

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], born on [REDACTED] 1933 in Troppau (at that time Sudetenland, nowadays Opava, Czech Republic). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1908 in Koschendorf, Sudetenland (at that time Austria-Hungary, nowadays Kosetice, Czech

Republic) and died on 29th May 1979 in Augsburg (Germany); [REDACTED] was born on 7th July 1902 in Adelsdorf, Sudetenland (at that time Austria-Hungary, nowadays Adolfovice, Czech Republic) and died on 24th November 1996 in Weissenhorn, Bavaria (Germany).

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 10th September 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]Hamburg” issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 9th July 2003 “... *We cannot see anything to indicate that your father’s insurance policy was confiscated by organs of the National Socialist Regime in Germany, or by government authorities, as defined in the definition of ‘victims of the Holocaust’. Government bodies of the Czechoslovakian Republic may possibly have confiscated it after the end of the war; but such actions do not fall within the scope of the Agreement. Your application for compensation under the Agreement therefore cannot be awarded. We are sorry we cannot give you any more favourable statement*”.
5. The Appellant submitted an appeal to the Appeals Office dated 30th July 2003, which was accompanied by an attachment setting out the reasons for the appeal and copies of the afore-mentioned decision letter. The appeal form arrived at the Appeals Office on 27th November 2003.
6. The Appeals Office mailed a copy to the Respondent on 9th December 2003.
7. [REDACTED] responded in a letter dated 6th January 2004, in which it sent all documentary evidence available and repeated the reasons it had set out before for declining the claim.
8. On 15th January 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. The Appellant responded in a letter dated 22nd January 2004, in which he informed the Appeals Office as follows: “... *thank you for the above information* (he refers to the afore-mentioned letter dated 15th January 2004). *But I think that the insurance sum we could receive is not high enough for costs of an oral hearing. ...*”. After having received this letter on 26th January 2004 the Appeals Office asked the Appellant, in a telephone call on 27th January 2004, whether he requested an oral hearing. The Appellant, however, expressed no interest in an oral hearing.
10. Since 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 in his claim form:
- a) The Appellant answers question 1 (“*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?*”) with “yes”.
 - b) He identifies “[REDACTED]” as the company that issued a life insurance policy number [REDACTED] in Troppau and names as “Sachbearbeiter” (person, who deals with the applications) Mr. [REDACTED]. In addition, he states that the currency of the policy was Reichsmark and the date of issue around 1940. Further details he does not know.
 - c) He identifies his father, [REDACTED], born 30th April 1908 in Koschendorf, Sudetenland as the policyholder and insured and his mother, [REDACTED], née [REDACTED], born on [REDACTED] 1902 in Adelsdorf, Sudetenland as beneficiary.
 - d) Questions 6.15, 7.14 and 8.14 (“*Do you know of any other living heirs of the policyholder/insured/beneficiary ?*”) he answers by giving the names of [REDACTED] from Weissenhorn and [REDACTED] from Vogtareuth.
 - e) Question 9 referring to “*compensation*” he answers with “no”.
13. Attached to his claim form were copies of his identity card and a copy of a letter from the Respondent dated 18th February 2000.
14. In his Appeal Form the Appellant writes: “*According to the decision of 9th July 2003, all the requirements for compensation for policy L 395 520 are met on three counts. The only doubts are in connection with point b, definition of Holocaust victim. I was 10 years old, completely alone and responsible for everything the family possessed (money, jewellery, savings accounts and all insurance policies). This was taken from me by a member of the Wehrmacht (armed forces). Whether he simply wanted to enrich himself or why did he run off with my suitcase? In my position, it was being deprived of all my parents’ and brothers and sisters’ insurance policies by a body of the National Socialist government. As far as the trauma, deprivation, threats to life and psychological threats meant to a totally helpless, fearful ten-year-old, please see my account on page 7. Victim of rapacious Czechs or victims of the Holocaust, where is the difference ?*”.

With the Appeal Form the Claimant submitted a 12-page typewritten document recounting his situation as a ten-year-old in 1944, his family’s flight from their village, his separation from his family and the loss of the suitcase containing the insurance policies (page 5, paragraph 3).

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. In a letter dated 28th June 2002 the Respondent writes: “... *Following Herr [REDACTED]’s entry, we have examined the documents available. We still have a comprehensive card file database on insurance policies taken out from the RM era, which was one of the main tools of our policy management until the early 70s of last century. We have very few policies from the Reichsmark period. There are no policy files now in existence in Herr [REDACTED]’s case. From our card files, we have been able to establish the data below:*

<i>Policy no.</i>	<i>[REDACTED]</i>
<i>Policyholder</i>	<i>[REDACTED], Troppau/East Sudetenland, Zwischenmärkten 1</i>
<i>Person insured</i>	<i>[REDACTED], born 30.04.1908, same address</i>
<i>Insured person's occupation</i>	<i>Coach driver</i>
<i>Policy start date</i>	<i>01.07.1940</i>
<i>Policy end date</i>	<i>01.07.1973</i>
<i>Tariff</i>	<i>2 = major life assurance for death and life</i>
<i>Starting age</i>	<i>32</i>
<i>End age</i>	<i>65</i>
<i>Sum insured</i>	<i>RM 1,000.00</i>
<i>Premium excluding insurance tax</i>	<i>RM 2.45</i>
<i>Insurance tax</i>	<i>RM 0.05</i>
<i>Total premium</i>	<i>RM 2.50</i>
<i>Premium payment mode</i>	<i>Monthly</i>
<i>Date certificate of insurance issued</i>	<i>07.09.1940</i>
<i>Date card file printed</i>	<i>01.09.1941</i>

The file card does not say anything more as to what happened to the policy...Our files contain a model pre-printed form for the certificates of insurance usual in the Reichsmark period. A photocopy of the model is enclosed...”

16. In its decision letter the Respondent writes: “ *B ... Compensation for life assurance policy is due if*

- a) The claim relates to a life insurance policy which was in force between 1st January 1920 and 8th May 1945, and which was issued by a German company and is attributable to it and which fell due as a result of death, expiry or redemption, and*
- b) The insurance policy was not paid in full or at all in accordance with the terms of the insurance policy law, or was confiscated by the National Socialist regime in Germany or by the government authorities, as defined in the Definition of ‘victims of Holocaust’ and*
- c) The insurance policy concerned was not the subject of any ruling by a German compensation authority. Insurance policies are deemed to be the subject of a ruling by*

- a German compensation or restitution authority if that ruling concerns the same insurance policy as is listed in the applicant's application form, and
- d) The applicant belongs to the class of persons entitled to apply and claim compensation.

... Of the criteria listed in section B a) to d) above, only the criteria a), c) and d) are met, as far as we can see. Your father's policy was taken out in that period. You are one of your father's heirs, and, from what you say, there have been no compensation proceedings under the Federal compensation law by any German compensation authority. From what you say, we cannot see that criterion b) is met. We cannot see anything to indicate that your father's insurance policy was confiscated by organs of the National Socialist Regime in Germany, or by government authorities, as defined in the definition of 'victims of the Holocaust'. Government bodies of the Czechoslovakian Republic may possibly have confiscated it after the end of the war; but such actions do not fall within the scope of the Agreement. Your application for compensation under the Agreement therefore cannot be awarded. We are sorry we cannot give you any more favourable statement".

THE ISSUES FOR DETERMINATION

17. There is no doubt that the Appellant's father had a policy of life insurance with the terms as reconstructed by the Respondent and set out above (paragraph 15). The Respondent further does not deny that – with the exception of the “Holocaust victim issue” - all conditions for a payment within the scope of the Agreement are met.
18. The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, “*the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice*”. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and / or Appellant are a Holocaust victim in the sense of Section 14 of the Agreement.
19. For purposes of the Agreement, “*Holocaust victim*” means “*anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: ... Czechoslovakia – Sudetenland (1938) ...*”.
20. The loss or deprivation of financial assets, which the Appellant (and his parents) suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime during the war. The National Socialist Regime did not persecute the Appellant and his family in the relevant period of time (from 1938 to 8th May 1945). The deprivation of the piece of luggage containing, among others, the insurance policies by a soldier of the “*Wehrmacht*”, which, according to the Appellant's account quoted above sub para. 14, might as well, without intention to rob or steel, have been caused by loosing each other out of sight during the flight in the dark, cannot be regarded as a persecution by the National Socialist Regime in the sense of the Agreement. Even a possible misdemeanour committed by a single member of the “*Wehrmacht*” would not mean persecution by the National Socialist Regime but a criminal offence not covered by

the Agreement. Finally, the loss of the insurance policy as such (as a piece of paper in a physical sense proving the existence of an insurance contract) had no effects on the rights and claims connected with the insurance contract, which in the given case could be reconstructed according to the Respondent's archives. The reason for having lost the proceeds of the life insurance policy is not the loss of the policy, but the political and economic events in the years after the war resulting among others in legal or factual expropriation, nationalisation of private companies, compulsory currency conversion and other developments.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 24th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member
Signing on behalf of all the
Members of the Appeals Panel

Abraham J. Gafni
Panel Member