

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

Fax:

++ 44 (0) 207 269 7303

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

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]

CLAIM NUMBER: [REDACTED]

BETWEEN

[REDACTED]

Represented by:
[REDACTED],
Walton on Thames, Surrey,
England

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], nee [REDACTED], who was born on [REDACTED] 1927 in Klatovy (Czechoslovakia). She is the daughter of [REDACTED] and [REDACTED], nee [REDACTED]. [REDACTED] was born on [REDACTED] 1889; [REDACTED] was born on [REDACTED] 1889. They both died in October 1944 in Auschwitz.
2. The Respondent is [REDACTED].

3. The Appellant submitted a Claim Form signed on 8th May 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claims the proceeds of an insurance policy issued by [REDACTED]. No details relating to the policies were given.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 2003 “*based on the information you provided and our search, 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. This letter was addressed to the Appellant’s representative under a London address, where he had been practising as a solicitor until he retired in May 2001. In a letter dated 7th March 2002 he had informed the ICHEIC about the change of addresses; this information did not reach the Respondent. The decision letter dated 6th February 2003 was forwarded to the present address of the Appellant’s representative and reached the Appellant on 26th June 2003.
6. The Appellant submitted an appeal to the Appeals Office dated 30th June 2003.
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 16th 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 waiving any right to appeal such decision as provided in the Appeal 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 waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
8. The Appeals Office requested the Appellant by letter dated 26th August 2003 to sign an amended Appeal Form.
9. On 4th September 2003 the Appeals Office received the new Appeal Form, which is dated 3rd September 2003 and mailed a copy of it to the Respondent on 5th September 2003.
10. [REDACTED] responded in a letter dated 30th September 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*”.
11. On 30th 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.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
13. 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 there.

THE CLAIM

14. The Appellant sets out the reasons for her Appeal as follows: *“I clearly recall that my late father, [REDACTED], paid premiums regularly to [REDACTED], the local agent for [REDACTED] in Klatovy, Czechoslovakia. It is not an adequate reply from [REDACTED] that they can find no information in their records. [REDACTED] should conduct a full and proper search to find the details of the policy(ies) and pay out what is due to me”.*

15. In the Claim Form

- a) Appellant identifies [REDACTED] as the insurance company that issued an insurance policy.
- b) She states that this policy was purchased in Pilsen/Klatovy/Prague, Czechoslovakia and identifies the agent as [REDACTED] of Klatovy.
- c) Appellant does not provide any specific details relating to the type of policy issued, the currency, insured sum, or date of maturity, but states that the policy was issued ‘*approx in 1920’s*’.
- d) The policyholders and the insured persons are identified as [REDACTED], born 17th February 1889, and [REDACTED], born 25th October 1889, her parents.
- e) In answer to question 6.15 regarding other living heirs, she writes ‘*only my two daughters [REDACTED] and [REDACTED]*’.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the final decision letter issued on 6th February 2003 [REDACTED] states, *“we have 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] concludes, *“unfortunately we have to inform you that, based on the information you provided and our search, 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”.*

17. In response to the Appeal Process, [REDACTED] writes in a letter dated 30th September 2003, *“we have also thoroughly researched the name indicated by the appellant as alleged insurance agent, without finding any results”.*

THE ISSUES FOR DETERMINATION

18. The first issue for determination in this appeal is whether the Appellant filed her appeal in time, i.e. within 120 days of the receipt of the company's decision (section 4 (3) of the Agreement dated 16th October 2002). The initial imperfect Appeal Form was submitted on 30th June 2003, which is outside the specified time limit of 120 days. However, a letter accompanying the Appeal Form, written by the Appellant's representative, explains that the decision letter dated 6th February 2003 was sent to the representative's former address which resulted in a long delay and was not forwarded to the Appellant before 26th June 2003. Also, the Appellant's representative received the decision letter beyond the time limit of 120 days. There is notification in the claim file dated 7th March 2002 of his change of address. Because of these circumstances the appeal should be regarded as timely filed, as it was neither the Appellant's nor her representative's fault that they had no knowledge of the decision and the beginning of the 120 days time line for filing the appeal. After having received the letter on 26th June 2003 they immediately filed the appeal on the "old" appeal form, and, on request of the Appeals Office dated 26th August 2003, have sent a perfected Appeal Form on 4th September 2003.
19. The next 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:
- b) 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;
 - c) 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
 - d) 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 the case that a policy was issued by the German company.
21. As to the existence of a life insurance policy, the Panel has concluded that the Appellant has met her burden of proof. She particularised the name of the company which issued the insurance policy and the name of the local representative who sold the insurance. She said from the very beginning that she clearly recalled that her father paid premiums regularly to [REDACTED], the local agent of [REDACTED]. This early naming of the local representative of the company, something one would, under normal circumstances, regard as rather easy to check, specifically contributes to the authenticity of her statement. She also identified the place, where the policy was purchased, by stating that this was Klatovy, her parent's hometown that is about 25 miles south of Pilsen, or Pilsen itself or Prague, which

is about 60 miles northeast of Klatovy. As these three are geographically close to Klatovy, it is plausible that the policy was purchased in one of them. She further could approximate roughly when the policy was issued and set forth the policyholder's and insured's names. Although she did not state explicitly what kind of insurance policy her parents took out, the Panel is satisfied that it was a life insurance policy, as the Appellant stated later in the Claim Form that her parents were the insured persons. 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 the Appellant states that it was issued "*approx in the 1920's*" and her parents died in 1944.

22. The Panel further finds plausible under section 17.2.2 above that the Appellant is the person entitled to the proceeds of the policy. Even if the Appellant is not able to name the beneficiary there are no indications that someone else could be the beneficiary, as she states that she is the only daughter of her parents. Her statement that beside herself there are two other heirs of her parents, namely her daughters [REDACTED] and [REDACTED], does not change this. As Appellant was only seventeen years old when her parents died in Auschwitz and the insurance contract would have been taken out at a time when there were surely no grandchildren, it is most unlikely that the Appellant's parents designated beneficiaries other than their daughter.
23. Finally, there is no doubt that the policyholders are within the definition of Holocaust victim as set out in section 14 of the Agreement, as the Appellant's parents were taken to the concentration camps of Theresienstadt and Auschwitz and vanished in the Holocaust.
24. The Respondent's statement that it has not found a match with its records and that those archives relating to policies issued in Eastern Europe were held locally and nowadays are no longer in its possession does not provide a sufficient defence against the plausibility of the Appellant's assertions. Moreover, [REDACTED] was not able to rule out the Appellant's statement that its local agent at the time and region was [REDACTED].

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 is required to calculate using rules set forth 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).
26. Here the currency of the insurance policy is unknown and it could have been a policy in Czech Korunas or in Reichsmark, depending on where the policy was issued. However, because this is a "capped-amount-valuation", the question of the currency is only important for the decision the Panel has to take, if a valuation in one of these two currencies results in an amount less than US\$ 6,000. This is not the case as shown by the following two calculations:
 - a) 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.

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.

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 the end of 2000.

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 (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 15/12 of 4.75 %), which leads to the amount of US\$ 10,337.61665376 for 2001, US\$ 10,854.497486448 for 2002 and US\$ 11,498.98327470585 for 2003.

- b) For Policies issued in Czechoslovakia (Sudetenland) between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Reichsmark 841 which, according to Schedule 3 and section 7.1 of the said Annex, must be multiplied by 3 to get the base value of Reichsmark 2,523.

This value in Reichsmark corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.2807 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 708.2061.

According to Step 2 of Schedule 2 of the said Annex this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 7,992.8140446 by end 2000.

According to Step 3 of Schedule 2 of the said Annex additions must be made to the dollar value up to the 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. 15/12 of 4.75 %), which leads to the amount of US\$ 8,424.4260030084 for 2001, US\$ 8,845.64730315882 for 2002 and US\$ 9,370.8576117838749375 for 2003.

27. These total amounts of US\$ 11,498.98 or 9,370.86 are, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000.

28. Therefore, under either calculation, the Respondent must pay US\$ 6,000.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 6,000 within 60 days from the date of this decision.

Dated this 7th day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member