

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

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], née [REDACTED], who was born on [REDACTED] 1923 in Hrvatska Belisce (former Yugoslavia, now Croatia). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1887 in Kecel (former Austria-Hungary, now Hungary) and died on 31st July 1942 in the concentration camp Jasenovac (Croatia). [REDACTED] was born on [REDACTED] 1895 in Valpovo (former Austria-Hungary, now Croatia) and died on 31st July 1942 in the camp of Stara Gradiska (Croatia). The Appellant has a sister, [REDACTED], nee [REDACTED], who was born on [REDACTED] 1917 in Valpovo and lives now in Belgrade.
2. The Respondent is [REDACTED], as the legal successor of “[REDACTED]”.

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued policies of life insurance to her father.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 20th May 2003 that *“based on the information you provided and our search, the policy number you mentioned in the claim form and in the letter 11/03/1946 sent to you from “[REDACTED]”, does not belong to the portfolio [REDACTED]; consequently 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”*.
5. The Appellant submitted an appeal to the Appeals Office dated 22nd August 2003, which was accompanied by an attachment setting out the reasons for the appeal and four copies of documents from registers of births, marriages and deaths.
6. The Appeals Office received this letter on 25th September 2003 and mailed a copy of it to [REDACTED] on 1st October 2003.
7. [REDACTED] responded in a letter dated 30th October 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to this claim, and to confirm [REDACTED]’s previous decision on it”*.
8. On 3rd November 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 and forwarded a copy of the letter dated 30th October 2003 to the Appellant.
9. On 19th November 2003 the Appeals Office received a fax from the Appellant with a request for an oral hearing. By letter dated 20th November 2003 the Appeals Office informed [REDACTED] of that request.

By letter dated 24th November 2003 the Appellant sent copies of birth and death certificates of her father and a translation of a letter dated 11th March 1946 from “[REDACTED]”, the original of which in Serbo-Croatian had been provided together with the Claim Form.

10. On 12th December 2003 the Appeals Panel decided that there should be an oral hearing by setting up a telephone conference call on Thursday, 8th January 2004, 16.30 (German time) and that the interview would be conducted in German. The Appeals Office informed both parties about this decision by letter dated 15th December 2003.
11. The oral hearing took place on 8th January 2004. It was conducted in German and translated by an interpreter into English. A representative of the Respondent took part in this oral hearing as well.
12. 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.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made in that place.

THE CLAIM

13. The Appellant has submitted the following information in relation to the claim.
- a) In answer to Question 3.1 she identifies “[REDACTED]” as the company, which issued the life insurance policy to her father and adds, “*their representative was [REDACTED]*”. She further states that the policy was purchased in Osijek (Croatia), Yugoslavia and names the agent as [REDACTED].
 - b) Question 4 (“*Can you provide us with copies of any document and/or statement and/or other information substantiating your claim*”) she answers with “yes” and continues as follows: “*1st Enclosure: Correspondence with the insurance company. The insurance company could not make a decision on payment because we were not able to send any of the documents which they demanded (please see the attached photocopy of the letter addressed to the insurance company which represented [REDACTED])*”. This letter is the above already mentioned letter dated 11 March 1946, which was issued by “[REDACTED]” which reads: “*I confirm receipt of your esteemed letter of the 27 of the previous month. It is our honour to inform you that we can make our decision concerning the above policy on the basis of the following documents: the original policy, the receipt of the last paid premium, the death certificate, the birth certificate and a certificate from the district court that the property of the insured person and the beneficiary has not been confiscated*”. This letter quotes a policy number “[REDACTED]”.
 - c) In answer to Question 5 regarding specific details about the policy, the Appellant gives the above quoted policy number and states that the currency in which the policy was issued is Dinar and premiums were paid until 1942.
 - d) She identifies her father as the policyholder and insured and herself as beneficiary. She further names her sister [REDACTED] as a living heir.
 - e) In answer to Question 11 concerning “*further information*” she refers to “*attached document = 1) photocopy of ID card 2) correspondence (1 letter) with the insurance company [REDACTED] which represented [REDACTED]*”. As far as we can remember the insurance was concluded in the period between 1929 and 1940 to the sum of 15,000 Dinars of the time but this detail may not be exact”.
14. The Appellant sets out the reasons for the appeal as follows: “*In late June 1942 I escaped the Nazis/Ustasas, leaving my parents home and hoping to save my own life (I was 19 years old). I could not carry any documents with me as I escaped illegally over the boarder. (From the former independent state of Croatia to Hungary.) I knew that my father [REDACTED] had a life insurance at [REDACTED]’ from various discussions and talks we had within the family. As my parents died in concentration camps I did not go back to Osijek but instead moved to Belgrade where my sister lived, who had also survived. Some time in 1946 we posed an inquiry to the general insurance company [REDACTED]’ asking them to pay out our father’s life insurance’ ([REDACTED] did not exist any more.) We were denied because we did no have the original certificate of insurance*”.
15. Finally, in a letter dated 17th November 2003, which repeats and summarizes what she reported, she states “*we know with certain that our father paid his premiums regularly until he was taken to the concentration camp of Jasenovac*”.
16. In the oral hearing the Appellant repeated what she already had stated in writing and gave the following additional information:

- a) She restated that she is entirely sure that her father took out a life insurance policy from “[REDACTED]” and stated further that in 1945 she had already claimed restitution of lost assets and in 1946 claimed for the first time the proceeds of this insurance policy. In 1949 she again submitted this claim and received an answer from the magistrate of the city of Osijek.
- b) Asked for further details about the beneficiary of the policy she answered that she is not able to give further information, but that she is sure that beneficiaries were either her mother or she and her sister [REDACTED]. After being made aware of the contradictory answer she had given in the claim form, in which she had answered the question about the beneficiary by stating that she was the only beneficiary, she indicated that she did not want to state this and that this answer may have been caused because she misunderstood the question. She explained that as far as she remembers she shared everything she received from her parents in equal parts with her sister [REDACTED].
- c) She further stated that she was sure that “[REDACTED]” was not the company which issued the life insurance policy and explained this by pointing out that there was a sign on the wall of their former house showing the label or name of “[REDACTED]” which would have indicated that this house was insured by “[REDACTED]”.
- d) Finally she pointed out that she never wanted to state that the number shown in the letter dated 11th March 1946 which had been written by “[REDACTED]” was the original policy number which was given by “[REDACTED]”. She only quoted this application number as the “[REDACTED]”, which she thought was representing “[REDACTED]”, had given it.
- e) She also made the Appeals Panel aware of that there were only two families called “[REDACTED]” where the family had lived and that only her father had the name “[REDACTED]”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. After a copy of the Claim Form had been submitted to [REDACTED], the company informed the Appellant by letter dated 20th May 2003 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. 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”*. [REDACTED] denied the claim for reasons already reported above (paragraph 4).
18. In a letter dated 30th October 2003 [REDACTED] repeated the above and confirmed its decision. In this letter [REDACTED] writes *“The claim at issue relates to an Eastern European country, where [REDACTED]’s former subsidiary ([REDACTED]) was completely nationalized and expropriated immediately after the end of World War II”*. The statement made in the letter dated 20th May 2003 that *“the policy number ... mentioned in the claim form and in the letter 11/03/1946 sent to you from “[REDACTED]”, does not belong to the portfolio [REDACTED]”* was not repeated.
19. In the oral hearing the Respondent’s representative referred to what already had been stated in writing and made the following additional statements:

- a) The policy number given in the letter dated 11th March 1946 is no policy number which could be allocated with a [REDACTED] or [REDACTED] subsidiary number, as they had no policy numbers in the years of 1930 which were that high.
- b) If it was “[REDACTED]” that issued the insurance policy covering the house of the Appellant’s family it is more likely that “[REDACTED]” also were the company issuing the life insurance policy.

THE ISSUES FOR DETERMINATION

20. 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 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.

21. 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 German company.

22. Based upon the written assertions of the Appellant and her statements during the oral hearing the Panel concluded that she has met her burden of proof. Her evidence has the requisite authenticity and particularity. The Appellant since shortly after the war tried to get the proceeds of the policy. She has particularised the company that issued the insurance and the place where the insurance was issued. She was able to identify the agent who was involved when the insurance contract was taken out and the currency of the insurance contract. She also could rule out the Respondent’s assertion regarding the given policy number (112494) that this policy could not have been issued by “[REDACTED]” by making clear that she did not state that this was the policy number originally given by the company. Rather, this was the number she was given by the “[REDACTED]” when corresponding with this company which she thought was representing “[REDACTED]”. Further, there is no empirical fact that makes it more likely that it was “[REDACTED]” – which is not a former or present subsidiary of the Respondent – that issued the life insurance policy, because it was the insurance company, which issued the house insurance policy. Finally, the Appeals Panel is convinced that a misunderstanding caused the Appellant’s first statement in the Claim Form saying that only she is the beneficiary.

Having been asked in the oral hearing and having been given an explanation about the meaning of this question, the Appellant did not hesitate to make clear that either her mother or she and her sister were beneficiaries.

The Panel is also satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945 as premium payments were made until 1942. The assumption of the Appellant about an insured sum of 15,000 Dinars on the other hand may not be relied upon as it is too vague, the Appellant herself having acknowledged that this detail may not be exact.

23. Furthermore, it is plausible under section 17.2.2 above that the Appellant and her sister are the persons entitled to the proceeds of the policy as the beneficiaries of that contract for the reasons set out above.
24. Finally, there is no doubt that the policyholder and the Appellant are within the definition of Holocaust victim as set out in section 14 of the Agreement. The Appellant's father (the policyholder) died in a concentration camp and the Appellant herself (the beneficiary) had to leave Croatia because of the persecution by the National Socialists.
25. [REDACTED] could not set up a valid defence under the same relaxed standards of proof. The non-existence of records is no such defence.

VALUATION

26. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel is, since the value cannot be otherwise determined, required 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 a 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).
27. For Policies issued in Yugoslavia between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Dinar 24,080, 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 Dinar 72,240.
28. This value in Dinar corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.01594 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 1,151.5056.
29. 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\$ 12,995.8922016 by end 2000.
30. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to the end of 2000 for the subsequent years. These interest rates have been agreed on in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which has been consulted with the other two parties of the Agreement, the Foundation and [REDACTED] (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 % according to the month, in which the decision is made, plus two months, i.e.

4/12 of 5.0 %). A calculation on this basis leads to the amount of US\$ 13,697.6703804864 for 2001, US\$ 14,382.55389951072 for 2002, US\$ 15,065.7252097374792 for 2003 and US\$ 15,316.82062989977052 for 2004.

31. This total amount of US\$ 15,316.82 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 must 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 sister [REDACTED], nee [REDACTED].

Dated this 10th day of February 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member