

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

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], née [REDACTED], born on [REDACTED] 1928 in Breslau, Germany. She is the daughter of [REDACTED] and [REDACTED] née [REDACTED]. [REDACTED] was born on [REDACTED] 1890 in Breslau, Germany and

died on 8th October 1954 in Evanston, Illinois, USA. [REDACTED] was born on [REDACTED] 1903 in Gleiwitz, Germany and died on 3rd March 1992 in San Diego, California, USA.

[REDACTED] had law office in Breslau, Germany and was incarcerated in the Buchenwald concentration camp during the years 1938-39. The Appellant's family left Germany for Shanghai, China in 1939 and was interned by the Japanese in the designated ghetto of Hong Kew in China during the Second World War.

The Appellant has a brother, [REDACTED]. He is her co-Claimant.

2. The Respondent is [REDACTED].
3. The Appellant submitted a "European Insurance Company Claim Form" and a "Holocaust Survivor/Insurance Claims Questionnaire", issued by the State of California's Department of Insurance, in which she claimed that her father had held life insurance. These forms were forwarded to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in January 2000.

These claims were processed as follows:

- a) One claim was classified as an unnamed company claim and given claim number [REDACTED];
 - b) The claim against [REDACTED] which is the subject of this appeal was given claim number [REDACTED];
 - c) Two claims against [REDACTED] were given claim numbers [REDACTED] and [REDACTED];
 - d) One claim against [REDACTED], a so called "[REDACTED]-company" was given claim number [REDACTED].
4. The ICHEIC submitted the claim forms to [REDACTED] (as one of the companies named as having possibly issued an insurance contract to the Appellant's father) on 14th February 2000.
 5. [REDACTED] stated in its decision letter dated 25th March 2004: "*We have been able to find out that [...] your mother [...] had filed a claim for compensation under the German Compensation Laws as early as June 1955 [...]. As, however, the 'Agreement' of 16th October 2002 stipulates in Article 2 Section 1 that a policy can be compensated only if that specific policy had not been the subject matter of a previous decision by a compensation authority, you are, hence, not eligible for compensation. We are confident that you will understand our decision not to submit an offer under the given circumstances*".
 6. The Appellant submitted an appeal form dated 10th April 2004, in which she set out the reasons for the appeal.
 7. On 22nd April 2004 the Appeals Office received the appeal and sent a copy of the appeal form to the Respondent on 23rd April 2004.
 8. [REDACTED] responded in a letter dated 3rd May 2004 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 1st June 2004, the Appeals Office informed both parties that the appeal would 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 that letter.
10. No request for an oral hearing was received from either party. The appeal proceeded on a “*documents only*” basis.
11. Independent of the appeals process, the competent ICHEIC body has awarded the Appellant a humanitarian payment of US\$ 1,000 and has related that payment to unnamed company claim number [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. In the European Insurance Company Claim Form, the Appellant provides the following information:
 - a) In section three, she identifies her father, [REDACTED], as the insured. She states that he owned a law office.
 - b) In section four, she identifies her mother, [REDACTED], as the beneficiary. After [REDACTED]’s death, [REDACTED] remarried and became [REDACTED]. Under the heading “*additional information*”, the Appellant writes: “*My father had a large law office in Breslau Germany and I know he had life insurance*”.
 - c) In section five no facts about the insurance policy(ies) are provided.
 - d) In section six, with regard to the “*basis for your claim on the policy(ies) listed above*”, the Appellant states: “*My father was thirteen years older than mother. He owned a large practice and a lot of real estate and was very insurance minded. I was ten years old when we left and too young to remember!*”.
 - e) In section seven, regarding “*basis for belief that a policy was not paid*”, the Appellant writes: “*My father was 38 years old when I was born. He had insurance for everything else and I know he must have carried life insurance since he owned real estate in partnerships. He would have wanted his family protected from these partnerships. Since he was a lawyer he knew he needed life insurance protection. We were interned by the Japanese and all his papers were destroyed. I have been able to trace his ownership in his Real Estate holdings and have received restitution. I have not been able to find his life insurance information. I am his daughter, the only heir and hope that you can trace some information on my father’s life insurance policies*”.

- f) In section eight, with regard to “*previous claims or inquires made*”, she writes: “*None with insurance. Wiedergutmachung [compensation] for real estate in Germany*”.
14. In the Holocaust Survivor/Insurance Claims Questionnaire, the Appellant provides the following information:
- a) In section three, she identifies her father, [REDACTED], as the policyholder. She states that he was a self-employed lawyer in Breslau and that he took out policies. The Appellant also identifies [REDACTED] (the son of the policyholder) as another heir of the policyholder. She states that her father, a Jew, was forbidden and therefore unable to practice law after 1933. He was incarcerated in the concentration camp of Buchenwald between 1938 and 1939. The Appellant states that his properties were taken away and that it is possible that the insurance policy was also confiscated (she later writes of “*insurance policies*”).
 - b) In section four, the Appellant identifies her father as the insured person.
 - c) In section five, she identifies her mother as the beneficiary.
 - d) In section six, she provides the names of various companies with which her father might have had an insurance policy. She writes: “*[REDACTED] – Breslau; [REDACTED], [REDACTED] – Breslau; [REDACTED] and [REDACTED]; [REDACTED]*”. Asked about details of the policy, she states: “*I just know that he had life insurance. I was ten years old and do not know with what insurance company*”. She asserts that the policy may have been confiscated in 1938-39.
 - e) In section seven, regarding the “*basis for claim*”, the Appellant states: “*My father did his banking with the [REDACTED], Breslau. They sold the [REDACTED]. The agents also sold [REDACTED] and [REDACTED]. It is a possibility! In 1938 my father had to list all his assets with the state. Perhaps you have access to these records?*”.
 - f) In sections eight and nine, the Appellant states that no previous claims or inquiries have been made and also indicates that nobody has participated in any compensation procedure for this claim. Asked why no application for compensation/restitution was made, the Appellant writes: “*I did not know what insurance company my father was insured with*”.
 - g) In section ten, regarding “*additional information*”, she writes: “*My father Dr. [REDACTED] had a very large law firm in Breslau, Germany and was very wealthy, owning a lot of Real Estate. Since he carried a lot of mortgages I would assume that his life insurance policies covered all his outstanding mortgage debt*”.
15. Copies of the following documents were also provided:
- a) Birth, marriage and death certificates for members of the Appellant’s family.
 - b) Confirmation that the Appellant is the sole beneficiary and inheritor of her mother’s property.
 - c) Document in which [REDACTED] (the Appellant’s brother) issues power of attorney to the Appellant in connection with any rights to the claimed account of [REDACTED].
 - d) Letter by the Appellant dated 1st April 1999 which states: “*I now have reason to believe that the life insurances could have been with the following life insurance companies: [REDACTED]; [REDACTED]; [REDACTED]. In 1938 my father had to list all his*

assets with the German Reich. All his real estate holding and mortgages I think were with the [REDACTED], [REDACTED], and [REDACTED] [REDACTED], [REDACTED]. Breslau. Considering my father's age I feel that the policies might have been paid up and thus had to be turned over as an asset to the Reich. I wonder if you have access to these records".

16. In the reason for the appeal of the decision, the Appellant writes: *"I would like to appeal because my father never cashed in his policy in 1935. Proof that he was wealthy was the thousands of Mark that he paid to the State for being Jewish! [REDACTED] cannot furnish me with a signature that the policy was cashed in. My mother, while still alive, always maintained that he did not cash it! As long as they can only prove that my mother received a settlement of \$ 10,050 DM I would like to appeal this decision so that it is settled for once and for all! I appreciate anything that you can decide on this case, so that I can have closure on this unfortunate happening. Please ask [REDACTED] for my father's signature".*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. [REDACTED] stated in its decision letter dated 25th March 2004: *"We have been able to find out that – contrary to the explicit statements in your ICHEIC claim - your mother, Mrs [REDACTED] née [REDACTED], represented by Dr [REDACTED], Lawyer in Neustadt/Weinstrasse, had filed a claim for compensation under the German Compensation Laws as early as in June 1955 [...] regarding the policy in question taken out by your father with '[REDACTED]'. The excerpts of the records made available to us by the District Office of Neustadt/Weinstrasse show furthermore that this claim for compensation was granted by a decision dd 4th December 1963 under the file No. [REDACTED] and your mother was awarded a compensation payment of DEM 10,050.00. For your information, we attach a copy of the decision dd 4th December 1963. As, however, the 'Agreement of 16th October 2002 stipulates in Article 2 Section 1 that a policy can be compensated only if that specific policy has not been the subject matter of a previous decision by a compensation authority, you are, hence, not eligible for compensation".*

Enclosed with its decision letter, [REDACTED] provided copies of the following documents:

- a) Letter dated 28th November 1963 from [REDACTED] to the compensation office of Neustadt providing details of a life insurance policy with the policy number [REDACTED] for the insured person [REDACTED].
 - b) Decision from the compensation authorities of Neustadt an der Weinstrasse dated 4th December 1963. Under the Federal Law on Compensation for Victims of National Socialist Persecution (BEG), this ruling awards [REDACTED] née [REDACTED] (the Appellant's mother) compensation of DM 10,050 for the life insurance policy [REDACTED] taken out with [REDACTED] by [REDACTED]. The decision also states that the insurance policy in question was redeemed in 1935, and the redemption value was paid.
18. In response to the Appellant's appeal, [REDACTED] stated in a letter dated 3rd May 2004: *"As already explained to the claimant in our letter dd 25th March 2004, a compensation as per the rules of the 'Agreement' of 16th October 2002 cannot be awarded, as the policy was the subject matter of a compensation proceeding under the German Compensation Law. Also the claimant's renewed explanations do not allow any other conclusion even if the*

claimant's mother – for reasons that are beyond our control – should not have received the compensation awarded at that time; however, there is no indication as to such a non-payment. For the reasons explained above, we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]'s previous decision on it".

THE ISSUES FOR DETERMINATION

19. The main issue for determination in this appeal is whether the Respondent has established a valid defence. There is no doubt that the Appellant's father had an insurance policy with [REDACTED], that the Appellant - as heir of her parents - could be entitled to the proceeds of such a policy and that her family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as this policy is concerned, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. Pursuant to Section 17.3 of the Appeal Guidelines the Appellant is not 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.

20. The Respondent proved that this policy was the subject of a compensation proceeding by providing a statement from the compensation authorities of Neustadt an der Weinstrasse dated 4th December 1963. This document shows that, under BEG legislation, the Appellant's mother was awarded compensation of DM 10,050 for [REDACTED]'s life insurance policy with [REDACTED]. Indeed, the Appellant herself states in her Appeal Form that her mother received such a settlement. The Appellant challenges, however, the company's assertion that her father cashed in his policy in 1935. There is nothing in the record to support Appellant's assertion in this regard which was presumably made during the BEG proceedings when the Appellant's mother was represented by counsel. Moreover, this contention, even if true (and there is no support for it presented), is not relevant to this appeal. Rather, the policy in question was undoubtedly covered by a decision of the compensation authority, and the Panel therefore, according to section 2.2.2 of the Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such a policy.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 8th day of October 2004.

For the Appeals Panel

[REDACTED]