

## 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]

Represented by  
Rechtsanwalt [REDACTED]  
Leipzig (Germany)

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] 1927 in Chemnitz (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1884 in Chemnitz and died on 11<sup>th</sup> April 1951 in Birmingham (England); [REDACTED] was born on [REDACTED] 1899 in Berlin (Germany). [REDACTED] was taken into what the Nazi authorities called “protective custody” in early March 1933 for two weeks, and was

allegedly seriously mistreated during that time. By end 1938, in connection with the process of “Aryanisation”, he was forced to sell his business making gloves and stockings, which was taken over on 1<sup>st</sup> January 1939. In May 1939 the [REDACTED] family moved to Berlin to prepare to emigrate and left for England in August 1939.

[REDACTED], the Appellant’s grandfather, was born on [REDACTED] 1865 and died on 19<sup>th</sup> September 1942 in the concentration camp of Theresienstadt.

2. The Respondent is [REDACTED].
3. The Appellant submitted several claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC). In the present claim she claims that “[REDACTED]” issued a policy of life insurance to her grandfather [REDACTED].

Further claims, not related to this appeal, were made against other companies. In some cases payments offered were accepted; in others an appeal against a denial was dismissed.

4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 15<sup>th</sup> March 2004 *“On the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [REDACTED] could not have been established, even under the “Relaxed Standards of Proof” of the “Agreement”. According to the Foundation Law and the “Agreement” a claim has to be denied if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances”*.
5. The Appellant’s representative submitted an appeal to the Appeals Office dated 18<sup>th</sup> March 2004, in which the reasons for the appeal were set out.
6. The Appeals Office received the appeal form on 22<sup>nd</sup> March 2004 and mailed a copy to the Respondent on 29<sup>th</sup> March 2004.
7. [REDACTED] responded in a letter dated 2<sup>nd</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 [REDACTED]’s previous decision on it”*.
8. On 4<sup>th</sup> May 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. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
10. 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

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

- a) In section five the Appellant states that not all premiums were paid. She also states that the payments were stopped due to Nazi persecution.
- b) In section six the policyholder is identified as [REDACTED], her grandfather, who was born on [REDACTED] 1865 and died on 19<sup>th</sup> September 1942 in Theresienstadt.
- c) The insured person is identified as the Appellant's grandfather.

Other details of the policy are, according to the claim form, unknown to the Appellant.

12. Copies of the following documents were submitted:

- a) A letter dated 28<sup>th</sup> January 1963 from [REDACTED], son of [REDACTED], to the lawyer Dr. [REDACTED]. In this longer letter, apparently dealing with different restitution matters, he writes with respect to insurance policies, "*Insurance policies: my father had a life assurance policy with [REDACTED], then of [REDACTED]. His policy was badly devalued after the First World War and the inflation that followed. The German government subsequently passed a law revaluing those policies. If my memory does not deceive me, you could choose between a settlement payment and adjusted revaluation policy. I cannot remember what my father decided at the time. As far as my own policy was concerned, I opted a settlement*".
- b) A further letter from [REDACTED] dated 1963 to Dr. [REDACTED]. No reference is made to an insurance policy in this letter.

13. In a statement submitted with the appeal form the Appellant's representative writes: "*The assertion by [REDACTED] that a life insurance policy for [REDACTED] did not exist is incorrect. The statement made by the son of the policyholder, Herr [REDACTED], on 28<sup>th</sup> January 1963 disproves this. The insurance company has this document and it was also attached to the application form. Herr [REDACTED], who knew precisely the financial circumstances of his father, explained in this statement that his father took out a life insurance policy with [REDACTED] in Berlin, which was in [REDACTED] at that time. It is shameful that, despite the clarity pertaining in this matter, [REDACTED] claims not to have been able to investigate these insurance policies in their records since 1998, i.e. nearly six years. This is in keeping with the decades-long experience of those persecuted by the Nazis, whereby the German insurance companies always maintain that there were no documents. Strangely enough, these documents are always found only when the German insurance companies think they are able to decline each further payment with reference to trivial compensation payments on the part of the German state. Given that the existence of a life insurance policy of [REDACTED] is sufficiently proven by the statements made by his son at the time, [REDACTED] is obliged to make a payment*".

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. In its decision letter dated 15<sup>th</sup> March 2004 [REDACTED] denies the claim because it could not find any indication in internal or external archives that established that Mr. [REDACTED] took out a life insurance policy with [REDACTED].
15. [REDACTED] made additional comments in its letter of 2<sup>nd</sup> April 2004, in which “*without wishing to comment in detail on the factually unjustified accusations*” it states: “*The only information related to former activities in Germany and abroad in [REDACTED]’s possession consist of a reduced number of statistical and some technical registers sorted by policy numbers still available out of [REDACTED]’s former main archive in Berlin, which was destroyed in February 1945. These registers, which contain no names of policyholders, whatsoever were thoroughly analysed and recorded together with all the information obtained as a result of internal and external searched into one electronic database to perform all possible research. Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. Unfortunately no match occurred in our records due to the lack of detailed and specific information in the claims-form as to e.g. the policy number. Our only search criterion were the names of the family members listed in the claims-form. All investigations in the still available lists with names of former policy holders and persons involved in insurance contracts did not produce any results even under consideration of all names and birth dates mentioned in the claims-form and deviating spellings, errors in the transfer of names or deviating pronunciations. This is the reason why we have to confirm the rejection of this claim, and also the reason for the impossibility to produce to the Panel any document related to the claim at issue, because no such document is available to us*”.

## THE ISSUES FOR DETERMINATION

16. The main issue for determination in this appeal is whether the Appellant has met her burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
  - 17.2.1 that the claim relates to a life insurance policy in force between 1<sup>st</sup> January 1920 and 8<sup>th</sup> May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;
  - 17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and
  - 17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
17. There is no doubt that the Appellant and her family were Holocaust victims as defined in Section 14 of the Agreement and that the Appellant as granddaughter of [REDACTED] could be entitled to the proceeds of an unsettled life insurance policy.

18. However, where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “plausible” rather than “probable”. Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant’s assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company.
19. It is concluded that there is not sufficient plausibility to support the conclusion that an insurance policy remains unpaid. The only evidence, the letter dated 28<sup>th</sup> January 1963 from [REDACTED] to the lawyer Dr. [REDACTED], can be regarded as speaking in favour of the existence of an insurance contract between the Appellant’s grandfather [REDACTED] and [REDACTED]; the non-existence of pre-war documentation in [REDACTED]’s possession does not exclude the existence of such policy. However, the same letter clearly states that the author of the letter, the son of [REDACTED], who, according to the Appellant, was very familiar with the financial affairs of his father, was not sure whether this – due to inflation – greatly devaluated policy remained unpaid, or had been subject of a settlement payment before the war similar to his acceptance of such a payment for his own equally devaluated policy. The non-existence of any further correspondence between [REDACTED] and the lawyer with regard to the policy in question, together with the lack of any relevant information in the registers and archives of [REDACTED] (not only with regard to pre-war documents but also with regard to post-war correspondence) support the probable assumption that at the time no attempts were made to collect the proceeds of such policy or to seek restitution. This is, undoubtedly, no proof that [REDACTED] before the war had accepted a settlement payment. The known facts, on the other hand, taken together do not justify an award in favour of the Appellant on the assumption that an offered settlement payment was not accepted and a greatly devaluated policy (for which no documents could be found in the Respondent’s archives) is still in force and unpaid.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 13<sup>th</sup> day of August 2004

For the Appeals Panel

(signed) [REDACTED]

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

London, 16<sup>th</sup> day of August 2004

