

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]

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] ([REDACTED]), born on [REDACTED] 1929 in Trencianska Tepla (Czechoslovakia, today Slovakia). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], an independent butcher and smoked meat producer, was born on [REDACTED] 1885 in Boleslov, district of Puchov (former Austria-Hungary, today Slovakia) and died on 13th February 1943 at Sered camp (Slovakia). [REDACTED] was born on [REDACTED] 1901 in Ocadnica, district of Cadca (former Austria-Hungary, today Slovakia) and died in 1945 in the concentration camp at Auschwitz. The Appellant's sister, [REDACTED], born on [REDACTED] 1930, also perished in the concentration camp at Auschwitz in 1945. The Appellant himself was deported to concentration camps (Gross Rosen, Auschwitz) and freed by the United States Army from the concentration camp at Buchenwald.
2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 12th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 24th July 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. The Appellant submitted an appeal to the Appeals Office dated 8th July 2003, which was accompanied by an attachment setting out the reasons for the appeal and copies of further documents.
6. The Appeals Office received the appeal form on 30th October 2003 and mailed a copy to the Respondent on 5th November 2003.
7. [REDACTED] responded in a letter dated 12th November 2003 and asked the Appeals Office for translations of copies of letters submitted with the appeal (letters dated 2nd March 1969, 23rd May 1971 and 11th February 1991). The Appeals Office sent those translations by fax on 18th November 2003 and 3rd December 2003.
8. In a letter dated 2nd December 2003 [REDACTED] 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”*.
9. On 12th December 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
11. 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

12. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.

- a) The Appellant identified two companies as having issued policies to his father, [REDACTED] and [REDACTED]. This appeal relates to the claim against [REDACTED].
- b) In section three the Appellant asserts that the policy was purchased in Slovakia between about 1920 and 1929.
- c) In section four with regard to documents, the Appellant writes, “*correspondence dated April 14th, 1971 with response attached. Correspondence dated 2nd May 1971, also from 11th February 1991*”.
- d) In section five the policy is identified as a ‘life insurance policy’. The Appellant states that the sum insured was US\$ 20,000 and that the date of issue was sometime between 1920 and 1929. He further asserts that the policy was confiscated by the Germans and by the Slovak state and that all premiums were paid to the best of his knowledge.
- e) In section six the policyholder is identified as [REDACTED], the Appellant’s father, who was born on [REDACTED] 1885 in Bolesov, in the district of Puchov. He died on 13th February 1943 at Sered camp in Slovakia. The Appellant’s father was an independent butcher and smoked meats producer and ran a butcher and smoked meats shop.
- f) In section seven the insured person is identified as the Appellant’s father.
- g) In section eight the beneficiaries are identified as the Appellant and his mother, [REDACTED] née [REDACTED] who was born on [REDACTED] 1901 in Ocadnica, in the district of Cadca. She died in Auschwitz in 1945.
- h) In section eleven with regard to further information, the Appellant writes, “*...as an orphan and minor, I was appointed a tutor by the law office at Trencin, Dr. [REDACTED]. All my documents remained with Mr [REDACTED] at Trencin. Meanwhile I left Slovakia via Israel to the USA. Mr [REDACTED] the lawyer died, and all the documents remained at the Trencin law office. Meanwhile the Czech and Slovak republics separated and I was not able to get my documents. As the attached correspondence will show, I did try to obtain the policies personally...*”.

13. The following documents were submitted with the claim form:

- a) A letter from the Appellant to [REDACTED] dated 14th April 1971. This letter asks for information about his father’s life insurance taken out with [REDACTED]. In this letter the Appellant asserts the policy was issued in the 1920’s. He writes, “*In 1946 I left my country for Israel and later for the USA. Together with my family and I became US citizens. The policy in question I left in Czechoslovakia together with other documents with my official tutor...because of the death [the next words are illegible because of the poor quality of the photocopy] I am not able to recover the policy*”.

- b) A letter from [REDACTED] to the Appellant dated 27th April 1971. This letter informs him that the state institute '[REDACTED]- Praha II – [REDACTED], post srnka [REDACTED] – is responsible for all obligations arising from the life insurance contracts stipulated in Czechoslovakia. Furthermore, it states that it is unable to check its records without the policy number.
 - c) A letter from the Appellant to the [REDACTED] in Prague, dated 23rd May 1971. In this letter he enquires about how he might submit a claim on life insurance policies taken out by his father with [REDACTED] and [REDACTED].
 - d) A letter from the Appellant to the Czechoslovak [REDACTED] in Prague, dated 11th February 1991. This letter is a request for information about his father's insurance policies, taken out with [REDACTED] and [REDACTED]. In this letter he writes, *“the policies were valid at the time of his death, and responsibility for payments on them was later taken over by the Czechoslovak [REDACTED], but as the sole heir I was never paid any of the benefit due to me, both under insurance law and under the insurance conditions of both companies”*.
 - e) A letter of probate issued by the Office of the State Notary at Trencin on 7th August 1992 in the matter of the estate of [REDACTED]. The document lists the estate owned by the deceased and confirms that the sole heir is [REDACTED], the Appellant.
14. Together with his appeal form, the Appellant sent copies of correspondence previously submitted to the ICHEIC as well as some new documents. In a supplement to the appeal form he writes, *“I just returned from the Slovak Republic where I observed documents on a computer proving that my father, [REDACTED], residing in Trencianska Tepla house [REDACTED] was insured by two (2) companies. 1, [REDACTED] and 2. [REDACTED]. Attached are two copies that show proof. I also have letters sent to different offices and companies that I sent from 1969 until 1971 and until this date. Attached are copies of these letters ...”*.
15. The following additional documents were submitted in the appeals process:
- a) A letter from the Appellant to Mrs. [REDACTED] dated 2nd March 1969 upon the death of her husband. From this letter it can be established that her late husband represented the claimant and was in possession of documents, which included his late parents' insurance policies. The Appellant asks Mrs [REDACTED] whether she could let him know if she is still in possession of the documents.
 - b) A copy of his father's identity card.
 - c) Two hard copies from ICHEIC's database, showing the Appellant's name and [REDACTED] and a non-[REDACTED] company ([REDACTED]) as insurance companies. There is no information on the file as to how the Appellant had obtained a hard copy from this internal database.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. In the final decision letter of 24th July 2003 the Respondent writes, “*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. 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. Additional comments were made by the Respondent in its letter of 2nd December 2003, in which it states, “*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 is also the reason for our impossibility to produce to the Panel any document related to the claim at issue, because no such document is available. We would like also to precise that the new documents produced by the Appellant together with his appeal appear to be simply a couple of images somehow extracted by the ICHEIC claims database, which of course can only show the existence of a claim, while they do not give any information about the alleged insurance policy*”.

THE ISSUES FOR DETERMINATION

18. The first issue for determination in this appeal is whether the Appellant has met his 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.
19. There is no question that the conditions referred to in the aforementioned sections 17.2.2. and 17.2.3 have been met. The Appellant is the surviving heir of a family of Holocaust victims and therefore in general entitled under the provisions of the Agreement. The Appellant, furthermore, has succeeded in establishing that a life insurance issued by [REDACTED] existed.
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 this case that a policy was issued by the company.

21. As to the existence of a life insurance policy, the Panel has concluded that the Appellant has met his burden of proof. However, with respect to the insured sum, which he states was US\$ 20,000.00, he did not meet his burden of proof.

a) The Appellant particularised the name of the company that issued an insurance policy. Further, he was able to approximate roughly, when the policy was issued, and to set forth the policy holder’s, insured’s and beneficiary’s names. 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 his father took out the insurance policy with [REDACTED]. The assertions of the Appellant seem credible to the Appeals Panel because they are supported by corroborative evidence. There is significant correspondence from the early 1970’s and 1990’s showing that the Appellant had at that time and since tried to find out the details about his father’s life insurance policy and to cash its proceeds. From the very beginning of his documented attempts and over a period covering decades the Appellant always stated that there was an insurance policy issued by [REDACTED]. In addition, his correspondence with others (non-insurance companies) conforms to his assertions that a policy issued by [REDACTED] existed. The Panel noted especially the letter written to a certain Mrs. [REDACTED], where the Appellant, referring to his late parent’s insurance policies, stated that his cousin, Dr. (Ing.) [REDACTED], left all the relevant documentation - among this his late parent’s insurance policies – with Mrs. [REDACTED]’s late husband, Dr. [REDACTED], who had been appointed the Appellant’s tutor after he had become an orphan. In these circumstances, the Panel concludes in favour of the Appellant on the issue of the existence of a policy issued by the Respondent.

b) As far as the insured sum is concerned the Appeals Panel reached a different conclusion. In the claim form the Appellant answered Questions 5.3 and 5.4, which relate to the currency and the sum insured with the statement “*US dollars 20,000*”. This is the first time that an insured sum was mentioned in all the material submitted by the Appellant. The insured sum, which is, for the time when the insurance contract is likely to have been concluded, a relatively high one, was never mentioned in the aforementioned correspondence, which extended over a considerable period of time. There is, in addition, no explanation, as to how after so many years the Appellant learned of the insured sum. It is clear from the letters he wrote during the afore-mentioned years that he was not able to specify the insured sum or other details, but only that there must have been an insurance contract with [REDACTED]. Under these circumstances the Panel is not satisfied that the Appellant with the necessary particularity and authenticity even under the relaxed standards of proof, was able to establish that it is plausible that the insured sum was US\$ 20,000.00 as claimed for the first time in the claim form. Therefore, while the contract is to be regarded as existing, it must be valued as a contract with an unknown insured sum.

VALUATION

22. 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 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 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 must be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).

23. 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 must, according to Schedule 3 and section 7.1 of the said Annex, be multiplied by 3 to get the base value of Koruna 36,210.
24. 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 a value of US\$ 869.04.
25. 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\$ 9,807.98544 by the end of 2000.
26. 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. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC issued after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (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. 8/12 of 5.0 %), which leads to the amount of US\$ 10,337.61665376 for 2001, US\$ 10,854.497486448 for 2002, US\$ 11,342.3466822336 for 2003 and US\$ 11,720.42490497472 for 2004.
27. This total amount of US\$ 11,720.42 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 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 no later than the last day of the second month following the month of the decision, which is 30th September 2004.

Dated this 1st day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member