

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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

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### 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], born on [REDACTED] 1926 in Frankfurt am Main (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], who was an art historian and publisher, was born on [REDACTED] 1901 in Gevelsberg (Germany) and died in April 1941 in the concentration camp of Sachsenhausen; [REDACTED] was born on [REDACTED] 1903 in Dresden (Germany) and died on 8<sup>th</sup> June 1977 in London. [REDACTED] and [REDACTED] were divorced in 1929. They married again and were divorced a second time. The Appellant has a brother, [REDACTED], who was born on [REDACTED] 1928 and now lives in Madrid (Spain). He is his co-claimant.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms issued by the Department of Insurance of the State of California that were received there in November 1998 and March 2000 and forwarded to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in May 2000, in which he claims that [REDACTED] and [REDACTED] issued policies of life insurance. The claims were given claim numbers [REDACTED] ([REDACTED]) and [REDACTED]. The subject of this appeal is the claim against [REDACTED].
4. The ICHEIC submitted the claims to the two above named companies.
5. [REDACTED] stated in its decision letter dated 16<sup>th</sup> February 2004: *“As you already know from correspondence with us to date, we have found an entry in our central records for [REDACTED] ... . We are unable to find the policy file ... . From the compensation authority documents, it appears that [REDACTED] took out life insurance policy no. [REDACTED], starting 01.11.1930, and life insurance policy [REDACTED], starting 01.01.1935 ... . The record card also shows the death reported on 20.04.1941. We therefore assume for the reasons stated in the letter enclosed as enclosure 2 that all insurance benefits were paid. The compensation authority, Berlin, rejected the application for compensation for loss of insurance accordingly in its ruling of 23.07.1973...Our aim is to take up all cases in which a policy demonstrably came about for which we have not made any payments. This is not the case with your father’s life assurance policies, however, as the benefits under the policies were paid. These policies were also the subject of compensation proceedings, so no further payment can be made under the rules of the agreement between ICHEIC, the German foundation “Remembrance, Responsibility and Future” and the [REDACTED]”.*
6. The Appellant submitted an appeal to the Appeals Office dated 28<sup>th</sup> February 2004, in which the reasons for the appeal were set out.
7. The Appeals Office received the appeal form on 1<sup>st</sup> March 2004 and mailed a copy to the Respondent on 23<sup>rd</sup> March 2004.
8. [REDACTED] responded in a letter dated 13<sup>th</sup> April 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 our decision on it”*. In addition [REDACTED] sent copies of all documentary evidence in its possession.
9. On 30<sup>th</sup> April 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.
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 16<sup>th</sup> 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 6<sup>th</sup> July 2004 this appeal was assigned to [REDACTED].

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 forms:

Holocaust Survivor/Insurance Claims  
- Questionnaire stamped as received 16<sup>th</sup> November 1998

- a) In section three the insured person is identified as [REDACTED], the Appellant's father, who was born on [REDACTED] 1901 in Gevelsberg, Germany and who died in the concentration camp of Sachsenhausen in April 1941.
- b) In section four the beneficiary is identified as [REDACTED], née [REDACTED], the Appellant's mother, who was born on 7<sup>th</sup> February 1903 in Dresden, Germany and who died on 8<sup>th</sup> June 1977 in London.
- c) In section five two companies are identified as having issued life insurance policies: [REDACTED] and [REDACTED]. It is stated that both policies were purchased in Berlin, Germany.
- d) In section six regarding "*basis for your claim on the policies listed above*" the Appellant writes, "*my mother's definite statements and her filing a claim (see 7)*".
- e) In section seven regarding "*basis for belief that a policy was not paid*" the Appellant writes, "*my mother applied for the monies during 1942 or so but someone apparently claimed money (and may have been paid) from [REDACTED]. My mother was also told that she should claim from the German government, who washed their hands of that part of the claim, though they paid a pension out of state fund based on my father's income and state insurance contributions*".
- f) In section eight regarding "*previous claims or inquiries made*" the Appellant writes, "*[REDACTED] claimed that no policy existed - then the claimed the policy was paid out*".
- g) In section nine regarding "*other relevant information*" the Appellant writes, "*the [REDACTED] insurance was, I seem to recollect, to the sum of Reichsmark 100,000. I know nothing about the [REDACTED] policy*".

Holocaust Survivor/Insurance Claims  
- Questionnaire stamped as received 31<sup>st</sup> March 1998

- a) Two claimants are identified in this questionnaire: [REDACTED] and his brother [REDACTED], who was born on [REDACTED] 1928.
- b) In section three the policyholder is identified as the Appellant's father.
- c) In section four the insured person is identified as the Appellant's father.
- d) In section five the beneficiary is identified as the Appellant's mother. It is stated that she died in May 1980 in London.

- e) In section six regarding ‘*details about insurance policies*’ the Appellant writes, “*main policy about 100,000 – 150,000 Mark. [REDACTED]*”. The policy number is not known and it is stated that the type of insurance was ‘*whole life*’. In answer to the date and place of purchase of the policy he writes, “*1932(?)*”. [REDACTED] is also identified as an insurance company. The type of insurance is stated as being ‘*whole life*’. In answer to the date and place of purchase of the policy the Appellant writes, “*? About mid-1930’s.*” It is asserted that the currency of the policy was Deutsche Reichsmark and that the policy was “*payable upon death*”. The premium was paid on a monthly basis and according to the Appellant his father was “*unable to pay one or two premiums as inmate of concentration camp*”.
- f) In section seven regarding ‘*basis for claim*’ the Appellant writes, “*our mother was told by [REDACTED] that premium had not been paid (see above 6). [REDACTED] insurance said there could have been suicide in concentration camp and claim should be paid (if valid) by German Government*”.
- g) In section eight with regard to ‘*previous claims or inquiries made*’ the Appellant writes, “*[REDACTED] claimed there was no policy. However, as late as 1951 our late mother produced a policy number (we cannot find documents)*”.
- h) In section nine regarding whether any person has participated in any compensation/restitution procedure for this claim the Appellant writes, “*Deutsche Wiedergutmachung – I and my brother were paid each Deutschmark 2000 for ‘lack of education’ around 1951 unconnected to insurance policy claim as our mother was then alive*”.

13. The Appellant provided copies of the following documents:

- a) A brief account of the life of the Appellant’s family once the Nazis came to power, entitled “*Broken Glass*”.
- b) Letters dated 22<sup>nd</sup> October 1998 and 2<sup>nd</sup> November 1998 to and from the Department of Insurance of the State of California asking for and giving support for filing the claim.
- c) A confirmation that the Appellant requested the ashes of his deceased mother has their final resting place in the Bockenheim cemetery of Frankfurt and the Appellant’s birth certificate.

14. In the appeal form the Appellant writes: “*After his arrest by the Nazis, my murdered [word missing must read “father”] (Oranienburg and Sachsenhausen concentration camps, near Berlin), was no longer able to pay the premiums and also did not receive any post. If an insurance pay-out did subsequently take place, the money was stolen by somebody else. As regards my mother, who has died in the meantime, she was certain that the insurance was taken out in her name as the mother of [REDACTED]’s two children. It is correct that my parents were divorced. However, they married again, but my father was divorced for a second time and married [REDACTED], née [REDACTED]*”.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] confirmed that the Appellant's father took out policy numbers [REDACTED] and [REDACTED]. However, the claim has been declined since [REDACTED] asserts that the benefits of these policies were paid. Furthermore, the Respondent asserts that the policies were subject of a decision of a German compensation authority and has submitted, among others, a "Bescheid" (ruling) from the Compensation Authority of Berlin dated 23<sup>rd</sup> July 1973 which records that policy number [REDACTED] and [REDACTED] were the subject of compensation proceedings under BEG law, but no compensation was awarded.

16. [REDACTED] provided copies of the following documents:

- a) Letter dated 10<sup>th</sup> December 1971 from [REDACTED] to the Compensation Authority of Berlin referencing policy numbers [REDACTED] and [REDACTED]. This letter informs the compensation authority that no policy documents are available for these policies. Furthermore, it states, "*the claim that the death documents were sent to the former payments department of the Berlin W 8 directorate, [REDACTED], is correct. The death entry was made on the name card (microfilm) in the central records on 20.04.1941. We even believe that, not only was this case reported, the benefits under the policy were also paid, for the following reasons: Policy [REDACTED] starting 01.11.1930 was still subject to general policy terms and conditions, with a waiting period for suicide of five years. The terms on which policy [REDACTED] was issued, on the other hand, contain no such provision; proofs had to be obtained as is know. It follows that proof of the cause of death would not have had any effect on the obligation to pay in 1941 – work was proceeding unrestrictedly at the time – on policies [REDACTED]. The cause of death is irrelevant in this case. If the certificate of insurance and death certificate were to hand, which your letter indicates should have been the case, benefits could be paid without any further ado. If there was no evidence as to the cause of death, the sum insured at least should have been paid out on policy [REDACTED]; but it should be remembered that the authorities concerned were very anxious at the time to ensure that suicides in the concentration camps should not be disclosed. So the cause of death was noted on the death certificate as 'shot while trying to escape' or 'Lung inflammation'. We therefore believe that life benefits were also paid out on policy [REDACTED]. As you see it, this is not a compensation claim, but an unsettled claim to policy benefits. We, on the other hand, believe the life assurance benefits were paid. It may be that the applicant claimed additional accident benefits at the time which were not examined on account of the circumstances known and for lack of documents, and so could not be accepted either...Our employee Fräulein [REDACTED], who still works in the payments department at the Berlin division was dealing with the payments department's death cases (letters L to Z) at the time. She confirmed that deaths in concentration camps were not examined for the possibility of suicide in principle, i.e. no evidence was required of the cause of death...*".
- b) "Bescheid" (ruling) dated 23<sup>rd</sup> July 1973 from the compensation authority of Berlin with regard to a claim for compensation filed by Frau [REDACTED] for [REDACTED] policy numbers [REDACTED] and [REDACTED]. Frau [REDACTED], the Appellant's mother, asserted that as the beneficiary she was due the benefits of the afore-mentioned policy numbers. She stated that [REDACTED] refused to pay her, even though she presented the death certificate and the last receipt for premiums paid as of March 1941. She asserted that [REDACTED] refused to pay because no cause of death was stated on the death certificate. [REDACTED], however, asserted that the benefits had been paid. Frau [REDACTED] could not provide any details about the policies and was unable to prove that she was the beneficiary. The ruling concludes, "*from the insurers' information, the policies remained in force until the policyholder's death. They were not wound up. As*

*premiums continued to be paid until March 1941, no injurious event occurred as the result of persecution. The assessment of policy losses is governed by the provisions of § 127 BEG. Under § 127 (1) BEG, a victim of persecution is entitled to compensation if, as the policyholder or beneficiary, they lost the cover under a life insurance policy (lump sum or pension insurance) taken out with an insurance organisation under private or public law, other than social security, wholly or in part, as the result of benefits or cover due under the articles or terms of the policy affected. Under § 127 (2) BEG, a non-persecuted beneficiary is due compensation if the policyholder was a victim of persecution and the beneficiary is the victim's spouse or a first or second ranking heir for the purposes of statutory inheritance. These conditions do not apply here as 1. The policies did not suffer as a result of persecution. 2. The beneficiary was not the victim's spouse at the time he died, and was not a statutory heir either. The application must therefore be refused".*

- c) Further correspondence from the compensation procedure (letters dated 20<sup>th</sup> October 1972 and 1<sup>st</sup> February 1973) and a "Bescheid" (ruling) dated 23<sup>rd</sup> July 1973 relating to claim filed by [REDACTED] regarding pension loss pursuant to §§ 134-137.

## **THE ISSUES FOR DETERMINATION**

17. There is no doubt that the Appellant's father had two insurance policies with [REDACTED], that the Appellant and his brother as heirs of their parents could be entitled to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as policies [REDACTED] and [REDACTED] are concerned, 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 not entitled to payment from Foundation funds if;

17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of section 5 of the Valuation Guidelines shall apply; and

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.

18. The Respondent has met its burden of proof by establishing that the policies are covered by a decision of a German restitution or compensation authority. There is written evidence in the form of a ruling dated 23<sup>rd</sup> July 1973 from the compensation authority of Berlin. With regard to claims covered by a decision rendered by a German restitution or compensation authority the Panel lacks jurisdiction (Section 2.2.2 of Appeal Guidelines).

In addition, the Respondent has met its burden of proof that the insurance policies in question were fully paid as required by the insurance contract. The letter dated 10<sup>th</sup> December 1971 from [REDACTED] to the Compensation Authority of Berlin [paragraph 16a)] is written evidence that shows that one of the two policies would have been paid in any event since the suicide clause limiting payments to deaths occurring after five years would not have been applicable; as to the other insurance policy the suicide clause was applicable but [REDACTED] proved by the statement of its former employee, Fräulein [REDACTED], that deaths in concentration camps were not examined for the possibility of suicide, i.e. no evidence was required as to the cause of death. The Appellant and his late

mother nevertheless claimed that no payment was made to his late mother. However, this does not rule out the possible validity of the Respondent's statement that payments were made to the beneficiary. It cannot be excluded that – despite the Appellant's assertions - his late father changed the beneficiary who initially could have been his wife [REDACTED], from whom he was twice divorced. It seems more plausible that after he married a third time ([REDACTED]), he changed the beneficiary to [REDACTED] without informing his former wife [REDACTED]. A statement the Appellant made in the questionnaire filled in 1998 also supports this line of reasoning. In this questionnaire he states: “ *...but someone apparently claimed money (and may have been paid) from [REDACTED]* “ [paragraph 12 e)].

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 27<sup>th</sup> day of August 2004

For the Appeals Panel

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[REDACTED]