

## **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]

### **BETWEEN**

[REDACTED]

**APPELLANT**

AND

[REDACTED]

**RESPONDENT**

### **PANEL DECISION**

The Appeals Panel 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 [REDACTED], who was born on [REDACTED] 1923 in Ceradice (former Czechoslovakia). She is the daughter of [REDACTED] and [REDACTED], nee [REDACTED]. Her father, who was born on [REDACTED] 1881 in Kratochony (former Austria-Hungary), died in the ghetto of Lodz on 16<sup>th</sup> March 1943 and her mother, who was born on [REDACTED] 1899 in Gmuend (Austria), died on 20<sup>th</sup> April 1945 at the concentration camp of Bergen-Belsen. The Appellant has a brother, [REDACTED], who lives in Israel.
2. The Respondent is [REDACTED].

3. The Appellant submitted a Claim Form signed on 17<sup>th</sup> March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claims the proceeds of a life insurance policy and a *“prosperity insurance of farming estate at Ceradice and ownership of [REDACTED] in Prague”* issued by “[REDACTED]”. No details relating to the policies were given.
4. The Claim was submitted by the ICHEIC to [REDACTED]. Before this a letter dated 25<sup>th</sup> August 2000 was sent to the Czech Ministry of Finance in which the Ministry was asked for assistance in determining whether “[REDACTED]” is still in existence. This letter has not been answered. Further research by the ICHEIC, which used different sources (among others the *“Assekuranz Jahrbuch”*, Basel, Verlag für Recht und Gesellschaft, several editions, dated around 1940), made it most probable that [REDACTED] was intended. An insurance company named “[REDACTED]” operating in Czechoslovakia never existed.
5. [REDACTED] denied the claim by letter to the Appellant dated 17<sup>th</sup> March 2003. [REDACTED] did not deny that they were the company described as “[REDACTED]”.
6. The Appellant submitted an Appeal to the Appeals Office dated 10<sup>th</sup> April 2003. In section C (*“Restate the basis for your claim and explain why you believe your claim has been wrongfully decided”*) she stated: *“My father [REDACTED] bought a life insurance policy in the amount of 100,000 Korunas from Mr. [REDACTED], the [REDACTED] agent in Zatec (Saoz) Czech Republic. At the same time also bought two policies from [REDACTED] ...”*. The (non-life) insurance contract (see above, Paragraph 3) was not mentioned in the Appeal Form.
7. The Appeal Form received from the Appellant was an incorrect Appeal Form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration of waiving any right to appeal such decision as provided in the Appeals Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration of waiving the right to make any claims against the Appeal Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
8. The Appeal Office requested the Appellant by letter dated 20<sup>th</sup> June 2003 to sign an amended Appeal Form.
9. On 18<sup>th</sup> July 2003 the Appeals Office received the amended Appeal Form in which the Appellant repeated her reasons for appealing the decision of [REDACTED], which she had set out previously in the imperfect Appeal Form.
10. The Appeals Office sent the new Appeal Form with the reasons for appeal to [REDACTED] on 18<sup>th</sup> July 2003.
11. [REDACTED] responded in a letter dated 13<sup>th</sup> August 2003. It repeated the reasons it had set out before adding: *“Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim, and also the reasons for our impossibility to produce to the Panel any document related to the claim, with the only exception of the generic exchange of correspondence herewith enclosed, which however does not give any evidence of a*

*contractual relationship. On the contrary, the uncertainty of the reference to [REDACTED] confirms what is shown by the documents produced by the claimant, that is the existence of a contractual relationship with another company, different and independent from [REDACTED]. We have of course researched in our database also the name indicated in the Appeal form as the “agent” who would have sold the supposed policy, but no match has been found”. Enclosed were a letter dated 9<sup>th</sup> August 1959 written by the Appellant to [REDACTED] and a letter dated 17<sup>th</sup> August 1959 from [REDACTED] answering this letter.*

12. On 3<sup>rd</sup> September 2003 the Appeals Office informed both parties that the appeal will be 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.
13. No request for an oral hearing has been received from either party. The Appeal proceeds on a “*documents only*” bases.
14. 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.
15. The seat of the Panel is Geneva, Switzerland and the Panel Decision is made in that place.

#### **THE CLAIM**

16. The Appellant sets out the reasons for her Appeal as follows: “*My father [REDACTED] bought a life insurance policy in the amount of 100,000 Korunas from Mr. [REDACTED], the [REDACTED] agent in Zatec (Saoz) Czech Republic. At the same time also bought two policies from [REDACTED]. My claim on that policy was settled by [REDACTED] last year. The reasons that I am unable to provide the original contract is that our entire family spent the war in concentration camps. Upon our return home we found that personal belongings and documents had been ransacked”.*
17. In the Claim Form she states that the insurance policy (life and non-life policies) were purchased in Zatec, Bohemia, Czechoslovakia and were purchased from “[REDACTED] agent [REDACTED] of Zatec, Czechoslovakia”. She further states without giving details as to sums insured that the policies were issued in Czech Korunas between 1923 and 1937. She identifies her father, [REDACTED], born [REDACTED] 1887, who died on 16<sup>th</sup> March 1943 in the ghetto of Litzmannstadt (Lodz) in Poland, as the policyholder and insured. She further states that she does not know the named beneficiary (of the life insurance policy), but it could be her late mother [REDACTED], born [REDACTED] 1899.

#### **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

18. A copy of the Claim Form was submitted by the ICHEIC to [REDACTED].
19. In its decision letter dated 17<sup>th</sup> March 2003 [REDACTED] informed the Appellant that it has “*carefully examined the information you provided. We have also carried out a search of all the information available to us that could support your claim and in this connection we have only found the exchange of correspondence of 1959, which we enclose for your reference. However, our documentation is limited because the archives relating to policies*

*issued in Eastern Europe were held locally and are no longer in our possession”. They informed her that “based on the information you provided and our search, the evidence would indicate that Life insurance policies had been stipulated with another Italian insurance Company, while no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found – and we are therefore declining your claim”.*

20. [REDACTED] responded to the appeal in a letter dated 13<sup>th</sup> August 2003, in which it pointed out the “*uncertainty of the reference to [REDACTED]*” as already quoted above (see Paragraph 11). In this letter [REDACTED] provided two letters dated 9<sup>th</sup> and 17<sup>th</sup> August 1959. The first letter is a letter written by the Appellant to [REDACTED] that reads as follows: “*My father, Mr. [REDACTED] of Ceradice, Czechoslovakia, and later Prague I, [REDACTED], Czechoslovakia, carried most of his insurance with your company. He, as well as my mother, Mrs. [REDACTED], nee [REDACTED], died during the World War II, and now we find out that some life insurance policies covering the life of my father and mother, with the children or the estate as beneficiaries, must have been some [REDACTED], -- of which some were in foreign currency; it seems certain, that these policies must have been with [REDACTED], Branch Office in Prague. – Since the institution being in charge of the liquidation of the Czechoslovak insurance business of [REDACTED] in Prague, does not at present give any information concerning any existing policies, I would appreciate it greatly if you could search in your files for any records which your Home Office may have concerning life insurance of my father [REDACTED] and my mother [REDACTED], nee [REDACTED], and if you should find these records, could advise me is to the policy numbers, amounts, currency and other details. ...*”. [REDACTED] responded: “*... we are sorry to tell you that we are not in a position to ascertain if, as it seems to you, the Life Insurance of your father, Mr. [REDACTED] has been stipulated with the [REDACTED] in Czechoslovakia, because the same alone was in possession of the documents concerning the Life Policies belonging to their portfolio. We beg however to inform you that after the war all private Insurance Companies operating in the Czechoslovakian Republic have been turned by specific law dispositions into a State property and the Czechoslovakian portfolio of these Companies with the respective properties, representing the premium reserves set up in Czechoslovakia, have been transferred to a State Institute ... . This Institute has therefore become competent and responsible for all obligations arising from the Life Insurance Contracts stipulated in Czechoslovakia*”.

## **THE ISSUES OF DETERMINATION**

21. The first issue for determination in this Appeal is whether the Appellant has met her 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 1<sup>st</sup> January 1920 and 8<sup>th</sup> 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.
22. The Appellant has succeeded in establishing that a life insurance issued by [REDACTED] existed.
23. Where the relevant member 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 does not 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 Member Company.
24. As to the existence of a life insurance policy, the Panel has concluded that the Appellant has met her burden of proof. However, she did not meet her burden of proof with respect to the insured sum, which she stated was KCs 100,000.
- a) The Appellant particularised, even if sometimes not completely correctly, the name of the company that issued the insurance policy, the place where the insurance was issued and the local representative who sold the insurance. She further could name the currency, in which the insurance was issued, to approximate roughly when the policy was issued and to set forth the policy holder’s and insured’s name. The Panel is satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945 as the Appellant states, and that her father took out the insurance policies with [REDACTED] at about the same time as he signed other insurance contracts with [REDACTED]. Those contracts with [REDACTED] had been signed – as evidenced by copies of [REDACTED] insurance documents and by a letter from [REDACTED] dated 23<sup>rd</sup> April 1998 – in 1928 and 1934. As in the [REDACTED] case, in which she stated that the insurance agent’s name was [REDACTED] from Zatec, she remembered the name of the [REDACTED] agent, which was [REDACTED] from Zatec. Further, it is plausible under section 17.2.2 above that the Appellant and her brother in equal shares are the persons entitled to the proceeds of the policy, as the only living relatives of the policyholder and insured and the possible beneficiary. Finally there is no doubt that the policyholder is within the definition of Holocaust victim as set out in section 14 of the Agreement; her father having died in the ghetto of Lodz during the Holocaust. In the circumstances the Panel concludes this appeal in favour of the Appellant on the issue of whether a policy was issued by the Respondent.
- b) In the Claim Form the Appellant answered Question 5.4, which relates to the sum insured “*Don’t know*”. Later, however, when setting out the reasons for her Appeal, she stated, without telling how she knew, that the insured sum was “100,000 Korunas”. In addition, in her letter written in 1959 she did not mention any insured sum but just, that there must have been an insurance contract with [REDACTED]. Under these circumstances the Panel is not satisfied that the insured sum the Appellant finally and for the first time stated in the Appeals Form is plausible as required by the relaxed standards of proof. Therefore, while the contract has to be regarded as existing, it must be valued as a contract with an unknown insured sum.

## VALUATION

25. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where the claimant satisfies ... 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 have to be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).
26. For policies issued in Czechoslovakia between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Koruna 12,070, which has, according to Schedule 3 and section 7.1 of the said Annex, to be multiplied by 3 to get the base value of Koruna 36,210.
27. This value in Koruna corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.024 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 869.04.
28. According to Step 2 of Schedule 2 of the said Annex this dollar value has to be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 9,807.98544 by end 2000.
29. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to end of 2000 for the subsequent years (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 13/12 of 4.75 %), which leads to the amount of US\$ 10,337.61665376 for 2001, US\$ 10,828.01592576 for 2002 and US\$ 11,342.3466822336 for 2003.
30. This total amount of US\$ 11,342.3466822336 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 has to pay the amount of US\$ 6,000.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

1. The appeal succeeds.
2. [REDACTED] shall pay the sum of US\$ 6,000 within 60 days from the date of this Decision such sum to be shared equally between the Appellant and her brother [REDACTED].

Dated this 17<sup>th</sup> day of November 2003

The Appeals Panel

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Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member