

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 German Insurance Association

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 NUMBERS: [REDACTED],
[REDACTED],
[REDACTED]
CLAIM NUMBERS: [REDACTED]
[REDACTED]
[REDACTED]

BETWEEN

[REDACTED]

Represented by
Rechtsanwalt [REDACTED],
Leipzig, Germany

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] (formerly [REDACTED]), born on [REDACTED] 1937 in Dresden (Germany). He is the grandson of [REDACTED], who was born on [REDACTED] 1873 in Wierchomla od. Nowi-Sacz and died on 13th January 1943 in the concentration camp at Auschwitz. The Appellant’s father is [REDACTED], born on 30th March 1901 in Dresden.

The heirs of [REDACTED] are [REDACTED] and [REDACTED], born on [REDACTED] 1921 in Leipzig (Germany).

2. The Respondent is [REDACTED].
3. The Appellant's Representative submitted a claim dated 24th July/1st September 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that "[REDACTED]" issued policies of life insurance.
4. The ICHEIC processed this claim referring to policy numbers [REDACTED], [REDACTED] and [REDACTED], as three claims and assigned claim numbers [REDACTED], [REDACTED] and [REDACTED].
5. The ICHEIC submitted all claims to the Respondent. [REDACTED] stated in its respective decision letters dated 19th August 2003, which are addressed to the Appellant's representative *"In your client's case we have been able to find out that in December 1948, the community of heirs of Mr [REDACTED], consisting of Messrs [REDACTED] and [REDACTED], represented by Messrs [REDACTED] and [REDACTED], lawyers in Jerusalem and Dr. [REDACTED], London had already filed a claim for compensation on the a/m policy taken out by Mr [REDACTED] with [REDACTED] with the Regierungspräsident in Hildesheim (Chief official in the Administrative District of Hildesheim) within the scope of the BEG (German Compensation Law). The comprehensive claims documentation does not give any reference as to life insurance policies. On 31st January 1963 the Regierungspräsident in Hildesheim (see above) – based on an information of the heirs' authorised person – turned to [REDACTED] asking for information on life insurance policy No. [REDACTED] (policy Nos. [REDACTED] and [REDACTED] respectively). The relevant information was given on 12th February 1963. After receipt of an information given on 6th January 1960 by [REDACTED] in Bonn ([REDACTED]), Messrs [REDACTED] and [REDACTED] has already contacted [REDACTED] in a letter dd 30th December 1963 with the same request. [REDACTED] answered the letter on 7th January 1964. The contents of both [REDACTED] letters is identical; from the policy number it can be taken that the policy was made out in old marks, and this prior to the inflation that ended in 1923. Later the policy was dealt with under the revaluation law and converted into Reichsmark. Even in the oldest available portfolio register, dating back to the year 1937, this policy is no longer listed. Thus it can be concluded that – somewhere in the early 30's – the policy was terminated prematurely and the sum was paid out – as it was the rule in case of small sums insured. On 11th November 1964 the Regierungspräsident in Hildesheim (see above) first of all denied the claim for compensation in view of 'Schaden im wirtschaftlichen Fortkommen' by referring explicitly to the life insurance policies taken out by Mr [REDACTED] with [REDACTED] [REDACTED]. In a composition dd 20th and 22nd April 1965 a lump sum of DEM 50,000 for compensation of the total 'Schaden im wirtschaftlichen Fortkommen' was agreed upon. This sum was paid on 20th May 1965. As Article 2, Section 1 of the Agreement dd 16th October 2002 stipulates that an insurance policy is only eligible for compensation if it has not been subject-matter of a prior decision by a restitution office, your client is not eligible for compensation"*.
6. The Appellant's representative submitted appeals to the Appeals Office dated 22nd August 2003, in which the reasons for the appeal were set out.
7. The Appeals Office received these appeals on 9th October 2003 and mailed copies to the Respondent on 23rd October 2003.
8. [REDACTED] responded in letters dated 31st 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"*.

9. On 2nd 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 German Insurance Association 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’s representative has in the claim forms submitted the following information.
 - a) He identifies [REDACTED] as the issuing company and states that the policies were purchased in Dresden, Germany.
 - b) In section five of the claim forms the Appellant provides the policy numbers: [REDACTED] / [REDACTED]/ [REDACTED].
 - c) The policyholder is identified as [REDACTED], the Appellant’s grandfather, who was born on [REDACTED] 1873 in Wierchomla od. Nowi-Sacz
 - d) The insured person is also identified as the Appellant’s grandfather.
 - e) The beneficiary is unknown.
 - f) In answer to question 9 regarding compensation the Appellant states that he doesn’t know.
 - g) The Appellant names lawyer Rechtsanwalt [REDACTED] as his representative in section 10.
13. A letter dated 12th February 1963 was submitted with the claim forms. [REDACTED] had sent this letter to the compensation authority of Hildesheim. This letter states that [REDACTED] no longer has any documents concerning the policies number [REDACTED] / [REDACTED]/ [REDACTED]. It states that from the policy numbers it can be seen that the policies in question were paid up using old German marks. Furthermore, it states that the policy in question is not in [REDACTED]’s portfolio record of 1937 and 1939. [REDACTED] concludes that the insurance was surrendered prematurely, somewhere around the start of the 1930’s.

14. In the Appeal Forms the Appellant's representative Rechtsanwalt [REDACTED], without contesting that the policies were covered by the BEG proceedings, outlines the grounds for appeal and writes: *"The exclusion of claims in all cases in which BEG proceedings have been previously conducted is improper and illegal. If, as is maintained by you, it should be correct, that such payments are not provided for within the agreement, this is only further confirmation that within the framework of the negotiations with the German insurance companies the interests of those persecuted by the Nazis was not represented. It is a generally recognised fact, which has been verified by historians, that all German insurance companies participated in the pauperisation of the Jewish people during the Hitler dictatorship. The interest of the German insurance companies was to make the largest possible profit from the persecution, expulsion and murder of Jewish people. For this the German insurance companies up to now have not made any payments at any time. Rather, for decades they have made further proceeds and interest from the enormous profits of the dead and the survivors. The fact that the German state as the legal successor to the German Reich has compensated parts of the confiscated assets, for which the Hitler state is to be blamed, does not free the German insurance companies from their obligations. The remarkably minor payments under the BEG proceedings were financed by the German taxpayer. It is neither proper nor legally comprehensible why these payments should release the German insurance companies from the duty of handing over the vast financial profits made from the Jewish persecution. The decision therefore cannot continue to apply. Should the view not be altered, it is to be assumed that with regards to these claims the possibility of taking legal action by those affected is not exhausted. If these claims are not to be collected by the ruling with the German insurance companies, then those affected will have to pursue the matter by taking legal action"*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. The Respondent summarises the result of his research in its decision letter issued on 19th August 2003 as quoted above (paragraph 5).

16. The following documents were submitted with the final decision letter:

- a) A document (partial copy from the restitution file) from the compensation authority of Hildesheim, finally dated 11th November 1964, which, comprising 16 pages, is a "Verfügung" (internal instruction), consisting of a "Vermerk" (note) setting out the facts and the legal reasoning with regard to the whole application, and several drafts of letters to the representatives of the applicants setting out explicitly the reasons for an offer of settlement with regard to the whole application including the insurance policy. From the copy of the file it can be seen that the letters, after internal checks, changes and approvals were sent out to the representatives. With regard to loss of economic advancement the following, apparently based on [REDACTED]'s findings, is stated in the "Vermerk" (note) "... d) loss of economic advancement: *It has not been possible to come to any conclusions on the deceased's life assurance policies with [REDACTED] [REDACTED]. The policies were taken out prior to 1923, later revalued in accordance with the Aufwertungsgesetz (Revaluation Act), converted into RM and obviously paid out around the start of the 1930's (76/II). Indemnification does not, therefore, apply*". Based on this note the draft of the letter to the applicants' representative (pages 14 and 15 of the "Verfügung") after quoting [REDACTED]'s letter including the policy numbers here in question, reads as follows: "... since it is thus not possible to determine a loss, I am not able to admit a claim to indemnification, not on a settlement basis either..." (the last part of the sentence is a handwritten insertion during the internal check of the whole "Verfügung").

- b) A settlement dated 20th April 1965 between the Bundesland Niedersachsen (Lower Saxony), represented by the Regierungspräsident of Hildesheim, and the community of heirs of [REDACTED], represented by the attorneys [REDACTED] and [REDACTED] from Jerusalem and solicitor Dr. [REDACTED] from London. This overall settlement is “for the inherited claims filed for indemnification due to loss
- a) of property
 - b) of assets
 - c) as a result of payment of special taxes – with the exception of the claim for indemnification for payment of a Reichsfluchtsteuer (Reich Flight Tax)
 - d) of economic advancement
- the indemnification authority pays the community of heirs the sum of DM 50,000”.

The documents of the compensation authority of 1964 and the settlement from 1965 bear file number [REDACTED]. [REDACTED] quotes this same file number in its letter to the compensation authority of Hildesheim dated 12th February 1963.

THE ISSUES FOR DETERMINATION

17. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate appeal number [REDACTED] (regarding claim number [REDACTED]), appeal number [REDACTED] (regarding claim number [REDACTED]) and appeal number [REDACTED] (regarding claim number [REDACTED]). The claims were denied by identical decision letters and are appealed with identical arguments. They are “related appeals” submitted by the same claimant but relating to different policies, namely three different life insurance policies issued by the same company.
18. There is no doubt that the Appellant’s grandfather had several insurance policies with [REDACTED], that the Appellant as heir of his father [REDACTED] could be entitled to the proceeds of these policies together with [REDACTED], who is a direct heir to [REDACTED], and that the members of the [REDACTED] family were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as to the three policies, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the Appellant is entitled to payment from 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.
19. The Respondent proved that the three policies, numbers [REDACTED], [REDACTED] and [REDACTED] were subjects of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, among others, a reasoned offer for a “Vergleich” (settlement) and a settlement dated 22nd April 1965, which shows that the afore-mentioned policies were the subject of a settlement, which the parties of the compensation proceedings under BEG law agreed upon. As a result of this settlement the Appellant’s father and his co-heir [REDACTED] received (not contested by the Appellant) a compensation payment totalling DM 50,000, which they had to share and which among others covered the three insurance policies being subjects of this appeal.
20. Although the Respondent’s statement in its decision letter dated 19th August 2003 that “on 11th November 1964 the Regierungspräsident in Hildesheim first of all denied the claim for

compensation in view of “Schaden im wirtschaftlichen Fortkommen” by referring explicitly to the life insurance policies taken out by Mr. [REDACTED] with [REDACTED] [REDACTED]” is not entirely correct, since the document mentioned above is not a decision but only an internal instruction (*Verfügung*) to prepare a decision or settlement [see above no. 16a)], there is no doubt, even from the Appellant’s side, that the insurance policies here in question were covered by the restitution agreement and the final settlement. The letter of the restitution authority to the representative, which gave the facts and the reasons for its offer for an overall settlement of all restitution claims, explicitly quoted the insurance policies and explained, referencing [REDACTED]’s letter, why an offer with regard to the policies could not be made even in a settlement. This was accepted later by the representatives when they consented to a settlement intended to cover all restitution matters, and which, in the total sum of DM 50,0000, included also “Schaden im wirtschaftlichen Fortkommen” (loss of economic advancement, the term under which insurance policies were restituted) to make clear that the restitution with regard to the insurance policies was covered by the overall settlement. Thus, the policies were covered by a decision (settlement) in a restitution proceeding and the Appeals Panel has no power to reopen the case.

21. The Appeals Panel moreover, according to 2.2.1 Appeal Guidelines, has no power to challenge the validity of the Guidelines which the Appellant does when calling the exclusion of claims in all cases in which BEG proceedings have been previously conducted as “*improper and illegal*” and presenting arguments to that effect (see above paragraph 14). The Appeals Panel may not consider the aforementioned reasons for appeal, because it is bound by the Agreement and its Annexes. The Appellant similarly became bound when he signed the Appeal Form.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 4th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member

Panel Member

Panel Member