

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]

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

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
CLAIM NUMBERS: [REDACTED]
[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], born on [REDACTED] 1927 in Karlsruhe (Germany). She is the only daughter of [REDACTED] and [REDACTED], née [REDACTED] (also [REDACTED]). [REDACTED] was born in 1872 in Karlsruhe and died there in April 1939; [REDACTED] was born in 1884 in Tremessen (Germany) and died in September 1942 in Auschwitz. The Appellant is married to [REDACTED] (also [REDACTED]).
2. The Respondent is [REDACTED], the [REDACTED].
3. The Appellant and her husband submitted claims as follows:

- a) Non-dated “*Asset Information*” received by the State of California – Department of Insurance – on 20th September 1999, in which she and her husband claim the proceeds of insurance policies taken out by their parents;
 - b) A non-dated “*Holocaust Survivor/Insurance Claims – Questionnaire*” issued by the State of California – Department of Insurance – that was received there on 25th October 1999, in which she claims the proceeds of a life insurance policy taken out by her father. This questionnaire was sent in order to receive more detailed information by the State of California – Department of Insurance – after receipt of the above (a) mentioned “*Asset Information*”. There is a further questionnaire in the Claim File that contains essentially the same information but is written in another hand;
 - c) Two ICHEIC Claim Forms dated 18th March 2000 and 28th June 2000. In the one dated 18th March 2000 she claims the proceeds of an insurance taken out by her mother, in the other dated 28th June 2000 she claims the proceeds of a life insurance policy taken out by her father. The first Claim Form was assigned number [REDACTED]; the second Claim Form was assigned number [REDACTED]. These two claims are subject of the appeal.
 - d) A non-dated “*Holocaust Survivor/Insurance Claims – Questionnaire*” issued by the State of California – Department of Insurance – that was received there on 8th May 2000, in which she claims for the proceeds of a life insurance policy taken out by her mother. This claim appears to be have been sent to the ICHEIC which assigned it number [REDACTED] and processed it. This claim is not part of this appeal.
4. The ICHEIC submitted the claims number [REDACTED] and [REDACTED] to the [REDACTED] Companies and German companies since no form named a company.
 5. In a letter dated 6th April 2001 [REDACTED] informed the Appellant that they found documentation of a life insurance contract in their archives regarding the name of the Appellant’s father and the Appellant herself. The company continued: “*Unfortunately we have not been able to find any reference to Mrs. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] or to the name of the business ‘[REDACTED]’ in our archives*”. The research was performed on the basis of the above listed names.
 6. [REDACTED] informed the Appellant and the ICHEIC on behalf of [REDACTED] in a letter dated 1st October 2002 about the result to that date. In a further letter dated 10th February 2003 [REDACTED] informed the Appellant that it “*now concluded our research into external archives for a life insurance contract for Mr [REDACTED] ...*”. [REDACTED] continued: “*As we have already informed you, your father has taken out a life insurance policy with [REDACTED], which was later on taken over by [REDACTED]. The surrender value was paid out to your father’s blocked account at [REDACTED], Karlsruhe. In the meantime, the compensation authority informed us that a compensation proceeding took place*”.
 7. Because payment to a blocked account was in question [REDACTED] forwarded the claim to the [REDACTED].
 8. [REDACTED] informed the Appellant in a decision letter dated 1st April 2003 “*according to the Agreement a policy is not eligible for additional compensation, if that specific policy was covered by a prior decision of a German restitution or compensation authority*”. It explained “*the German authorities have now confirmed that Mrs. [REDACTED] had filed a claim under the German Compensation Laws regarding your father’s life insurance policy No. [REDACTED] over 5,000 Goldmark, taken out with [REDACTED]. As you can see from the attached documents, the sum insured was paid out on 16th June 1939 on a bank*

account at [REDACTED]. The proceeds of [REDACTED] – including the sum insured for the insurance policy – subsequently became part of a court settlement that was reached on 8th January 1960. Section 2 paragraph (1) subsection (c) of the Agreement states, that a claimant is only eligible for compensation, if the policy in question was not covered by a decision of a German restitution or compensation authority. The court (Landgericht Karlsruhe) as a final legal supervisory authority of the state compensation authorities had included the insurance policy in the court settlement which was accepted by Mrs. [REDACTED]”. [REDACTED] attached copies of a document issued by the Karlsruhe regional court – Reparations division – dated 8th January 1960 plus further attachments to this document which are bank documents showing the development of an account at the [REDACTED] Karlsruhe, number [REDACTED], and a receipt and a calculation from 1939.

9. The Appellant submitted an appeal form to the Appeals Office dated 2nd June 2003, which was accompanied by an attachment setting out the reason for appeal.
10. The Appeals Office mailed a copy to the Respondent on 25th July 2003.
11. On request of the Respondent the Appeals Panel granted an extension of time for replying to the Appellant’s reasons until 5th September 2003.
12. [REDACTED] responded in a letter dated 2nd September 2003 and requested the Appeals Panel for reasons it had set out before “*to consider whether it has the appropriate subject matter jurisdiction for this case. ... The claim and our decision relates to an [REDACTED] policy, covered by the Landgericht Karlsruhe – Rückerstattungskammer – on 8th January 1960. The decision of the Landgericht Karlsruhe regarding the restitution of the bank account included the proceeds for the [REDACTED] over RM 5,000 that were paid in this account (please see second line from top: “16.6.1939 [REDACTED] Summe 5.000,-”)*”.
13. On 5th 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.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.
15. In a letter dated 3rd November 2003 [REDACTED] wrote: “*In the meantime, the further enquiries at the compensation authorities in the [REDACTED]-[REDACTED] case have now been concluded. The facts as established are now as follows: the [REDACTED]-[REDACTED] family had only one bank account with [REDACTED], account number [REDACTED]. The account [REDACTED] stated in the reparation proceedings is, we believe, a typographical error, as the facts below show:*
 - *The balance of RM 53,279.70 stated for account [REDACTED] matches the balance stated for account [REDACTED].*
 - *[REDACTED] has confirmed that the [REDACTED] family only had one account with it.*

We enclose a record from the Karlsruhe regional court of 08.01.1960, a memo from the registry court Karlsruhe of 20.10.1952 and confirmation from [REDACTED] of 17.10.1952, which we believe may be taken to indicate that the accounts stated are identical. Account [REDACTED] has been compensated”.

16. 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

17. The Appellant has submitted the following information in relation to the claim for the proceeds of insurance policies:

Claim No. [REDACTED]

- a) The Appellant neither identifies a company nor provides policy details or indicates the type of insurance policy.
- b) The policyholder and insured person is identified as [REDACTED] ([REDACTED]) [REDACTED] née [REDACTED] ([REDACTED]), the Appellant’s mother, and the beneficiary is identified as the Appellant.
- c) In answer to question 11 of the Claims Form concerning ‘further information’ the Appellant writes, *“I was the only child and to secure my future was uppermost in the eyes of both my father and my mother. They surely insured each other naming me as their beneficiary in the troubled, uncertain conditions before the Holocaust. I was too young to be told much details.”*

In this claim file there is a letter dated 19th March 2002 to the Chairman of the ICHEIC from the Appellant in which she states, *“It is 2 years already, since the [REDACTED] acknowledged that my father took out a life insurance for himself and me, his only child, before the Holocaust. My parents were from the upper-middle class and must have taken out a large policy”.*

There is a further letter to the Chairman of the ICHEIC dated 9th April 2003 in which she asserts *“they claim that my father took out a life insurance on himself with me, his daughter, the beneficiary for the amount of **5000 Gold Mark**. If this is correct then the value of this would be today, without counting accumulated interest **\$500,000**. They coerced my mother, not without putting the sign of Cain on her forehead by inserting the name [REDACTED] to her legal name, to sign a receipt in full for the paltry amount of 5000 Reichs Mark. She never saw a penny of all of this because the Germans confiscated the bank account of 83,000 Reichs Mark which included the 5000, and assassinated her in Auschwitz.*

By the way, as a young child at the time of my deportation as well as the years following the war, I was ignorant of all this. I did not even know at which bank my parents had an account of if they had one. Nor did I have any knowledge of a life insurance policy.

I immigrated to the US in 1954 penniless. When Dr [REDACTED] accepted in 1960 on my behalf compensation for the confiscated bank account the Germany government did not pay in full, rather 10 pennies for 1 Reichs Mark. Since the insurance money was buried in the account as well, it evolves that from the original value of the policy I received the equivalent of \$150.”

It is unclear from the claims file whether these letters were sent to the Respondent.

Claim no. [REDACTED]

- a) In this claim form the Appellant is unable to identify the company that issued a policy, but states that a life insurance policy was issued to her father, [REDACTED], born 1872 and died in April 1939.
 - b) Her father is also named as the insured person and the Appellant is identified as the beneficiary.
18. In addition to the Claim Forms there are four separate documents entitled 'asset information' with the following details:
- a) The name of [REDACTED], née [REDACTED], is entered at the top of the form. The name of the person who owned the policy or who was likely to have been named the policyholder or beneficiary is identified as '[REDACTED]'. The name of the insurance company is not provided, but she writes, "*I was a child at the time of racial persecution. I know that my parents had an insurance policy for my education and dowry. I do not know with what insurance company. My father had also shares in that company*".
 - b) The name of [REDACTED], née [REDACTED], is entered at the top of the form. [REDACTED] is named as the person who owned the policy or who was likely to have been the named policyholder or beneficiary. The name of the insurance company is not provided, but she writes, "*I was only a child at the time of persecution. I have no knowledge of details. However, I overheard conversations where insur. Policy was mentioned*".
 - c) The name of [REDACTED], born [REDACTED] 1927, is entered at the top of the form, naming [REDACTED] as the person who owned the policy or who was likely to have been the named policyholder or beneficiary. The insurance company is not named, but he writes, "*I was a child. My parents took out an insurance policy for my education. I do not know details*".
 - d) The name of [REDACTED] is entered at the top of the form. [REDACTED] [REDACTED] is named as the person who owned the policy or who was likely to have been the named policyholder or beneficiary. The insurance company is not named, but he writes, "*I was only a child during the Holocaust. My parents did not share this type of information with me. But I heard them speak about it*".
19. In addition, there is also a questionnaire from the State of California in which [REDACTED] and [REDACTED], [REDACTED] and [REDACTED] are named as next of kin. In this questionnaire, [REDACTED] is identified as the policyholder. His employment is described as "*self employed, wholesale, leather business [REDACTED] and [REDACTED]*". The insured is identified as [REDACTED] and the beneficiary is named as [REDACTED]. In answer to question 6 concerning details of policies, the Appellant writes "*Big life insurance, 2 houses insurance, 1 business insurance, dowry insurance for daughter.*" In answer to question 7 concerning the 'basis for claim' the Appellant writes, "*I have as a child overheard conversations about existing ins. Policies. Parents do not share this type of information with child. Therefore I am unable to provide details.*"
20. In a statement submitted with the Appeal Form dated 2nd June 2003 the Claimant states that the policy could have been for more than the five thousand gold mark admitted by [REDACTED]. She writes:

*“I had absolutely no idea that my parents had life insurance. It was only after having filled out the Claims Forms and [REDACTED] admitting that they found my fathers name and my own name in their life insurance records that I became aware of it. This was in June 2001. For nearly 2 years [REDACTED]/[REDACTED] were driving me crazy with: admitting, denying, admitting, denying my father’s life insurance.” She continues, “I appeal the [REDACTED] decision on several grounds. Despite repeated requests I have never received a copy of the insurance policy. [REDACTED] admits that the policy was for **five thousand gold Mark**. It could have been more. They only paid out 5000 Reichs Mark, which was a fraction of the real policy value. My father took out a policy in **Gold Mark** something that is not subject to inflation, devaluation or fluctuations. The value today, without taking into account the accrued interest, would be in the vicinity of half a million dollars. I look at the receipt and realize that my mother was coerced into signing it. They added the fictitious name of Israel to my fathers name and the fictitious name of [REDACTED] to her name. My mother knew in 1939 that she will never see a penny of this money that was paid into a blocked account. Sure enough it went into the pockets of the Nazis. The insurance company knew it. The CEO of [REDACTED] during the Nazi era was Finance minister of Hitler. So the whole thing was a hoax. Like paying with his left hand into his right hand. The insurance company dug out a statement from [REDACTED], which I was never privileged to see before this day, that shows an entry of **5000 Reichs Mark**. The sum was from [REDACTED], I don’t know who this is. But even assuming that it was connected, Ariesiert, to [REDACTED], this was only a small amount compared to the balance of the parent’s account that was more than 86,000. So when the Bundes Republic compensated the account with 5328 DM the compensation for the **5000 Gold Mark** turns out to be very minimal indeed...**I am demanding that [REDACTED] pay me the full value of the premium plus accrued interest.**”*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. [REDACTED] informed the Appellant in its final decision letter of the results of its research as quoted above (paragraph 8) and provided the following documents:

- a) Copy of the decision of Landgericht Karlsruhe dated 8th January 1960. In the case of “[REDACTED] v. German Reich” the translated version reads, “*counsel for the Respondent admitted that they had withdrawn the sum of RM 53, 279.70 from the account of [REDACTED]’s estate no. [REDACTED] (emphasis added) at the [REDACTED] on 30.07.1942 and therefore owed the account holder’s successors in law the sum of*

DM 5,327.97

DM 1,331.99 (incl. §15 BRüG)

DM 6,659.96

(Amount shown in translation is DM 6,669.96 and seems to be taken from a hard readable copy of the settlement)*

Counsel for the Applicant said that he had not yet had an opportunity of examining the statement of account to see if it included the freely available component of the purchase price for the property at [REDACTED]. Herr [REDACTED] (described in the decision as merchant, sole proprietor of the company [REDACTED] & Co. KG, Karlsruhe, [REDACTED]) said that the sum, which the German Reich admitted was due to him and applied that this amount be awarded to him. He said that the purchase price for the business was freely available, however. Counsel for the Applicant will exceptionally given compensation file no. [REDACTED], as the extensive statement of account will have to be examined in detail.”

- b) A hand-written ledger (4 pages) from the [REDACTED], Karlsruhe, for the account number **[REDACTED] (emphasis added)** of [REDACTED]. The second line of page one for 16th June 1939 shows an entry of 5,000 from “[REDACTED]”.
- c) Receipt made out for policy number [REDACTED] for the sum of GM 5,000. This receipt is signed by [REDACTED], the widow of [REDACTED], and dated 1st June 1939. The English translation states that she [[REDACTED]] *“admits receiving correctly today, in full settlement of the insured, from [REDACTED] Munich. At the same time, she declares that disbursement of the sum above constitutes full and final performance of all [REDACTED]’s liabilities under certificate no. [REDACTED] that no further claims against [REDACTED] of any kind can be derived there from and that the said certificate has been surrendered to the company.”* [The following comments have been added] *“I would be grateful if you would pay the claim as per order of the customs prosecution authorities, Freiburg im Breisgau, of 16./24.05.1939 to the account of the deceased Herr [REDACTED], frozen under § 59 of the currency law, at the [REDACTED], Karlsruhe.”* It is noted that the beneficiary of the policy was [REDACTED], the Appellant, and that her mother, [REDACTED], represented her in law.

22. In a letter dated 3rd November 2003 the Respondent provided the following additional documents:

- a) A confirmation issued by the [REDACTED] in Karlsruhe, dated 17th October 1952 which reads *“This is to confirm that we had to debit the account no. [REDACTED] [REDACTED]’s estate formerly held in our books under instruction from the higher finance president Baden, ... 30.07.1942 RM 53,279.70 to the higher finance cashier’s office of the higher finance president Baden, Karlsruhe (account balance)”*.
- b) A letter issued by the Karlsruhe registry court – Dispute resolution on reparations - , dated 20th October 1952 which reads *“[REDACTED] has informed me that it has not had an account or deposit account in the name of [REDACTED]”*.

THE ISSUES FOR DETERMINATION

23. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form. They are “*related appeals*” submitted by the same claimant but relating to different policies.
24. Irrespective of the letters quoted above in no. 17 – which, since they might not have been sent to the Respondent, anyhow cannot form a decisive part of the Panel’s reasoning – there is no doubt that the Appellant’s father had an insurance policy with [REDACTED] [REDACTED], that the Appellant as beneficiary would be entitled to the proceeds of this policy and that all family members were Holocaust victims. Therefore, the claim of the Appellant is within the scope of the Agreement dated 16th October 2002. Respondent, however, has succeeded in establishing a valid defence in accordance with the Agreement. Pursuant to Section 17.3 Appeal Guidelines the claimant is not entitled to payment from the Foundation funds if;
- 17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with Section 2 (1) (c) of the Agreement.
25. The Respondent has met its burden of proof. There is written evidence that there was a law suit between the Appellant and the “*Deutsche Reich*” for restoration of bank balance, household goods and cash. This law suit ended either by settlement or by judgement by confession after the counsel for the Respondent (in this law suit - the “*Deutsche Reich*”) admitted that the sum of RM 53,279.70 had been withdrawn from the account of the Appellant’s father, number [REDACTED], at the [REDACTED] in Karlsruhe and therefore owed the account holder’s successor in law DM 6,659.96 (RM 53,279.70, which is DM 5,327.97, plus DM 1.331.99).
26. Part of this RM 53,279.70 were RM 5,000, which were paid on this account on 16th June 1939 after the Appellant, represented in law by her mother, had received the insured sum of “*GM 5,000 ... in full settlement of the sum insured, from [REDACTED] Munich*”. This is proved by the receipt dated 1st June 1939.
27. As the proceeds of this life insurance policy number [REDACTED] issued by [REDACTED] were paid on a blocked account after the insured event (which was the death of the Appellant’s father) occurred, the Appellant in principle under the Agreement could have a valid claim and the policy would be given the same valuation as applied to unpaid claims pursuant to section 17.3.2 of the Appeal Guidelines (Annex E) and section 5.1 of the Valuation Guidelines (Annex D).
28. However, in this case there was a restitution procedure according to the Bundesrück-erstattungsgesetz (BRüG – Federal Restitution Law) which undoubtedly included the insurance in question. Therefore, even if the restitution procedure ended with a settlement or by judgement by confession, the policy in question is considered to have been covered by a decision of a German restitution or compensation authority in accordance with Section 2 (1) (c) of the Agreement. In a case like that the Panel has no jurisdiction under the Agreement.
29. Finally, the Appeals Panel is satisfied that the account quoted in the attachments of the transcript of the Karlsruhe regional court dated 8th January 1960 (number [REDACTED]) is the account, which is mentioned in the transcript itself (number [REDACTED]). On the one

hand the balance of RM 53,279.70 stated for account [REDACTED] matches the balance stated for account [REDACTED] and on the other hand [REDACTED] has confirmed that [REDACTED] had no account of her own with it. The account number [REDACTED] quoted in the transcript dated 8th January 1960 seems to be a typographical error.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 2nd day of February 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member