

## **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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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] ([REDACTED]), née [REDACTED], born on [REDACTED] 1919 in Budapest (Hungary). She is the widow of [REDACTED] ([REDACTED]). [REDACTED] was born on [REDACTED] 1907 in Mezótur (Austria-Hungary) and died on 11<sup>th</sup> July 1994 in Los Angeles (United States of America). [REDACTED] was incarcerated from January 1944 in several labour camps (Nagybanya,

Felsobanya, Jamma, Jeremesce, Fertorakos and Zürndorf), from which he managed to escape twice. After his second escape he hid in Budapest until his liberation on 18<sup>th</sup> January 1945.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 29<sup>th</sup> October 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued a non-life insurance policy (an “*insurance current value replacement to protect against currency devaluation*”). In addition she submitted a non-dated claim on a “*Holocaust Survivor/ Insurance Claims-Questionnaire*”-form issued by the State of California Department of Insurance, in which she also claims that “[REDACTED]” or “[REDACTED]” issued a non-life insurance policy as described above. Later, in the oral hearing, she claimed that [REDACTED] also issued life insurance policies.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 2<sup>nd</sup> October 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 22<sup>nd</sup> January 2004, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received an advance fax of this appeal form on 23<sup>rd</sup> January 2004 and mailed a copy of it to the Respondent on the same day.
7. [REDACTED] responded in a letter dated 5<sup>th</sup> February 2004 and requested the Appeals Panel for reasons it had set out before to “*reject the appeal submitted with respect to this non-life claim and to confirm [REDACTED]’s previous decision on it*”.
8. On 24<sup>th</sup> February 2004 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.
9. On 15<sup>th</sup> March 2004 the Appeals Office received a fax from the Appellant with a request for an oral hearing.
10. On 17<sup>th</sup> June 2004 the Appeals Panel decided that there would be an oral hearing by setting up a telephone conference call on 5<sup>th</sup> July 2004, 7.30 (Pacific Time). The Appeals Office informed both parties of this decision by letter dated 18<sup>th</sup> June 2004.
11. The oral hearing took place on 5<sup>th</sup> July 2004. The Appellant was assisted by her daughter, who, from time to time, translated certain words with which the Appellant was unfamiliar and answered questions on behalf of the Appellant.
12. 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.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

## THE CLAIM

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a non-life insurance policy in her claim forms:

### Questionnaire issued by the State of California Department of Insurance

- a) She identifies the policyholder as [REDACTED], previously known as [REDACTED], her husband, who was born on [REDACTED] 1907 in Mezótur, Austria-Hungary. With regard to her husband's employment she writes, *"we had a fire equipment business [REDACTED] before the war, and after [REDACTED] Budapest"*.
- b) She states that the insured person was her husband.
- c) She asserts that she is the beneficiary.
- d) In section 6 of the questionnaire regarding *"details about insurance policy(ies)"* the Appellant identifies the insurance company as *"[REDACTED] or [REDACTED]"*. She identifies the type of insurance as *"business"* and states that the policy was purchased in 1939 in Budapest. She writes, *"current value replacement value, to protect against currency devaluation."* She states that the currency was *"Hungarian currency, Forint"* (Pengö must be meant) and asserts that the maturity date was *"1945 Jan or February"*. She asserts that the premium was paid annually and the premiums were paid until January 1945, when they stopped because of the war.
- e) In section seven concerning the *"basis for claim"*, the Appellant writes, *"my husband did an application 1986 before he was sick. Where he sent it I don't know because I never find a copy of the original application. He was sick for seven years before he died in 1994. I ask him, but I never had an answer"*.
- f) In section eight regarding *"previous claims of inquiries made"*, the Appellant writes, *"my husband did the insurance 1939 because he wanted our business value will be the same anything happening. We lost everything during the war. After the war we had to start again with borrowed money"*.
- g) In section nine with regard to *"compensation"* the Appellant indicates that there had been no participation in any compensation or restitution procedure for this claim. In answer to the question *"If no application was made, why not ?"* she writes, *"1986 my husband did an application. Before he was sick. I never find a copy of the original application. That's the reason I don't know where he sent it. He was sick for seven years before he died July 1994. I ask him questions but never gave an answer to me"*.

### ICHEIC Claim Form

This form deals with the above-described claim. In section eleven regarding *"further information"* the Appellant writes, *"my husband sent 1991-92 but where I don't know. Never find a copy from the original. He was sick 7 years before he died 11 July 1994. I ask him, but never gave answer for me. When we lived in Australia my husband meet a very old friend from Budapest who has the same insurance co. I don't remember his name, but he dies before we came to the U.S.A. My husband did the insurance 1939, when I was not his wife. He wanted our business value will be the same anything happening"*.

In a letter of 25th May 2002, in which she amends her granddaughter's address, the Appellant sent a photocopy of the claim form.

14. In the claim file there are various documents relating to her husband's business. Among these documents are:
  - a) A copy of a letter, and a photograph of the original document, which was sent to the Ministry of Finance on 6<sup>th</sup> August 1945. This letter lists the items *"taken away by the Arrow-cross men [Hungarian Nazis, referred to as militia in the handwritten text], from our store, in my absence"*. Additional items are listed which were taken from the flat on 23<sup>rd</sup> October 1944.
  - b) Documents certifying that [REDACTED], the Appellant's husband, possessed a trade's licence to sell general fire equipment to the public.
  - c) Photographs of the company's stand at trade fairs.
15. With the appeal form the Appellant submitted, for the most part, copies of documents, which had previously been submitted and are to be found in the claim file. However, on a photograph of the letter sent to the Hungarian Ministry of Finance in August 1945 she writes, *"this is the original letter copy what my husband wrote Aug. 1945 request from the finance ministry This is proof our co. was very big, an certainly we had insurance."* She does submit one new document in Hungarian dated 15<sup>th</sup> May 1962. The authenticated English translation reads, *"Dear Mr. [REDACTED]; you're asking if we remember the time when you took the supplies stored in the storage facility of the German Army. Father was a soldier, in my presence he opened the door of the German Army storehouse. I had to be there, in my capacity of house manager. A Hungarian gentlemen addressed you as 'counsellor of the ministry'; they had an interpreter with them at the opening. The interpreter informed me that the supplies stored in the storehouse were needed for military purposes. What ever was there, I have no idea, but they were taking supplies away for days; they also called me for the locking of the door when the storehouse was emptied; I still remember it, although it happened in the late Fall of 1944, I can testify to this at any time because I remember it well"*.
16. Further reference is made to the policy in a letter received by the Appeals Office on 15<sup>th</sup> March 2004, in which the Appellant writes, *"in our case especially, our business could not exist without insurance, we had to have more than the average person. Others may make up stories but with us it cannot be made up. In addition to the normal business, we conducted fire testings which were a very high risk of our business, and it was only one aspect"*.
17. In the oral hearing the Appellant mentioned – for the first time – that in addition to the non-life insurance policies that were the subjects of the claims procedure, she believes that her late husband also had taken out life insurance policies. She further explained that a coverage for risks in the fire fighting equipment business was required by law, because part of that business involved certain tests that had to be performed by those who deal with such equipment before selling it; these risky tests were, according to the Appellant, also the reason why her husband had taken out life insurance policies insuring his life in case of casualties caused when testing the equipment.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In a letter dated 17<sup>th</sup> May 2001 [REDACTED] writes: *“In reply to your inquiry of January 11<sup>th</sup> 2001 we should firstly point out that following to the expropriation by the nationalisation of the insurance company/ branch by the state authorities after WW II, [REDACTED] has no legal obligation in respect of any policies issued by its former eastern European independent branch offices. Anyhow we undertook on humanitarian bases within the frame of ICHEIC to process your inquiry. We have carefully examined the information that you provided us with. We have also made a search for documents that could support your claim, but we regret to inform you that no records have been found regarding any insurance policies referable to the indication given by you. If you should have any additional information or documentation which may be relevant to this claim, or if you should have any questions about the claim or our conclusion, please do not hesitate to contact us”*. This letter was accompanied by another letter, also dated 17<sup>th</sup> May 2001, in which [REDACTED] advised the Appellant that *“we have to ask you to regard as provisional the contents of the letter herewith attached”*.
19. In its decision letter issued on 2<sup>nd</sup> October 2003 by the Respondent writes, *“...Within the German Foundation framework and according to the ICHEIC procedures, we have undertaken that, where there is evidence of an unpaid policy relating to a Holocaust victim and issued by one of [REDACTED]’s former independent Branch Offices or subsidiaries in Eastern Europe, we will pay out on such policy in accordance with the German Foundation and ICHEIC valuation standards. We have undertaken to do this exclusively on humanitarian grounds, even though [REDACTED] has no legal obligation with respect to such policies, because all our branches and subsidiaries in Eastern Europe were expropriated after the war.... 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”*.
20. The Respondent made further comments in its letter of 5th February 2004: *“Unfortunately, with respect to the non-life 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 reason for our impossibility to produce to the Panel any document related to the claim at issue, because no such document is available”*.
21. In the oral hearing the representatives of the Respondent pointed out that a provisional decision had been made on 17<sup>th</sup> March 2001, a consequence of which is that the jurisdiction of the Appeals Panel must be questioned. The instructions given in the final decision letter dated 2<sup>nd</sup> October 2003, including appealing to the Appeals Panel, were in error. The Appellant should have been advised to file an appeal with the Appeals Tribunal, and, as the Respondent added, under the rules for the Appeals Tribunal, non-life insurance policies are not covered. In addition, Respondent pointed out that the Appellant had mentioned the existence of life insurance policies for the first time during the oral hearing.

## THE ISSUES FOR DETERMINATION

22. The first issue for determination is whether the Appeals Panel has jurisdiction in this case. Pursuant to section 4 (5) of the Agreement “*all claims decisions, including provisional claims decisions, taken by the German [REDACTED] companies prior to the signing of this Agreement will be eligible for the ICHEIC appeals process*”, whereas “*all claims decisions taken by all of the German companies after signing of this Agreement (that was signed on 16<sup>th</sup> October 2002) will be eligible for the appeals process specified in this Agreement (Annex E)*”. In the opinion of the Appeals Panel the letter of 17<sup>th</sup> May 2001 (see paragraph 18) did not represent a “decision”, provisional or otherwise, that could be appealed. This letter only contains an acknowledgement that the Appellant’s claim had been forwarded to [REDACTED], that [REDACTED] had searched its archives and records and 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*”. This letter does not contain any conclusion by [REDACTED] with respect to the information provided in this letter. The claim is neither denied nor accepted. The remark in the covering letter (“*we have to ask you to regard as provisional the contents of the letter herewith attached*”) does not suggest that the letter it is covering is a “decision letter”. For this reason the Appeals Panel concludes that there was no “*claims decision, including provisional claims decision, taken ... prior to the signing of (the) Agreement*” that would be eligible for the ICHEIC appeals process (which is the ICHEIC Tribunal Appeals Process) and that the appeal was appropriately taken from the decision of 2<sup>nd</sup> October 2003 (see paragraph 19).
23. The main 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 have to be applied according to section 2 (2) of the Agreement and section 1.3 of the Appeal Guidelines as the Appellant here initially claimed the proceeds of a non-life insurance policy). Section 17 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.
24. 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.

25. The Appeals Panel concludes that the Appellant has not met her burden of proof that it was [REDACTED], which issued life and/or non-life insurance policies. Her evidence lacks the requisite authenticity and particularity and there is no corroborative evidence (such as letters or statements from third parties, previous attempts to obtain information or to collect proceeds from an insurance company) to support the Appellant's recollection of the existence of insurance policies issued by [REDACTED].

The Appellant's statements about the non-life insurance policies are on their face generally incompatible. For example, she names a person as an insured under business insurance policies. "Insured persons", however, are generally not covered by such policies but only insured assets or risks. In addition, she states that she was the "beneficiary" of these business related insurance contracts, which would be highly unusual. Typically, a business risk insurance policy would be issued for the purpose of covering different types of risks such as risks for damages to the fire-fighting equipment itself, by reason of fire, flood etc. or the potential liability for damages caused to others resulting from the operation of the fire-fighting business. The beneficiary would be the business and not an individual.

Even assuming, however, that the Appellant is referring to insurance in which damage to assets is covered, in which case it is arguable that she is claiming that she is the rightful beneficiary of insurance payable by reason of such losses, the Panel concludes that the Appellant has not met her burden of proof. In support of her claim, she can only produce a letter to the Hungarian Ministry of Finance that describes damages caused by the "*Arrow-cross men (Hungarian Nazis)*" also called "*Nyilas Militia*" to her late husband's business. However, the damages as described by the Appellant are damages which, normally, are excluded in insurance contracts by a clause that states that coverage is not afforded for damages caused by war, civil war and natural disaster. If the Appellant is asserting that such a clause was not part of the contract, she has neither so stated nor is there any reason to conclude that she would have any information as to the whether such exceptional damages were included within the scope of the property insurance. Finally, information relating to earlier attempts to recover any sum from any insurance company is not presented. Appellant herself admits that she was unable to ascertain any detail about the insurance by asking her husband, who was the one who dealt with these matters, as he was very ill at that time and could not give her any information. In light of the Appellant's acknowledgement that it was her husband and not she who was principally involved with the insurance policies in question, her statement that she knows that [REDACTED] was the company that issued the insurance policies, without more, is insufficient to provide the detail sufficient to satisfy the conclusion that the policies were, in fact, issued by [REDACTED] or, indeed, the scope of their coverage.

With respect to life insurance policy(ies), representations about them were made for the first time, as the Respondent's representatives correctly pointed out, in the oral hearing. The only information the Appellant could give regarding those policies was that she believes that her late husband must have had life insurance coverage, because he was involved in risky fire tests. This suggestion, however, is merely speculative and, standing alone, cannot satisfy the Appellant's burden even under relaxed standards of proof.

**Appellant:** [REDACTED]  
**Claim No.:** [REDACTED]

**Appeal No.:** [REDACTED]

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

The appeal is dismissed.

Dated this 8<sup>th</sup> day of July 2004

The Appeals Panel

\_\_\_\_\_  
Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member