

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

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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] 1916 in Guben, Niederlausitz (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], a businessman, was born on [REDACTED] 1883 in Guben and was killed in the Warsaw ghetto; details about [REDACTED]’s biography were not presented in the claim.

The Appellant was married to [REDACTED], born on [REDACTED] 1900 in Witkowo (at that time Germany, now Poland). The Appellant stated in all of her different claim forms that he died on 5th April 1964 in São Paulo (Brazil); in her appeal form, however, she stated that he was killed in a concentration camp.

The Appellant fled from Germany in 1938 to escape persecution by the German National Socialist Regime and emigrated to Brazil. After her first husband's death she left Brazil in 1965 and went to the United States of America where she married [REDACTED].

2. The Respondent is [REDACTED].
3. The Appellant submitted several claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that insurance companies issued policies of insurance to her father and to her first husband. The subject of this appeal is a claim against [REDACTED] related to a motor vehicle insurance policy issued to [REDACTED]. The claim files relating to her other claims (that appear to be incomplete) have been checked to determine whether there is other information relevant to this appeal but none was discovered.

Independent from the appeals process the competent ICHEIC body has awarded the Appellant a humanitarian payment of US\$ 1,000. This payment was made for claim number [REDACTED] against an unknown company for the proceeds of an unspecified policy.

4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 11th March 2004: *“Based on the information that you have provided in the claims-form we have intensively searched all relevant archives and records for information as to the existence of an insurance policy taken out by Mr. [REDACTED]. We have not found any evidence in our archives to confirm the existence of this specific policy or any other policy taken out by your husband”*. [REDACTED] continued to explain the difference between life insurance and motor vehicle insurance concluding: *“Should there have been a loss or damage as per the terms of the policy prior to the emigration (of the Appellant's husband), we can assume that there is no objection to an insured sum having been paid as per contract, if the insurance cover was still valid at that time. We are confident that you will understand our decision not to submit an offer under the given circumstances”*.
5. The Appellant submitted an undated appeal to [REDACTED] dated 2004, in which she set out the reasons for the appeal. On 25th March 2004 [REDACTED] forwarded the incomplete appeal form to the Appeals Office that did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva, Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
6. The Appeals Office requested the Appellant by letter dated 20th April 2004 to sign an amended appeal form.
7. The Appeals Office received the appeal form on 4th May 2004 and mailed a copy to the Respondent on 5th May 2004.

8. [REDACTED] responded in a letter dated 17th 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 10th 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.
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 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

12. 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 three the Appellant identifies the company that issued the insurance policy as “[REDACTED]. [REDACTED]. Berlin [REDACTED] – [REDACTED]. Insurance number [REDACTED]”. She asserts that the policy was purchased in Liegnitz. In answer to question 3.3 regarding ‘*other information which might support the search*’ she writes, “*motor vehicle insurance*”.
 - b) In sections six, seven and eight the policyholder and insured person are identified as [REDACTED], the Appellant’s first husband, who was born on [REDACTED] 1900, and the Appellant is named as beneficiary.
13. The following documents are in the claim file and would appear to have been submitted with the claim form:
 - a) Copies of the Appellant’s passport, her U.S. naturalization certificate and her marriage certificate to [REDACTED] in 1965.
 - b) A copy of a motor vehicle insurance policy taken out with [REDACTED]. The policy number is [REDACTED]. The policyholder is [REDACTED]. The first premium was to be paid on 3rd August 1937 and the initial premium payment for the period 3rd August 1937 to 3rd February 1938 was RM 129.90.
 - c) A copy of an option certificate for the German citizenship (“*für die Deutsche Reichsangehörigkeit*”) issued to [REDACTED] on 23rd December 1922.
 - d) A general notice from [REDACTED] stating that the personal liability insurance certificate is also valid for trips to Denmark, Sweden and Norway.

14. In the appeal form the Appellant sets out her reasons for appealing the decision and writes, *“my husband did not have a motoring accident. He was killed in a concentration camp. Because I am not well, the compensation could be useful”*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] denied the claim in its decision letter dated 11th March 2004 for the reasons already set out above (paragraph 4). In addition, [REDACTED] wrote: *“Nevertheless, we wish to give the following explanation: The motor vehicle policy mentioned by you is not a life insurance, but third-party liability insurance. The insurance cover of such a policy extended to possible damage of the car insured and losses of third parties they may suffer by accidents caused by this car. At that time, these policies were taken out for a fixed period of time with an agreed premium to be paid annually. The insurance cover expired at the agreed maturity or after the non-payments of premiums; you can take this from the policy of which you submitted a copy”*.
16. In its letter responding to the appeal [REDACTED] explains why its records and archives are limited, confirms that there were no matches in internal or external archives or records and continues: *“Moreover, with the help of the documents submitted by the claimant and the description of the then living situation, we have been able to find out that payments according to the insurance clauses from the motor vehicle insurance policy submitted by her had not been due. This fact is not mentioned by the claimant even now”*.

THE ISSUES FOR DETERMINATION

17. There is no doubt that the Appellant’s first husband had motor vehicle insurance with “[REDACTED]. [REDACTED]” in Berlin, that the Appellant as his heir could be entitled to the proceeds of that policy and that the Appellant is a Holocaust victim. Therefore, the claim of the Appellant in general is within the scope of the Agreement, which, pursuant to section 2 (2) of the Agreement, also covers non-life insurance policies. However, a claim concerning non-life insurance is only eligible for compensation, if the insured event occurred while the policy was in force at the time of the event (section 2 (2) (a) of the Agreement). Motor vehicle insurance is not a life insurance, but third-party liability insurance, as the Respondent correctly pointed out in its decision letter. Such insurance generally covers possible loss caused by the insured vehicle to third parties. Not covered, however, is the death of a motor vehicle insurance holder that is not caused by a car accident. Here, there is – independent from the contradictory statements referred to in no.1 above which most probably are caused by a misunderstanding on the side of the Appellant - no indication that [REDACTED], the Appellant’s first husband, died in a car accident at a time when there was an insurance contract in force that covered such an accident. In addition, the general notice from [REDACTED] stating that the personal liability insurance certificate is also valid for trips to Denmark, Sweden and Norway indicates that this motor vehicle insurance is “simple” liability insurance and does not include coverage for the owner operator of the car causing the damage. Taking all existing information together the Appellant has no eligible claim; she does not assert that her first husband died in a traffic accident at a time when the policy was in force and that the policy covered more than liability for damages suffered by third parties in a traffic accident.

Appellant:[REDACTED] No.: [REDACTED]	Appeal No.: [REDACTED]	Claim
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IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 10th day of September 2004

For the Appeals Panel

[REDACTED]