

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

DECISION

[REDACTED] 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 Polička (Czechoslovakia). He is the nephew of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1886 in Morašice (Austria-Hungary) and died on 15th February 1950 in Prague (Czechoslovakia). [REDACTED] was born on [REDACTED] 1890 in

Záhořany (Austria-Hungary) and died on 26th February 1962 in Dobřany, district of Prague-South, in a mental hospital. [REDACTED] and [REDACTED] had no children.

The Appellant's mother, [REDACTED] née [REDACTED], was [REDACTED]'s sister. She was born on [REDACTED] 1896 in Morašice and died on 13th September 1987 in Prague. [REDACTED] had two other sisters, [REDACTED] née [REDACTED] and [REDACTED] [REDACTED]. The three sisters became heirs of [REDACTED]; however, [REDACTED] and [REDACTED] [REDACTED] waived the heritage in favour of [REDACTED]. The Appellant's aunts [REDACTED] and [REDACTED] [REDACTED] died childless. The Appellant "received the insurance policies" which are in question here from his aunt [REDACTED].

[REDACTED] and [REDACTED] lived in 1938 in Svitavy (Zwittau), a town which as "part of the Sudetenland" was annexed by the German Reich after the invasion in October 1938. They were at that time employees of the "Ein- und Verkaufsgenossenschaft für Tabak- und Textilarbeiter für Zwittau und Umgebung, GmbH" (consumers' cooperative society for workers of the tobacco- and textile industry of Zwittau). Beginning on 1st April 1938 [REDACTED] was the cooperative society's business manager, [REDACTED] was the firm's chief accountant. [REDACTED] under the new rule was forced to cooperate in winding up the consumers' cooperative (which, together with others, he had built up and brought to success) until 31st March 1940 and then was dismissed as was his wife. After the occupation of the Sudetenland, neither was allowed to emigrate to Bohemia. From the end of 1938 until the end of 1941 they lived from their savings because as Czechs they could not find any new employment in Svitavy and tried to set up their own business. In November 1938 they automatically became citizens of the German Reich (as a consequence of Treaty No. 3000 between the Czechoslovakian Republic and the German Reich on issues of naturalization and option). Since, as Czechs, they refused to become "germanised" they finally were expelled from the Sudetenland and had to emigrate to Bohemia, where they settled in Chlumec nad Cidlinou until the war was over. In 1945 they regained their Czechoslovakian citizenship. As they were now regarded as "Germans" they suffered discrimination and imprisonment or internment.

The Appellant's family also lived in Svitavy until the outbreak of the war. The Appellant's father owned a kitchenware and china store that was demolished by the National Socialists in October 1938. The family emigrated to Poděbrady, Bohemia, in June 1939.

2. The Respondent is [REDACTED].
3. The Appellant submitted four claim forms dated 25th January 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC). In two of them he claims that "[REDACTED] in Wien, Filiale Brünn Abwicklung "[REDACTED]" Nr.[REDACTED]" issued policies of life insurance.
4. The ICHEIC submitted these claims under numbers [REDACTED] and [REDACTED] to the Respondent. [REDACTED] stated in its decision letter dated 19th December 2003: "*§2 of the Agreement between ICHEIC, the Foundation and the [REDACTED] provides that compensation is only due if the policyholder, the insured or the beneficiary under the policy were Holocaust victims and the assets were lost as a result of persecution by bodies of the National Socialist regime in Germany or by government authorities. As you state in your application yourself, and is apparent from the documents submitted, the policies in question were not terminated, seized or confiscated prior to 1945. As the documents you submitted also show, your uncle was able to pay annual premiums during and up to the end of the war. From the documents at our disposal, we do not consider you are entitled under the provisions of the Agreement. We hope you understand that, under the circumstances, we cannot offer you any compensation. ... We would also like to point out that, while the*

[REDACTED] assumed responsibility for the individual life assurance policies in the “[REDACTED]” policy stock in Sudetenland Reichsgau (district) as of 01.01.1942, it did not acquire the “[REDACTED]” policy stocks at any time. We do not have any files on “[REDACTED]” policies in our possession. [REDACTED]’s registered offices were at Aussig, Sudetenland. They were wound up in 1945, under Decree 108/45 of the President of the Czechoslovakian Republic, and their assets acquired by the Czechoslovakian state. ... ”.

5. The Appellant submitted an appeal to the Appeals Office dated 16th April 2004, which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received the appeal form on 22nd April 2004 and mailed a copy to the Respondent on 23rd April 2004.
7. [REDACTED] responded in a letter dated 21st May 2004 and confirmed its decision for reasons it had set out before stating: *“We are very sorry that we have to decline the claim for the above-named reason”.*
8. On 1st June 2004 the Appeals Office informed both parties that the appeal will be decided 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 18th June 2004 the Appeals Office received a letter dated 13th June 2004 from the Appellant with a request for an oral hearing.
10. On 15th September 2004 it was decided that there would be an oral hearing of the Appellant by telephone conference call on 5th October 2004, 15.00 (CEST) and that the interview would be conducted in Czech. The Appeals Office informed both parties about this decision by letter dated 15th September 2004.
11. The oral hearing took place on 5th October 2004. It was conducted in German and translated by an interpreter into Czech. The participants in that hearing were the Arbitrator, the Appellant and, on behalf of the Respondent, Mr. [REDACTED] and Mr. [REDACTED].
12. 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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel’s general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

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

THE CLAIM

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a life and endowment insurance policy in the claim form:

Claim number [REDACTED]

- a) In section three of the claim form the Appellant indicates *”[REDACTED] in Wien, branch in Brno”, “[REDACTED]” and “[REDACTED]”* and gives the former addresses

of these companies. The policy was purchased in “Svitavy (Zwittau), Czechoslovakia”. In question 3.3 he provides further information “[REDACTED] inspektorat Svitavy – Zwittau, [REDACTED]”. He states: “My uncle was insured for the amount of 20,000 Kč (Czech crowns) at the above mentioned insurance company (insurance policy No. [REDACTED]). The insurance policy was paid from December 1, 1925 to March 15, 1945. At the same insurance company my uncle also paid the insurance policy No. [REDACTED]”.

- b) The Appellant indicates the type of insurance policy as a life and endowment policy. The policy number is [REDACTED]. He indicates the currency as “Kč, RM” and the insured sum as 20,000 Czech Crowns. The policy was purchased in 1925 and its date of maturity is 1945. He is not aware of any payments resulting out of the policy. The premiums were paid annually and the Appellant indicates the amount of the premiums “1925 – 1,288.10 Kč, 1944 – 61.76 RM”. He also states that all premiums were paid.
- c) In section six (“Policyholder”) the Appellant states “not applicable”.
- d) The insured person is indicated as [REDACTED].
- e) The beneficiary is also identified as his uncle [REDACTED].
- f) With regard to compensation the Appellant states that he never applied as he “did not know about these possibilities”.
- g) In an attachment the Appellant submits further information. He states that his mother [REDACTED], née [REDACTED], was one of the three sisters of [REDACTED]. The sisters inherited [REDACTED]’s insurance policies after his death, but the Appellant’s mother and [REDACTED] [REDACTED], another sister, “waived their inheritance (insurance policies) in favour of [REDACTED], who cared after her brother [REDACTED] since the year 1945 until his death. The sisters – [REDACTED] and [REDACTED] [REDACTED], died childless, also my uncle and aunt ([REDACTED] and [REDACTED]) died childless”.

Regarding the insurance policies he states: “My uncle [REDACTED] and his wife [REDACTED] paid altogether four insurance policies in the course of their lives. My uncle [REDACTED] had two life insurance policies and a superannuating scheme. My aunt [REDACTED] only the superannuating scheme. With regard to the fact Svitavy was a part of Sudetenland and annexed to German Reich in 1938, the insurance policies were transferred to Germany. After my aunt and uncle had moved to Chlumec nad Clidinou, Bohemia, they never succeeded in transferring of the insurance policies from Germany to Bohemia”. The Appellant adds: “After the war the insurance policies remained in Germany and my uncle and aunt were left without any financial means – both were in the retirement age. They received no pension and the medical treatment had to be covered by their relatives – sisters, i.e. my mother, [REDACTED] and [REDACTED]”. He further states that his aunt had to live in a mental hospital from 1946 until her death in 1962 as she had become mentally ill “under the stress of war events”.

The Appellant emphasizes that his uncle and aunt had always held anti-Nazi views and supported Czechoslovakia. The whole family was according to his statements involved in helping a Jewish family named [REDACTED] to leave the country.

With the claim form the Appellant submitted the birth certificates of his aunt, uncle, his mother and himself; the death certificates of his uncle, aunt and mother; certificates of residency for himself, his aunt and his uncle; a citizenship certificate for his uncle; the

marriage certificate of his aunt and uncle; a copy of his passport. He further provided two letters explaining the citizenship laws introduced in 1938 in the Sudetenland, a copy of his uncle's testament, a receipt that his uncle had paid a contribution towards employment in Czechoslovakia in 1933 and also towards defence in 1936, two general information sheets of the insurance company, the invoice for the replacement of a broken shop window addressed to [REDACTED], professional references for [REDACTED] and [REDACTED], a letter congratulating [REDACTED] on the completion of 25 years in his company and a statement about all the premium payments made written by [REDACTED]. He also provided the copies of premium receipts and correspondence with the insurance company mentioned above.

Claim number [REDACTED]

This claim form is almost identical with the above described form and differs as follows:

- a) In section four the Claimant states: *"My uncle was insured for the amount of 20,000 Kč (Czech crowns) at the above mentioned insurance company (insurance policy No. [REDACTED]). The insurance policy was paid from January 1, 1927 to March 3, 1945. At the same insurance company my uncle also paid the insurance policy No. [REDACTED]"*.
 - b) The Appellant indicates the type of insurance policy as a life insurance policy. The policy number is [REDACTED]. He indicates the currency as *"Kč, RM"* and the insured sum as 20,000 Czech Crowns. The policy was purchased in 1927 and its date of maturity is 1947. The Appellant is not aware of any payments resulting out of the policy. The premiums were paid annually and the Appellant indicates the amount of the premiums *"1927 – 1200.00 Kč, 1945 – 588.50 RM"*. He also states that all premiums were paid.
 - c) Also with this claim form the Appellant submitted a letter with further information and exactly the same documentation as listed in claim number [REDACTED].
14. The Appellant submitted copies of all premium receipts for the years 1925-1945 (policy number [REDACTED]) and for the years 1927-1945 (policy number [REDACTED]).
15. The Appellant stated as a reason for appealing the decision: *"The insurers are not prepared to make any payment, so their decision doubts my legitimate claim to payment of compensation, and completely overlooks the documents I enclosed with my application"*.

In an additional statement submitted with the appeal form the Appellant declares: *"To claim that the [REDACTED], Hamburg, did not acquire the policy stock of '[REDACTED]' insurance company is incorrect, as the insurers told my uncle what the annual instalments should be, confirmed receipt of the moneys and provided further information after 01.01.1942. It was acting in all cases as the successor in law to '[REDACTED]' insurance company, and its letter of 01.01.1942 stated that all instalments were to be paid in equal amounts to Postcheque account no. [REDACTED], Hamburg, [REDACTED] liquidation dept. My uncle sent the moneys regularly to this account. [...] To argue that [REDACTED] [REDACTED] of Usti nad Labem was dissolved since 1945 under Decree 108/45 of the President of the Czech Republic and its assets acquired by the Czechoslovakian State does not make sense in this case, as the insurance policies, including payments up to 01.01.1942, were transferred to the insurers in Hamburg, and my uncle sent the instalments to Germany until February 1945. From the statements made, it appears that the money paid on two life insurance policies remained with the [REDACTED] insurers, Hamburg. [...] Over the course of twenty years, payments on the life insurance policies were made to three insurers handling the policies. The fate of the policies is easily traced on the basis of*

correspondence and payments receipts. All letters and premium receipts have been produced. In 1945, insurance premiums is also mentioned in the tax returns as presented for the years 1925 to 1937 and the statement of assets from 1945”.

With the appeal form the Appellant enclosed some of the above-named documents: the invoice for the replacement of a broken window addressed to [REDACTED], an information sheet of [REDACTED] dealing with the insurance policies taken over from [REDACTED] insurance company, two letters from [REDACTED] as already mentioned above, a statement about all the premium payments made written by [REDACTED] and premium receipts mentioned above.

16. In the oral hearing the Appellant gave additional information about his uncle [REDACTED]’s childhood and youth and his military service during the First World War. He summarised his written statements and highlighted what he regards as decisive facts for making a decision on his appeal.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. The Respondent denied the claims for the reason already quoted above (paragraph 4).
18. In its letter dated 21st May 2004 [REDACTED] explained: *“The documents provided show that the two insurance policies were originally purchased from the insurance company “[REDACTED]” and later transferred to the insurance company “[REDACTED]”. As we have mentioned in our letter to Mr. [REDACTED] dated 19th December 2003, the “[REDACTED]” insurance company became the trust company of all small life insurance policies of the “[REDACTED]” insurance stock on 1st January 1942. The trust company for the big life insurance policies was “[REDACTED]” insurance company. Being a trust company does not entail taking over the stock but to be in charge of the stock of another company. We would like to emphasize: 1. The “[REDACTED]” insurance company never took over the stock of insurance policies belonging to “[REDACTED]” insurance company. 2. The “[REDACTED]” insurance company was expropriated in 1945 as decreed in N 108/45 by the President of the Republic of Czechoslovakia and its funds were taken over by the Czechoslovakian state. ...”.*
19. In the oral hearing the representatives of the Respondent confirmed that [REDACTED] had taken out the insurance policies that are the subject of the claims with “[REDACTED]”, and that “[REDACTED]”, after it had gone bankrupt, was taken over by “[REDACTED]”. Later, the so called “*Grosslebensversicherungen*” (big life insurance policies) were taken over by “[REDACTED]” and the “*Kleinlebensversicherungen*” (small life insurance policies) were taken over by “[REDACTED]” as trust companies only. The Repsondent’s representatives highlighted once again that [REDACTED] was only acting as trust company, not as successor to the portfolio or parts of the portfolio of “[REDACTED]” or “[REDACTED]”.

THE ISSUES FOR DETERMINATION

20. It was decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure 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, namely life insurance policy number [REDACTED] and life insurance policy number [REDACTED].

21. 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 issue for determination in this Appeal is whether the policyholder and or Appellant are Holocaust victims in the sense of Section 14 of the Agreement.

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. ...*”.

22. There is no doubt that the Appellant’s uncle and aunt as well as his own family are to be regarded as victims in terms of having been forced initially to remain in the Sudetenland (in the case of the Appellant’s uncle and aunt) and subsequently to be expelled from there. They are victims also in terms of losing employment and being deprived of their economic livelihood. However, the loss or deprivation of their financial assets, specifically the loss of the insurance policies, which the Appellant’s uncle suffered, was not the result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime preceding and during the war. It was instead the result of the political and economic developments in the 1930’s, the years of the war and, essentially, in post-war Czechoslovakia. There is no indication that the policies were ever confiscated or paid into blocked accounts by the German National Socialist Regime. The Appellant himself states and proves that all premiums had been paid until 1944 and 1945. The policies were never paid because the “[REDACTED]” insurance company was expropriated in 1945 as decreed in N 108/45 by the President of the Republic of Czechoslovakia and its funds were taken over by the Czechoslovakian state. Therefore, the Appellant or his uncle and aunt are not Holocaust victims in the sense of the definition in the Glossary of the Agreement (section 14).
23. In stressing that the uncle had to pay his premiums into German bank accounts of a German insurance company the Appellant misunderstands what happened when he states: “*After the war the insurance policies remained in Germany ...*”. The information issued by “[REDACTED]” in January 1942 proves that “[REDACTED]” only took over the “*management on trust*” (emphasis added) of “[REDACTED]’s” individual life assurance policy stock in the Sudetenland; but the **planned** (emphasis added) take over of this stock in the future never happened. Instead, after the war, the “[REDACTED]” was nationalised and the Czechoslovakian State took over its funds. This is why the policies were not paid out. The Agreement quoted sub paragraph 12 does not cover the non-payment of insurance policies for such reason.
24. In light of the specific circumstances of the case, the sufferings and losses caused as a consequence of legislative and other acts from the German side before and during the war and from Czechoslovakian side after the war, it is recommended that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The ICHEIC will be informed accordingly.

Appellant: [REDACTED]
[REDACTED], [REDACTED]

Appeal No.: [REDACTED]

Claim Nos.:

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 31st day of October 2004

For the Appeals Panel

(signed) [REDACTED]

This is to certify that the original has been signed by the Panel Member.

London, 31st day of October 2004
