

## 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

DR. [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 Dr. [REDACTED], born on [REDACTED] 1925 in Kiszárda (Hungary). She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1887 in Bodrogkisfalud (Hungary); [REDACTED] was born on [REDACTED] 1895 in Kiszárda. The Appellant had a sister, [REDACTED], born on [REDACTED] 1931 in Kiszárda. The [REDACTED] family was incarcerated in the concentration camp of Auschwitz. The Appellant’s parents and her sister were killed in Auschwitz.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED] now [REDACTED]” issued policies of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 5<sup>th</sup> March 2003 “*Based on the information provided by you in your claims-form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by your father, Mr. [REDACTED], with [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 submitted an appeal to the Appeals Office dated 15<sup>th</sup> March 2004, which was accompanied by an attachment setting out the reasons for the appeal and giving further information about details of the personal data of her parents and her sister.
6. The Appeals Office received the appeal form on 24<sup>th</sup> March 2004 and mailed a copy to the Respondent on 29<sup>th</sup> March 2004.
7. [REDACTED] responded in a letter dated 8<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 [REDACTED]’s previous decision on it*”.
8. The Appellant gave comments on this letter in a letter dated 12<sup>th</sup> May 2004, in which she asks why [REDACTED] has no copies or other updating documents. She once again confirms that she knows that a policy existed and that she is claiming since 1993. Attached was an article from a Hungarian newspaper (“*Nepszabadrág*”) that states that insurance companies are playing with time in this matter.
9. 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.
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 her claim forms:

### Claim form signed 8<sup>th</sup> April 2000

- a) In section three she asserts that the policy was purchased in Berlin, Germany.
- b) In section five she indicates that the policy was an endowment, dowry or education policy. She asserts the sum insured was “20.000 US?”. With regard to the date of issue she writes, “1925?” and with regard to the date of maturity she writes, “age 18?” In answer to question 5.11, which asks whether anybody has approached the insurance company about the policy she writes, “myself”.
- c) The policyholder is not identified in section six.
- d) In section seven she identifies the insured person as herself.
- e) In section nine regarding compensation having been received she marks “no” and writes, “I wrote a letter to the Insurance Co. They answered that they don’t have any documents”.

### Claim form signed 22<sup>nd</sup> April 2000

- a) In this claim form the Appellant asserts that [REDACTED] issued a policy to her father, [REDACTED].
  - b) In section three she asserts that the policy was purchased in Kiszárda, Hungary.
  - c) In section five she indicates that the policy was a life insurance policy. With regard to the sum insured she writes, “20.000 US \$?” She asserts that the date of issue was “1925 (?)”.
  - d) The policyholder is identified as [REDACTED], the Appellant’s father, who was born on [REDACTED] 1894 (?) in Bodrogkiszalud, Hungary. He died in Auschwitz.
  - e) In section seven the insured person is identified as [REDACTED], the Appellant.
  - f) The beneficiary is also identified as the Appellant.
  - g) In section nine regarding compensation the Appellant denies that anybody else has participated in compensation proceedings, but writes, “applied to [REDACTED] – no payment”.
  - h) In section eleven regarding further information she writes, “applied the same claim in Israel”.
13. In a statement, received on 24<sup>th</sup> March 2004, accompanying her appeal form the Appellant writes, “I wish to inform you once more about the data in my possession. Up to now, no precise details of my father’s birth have been available to me. At the time he was born, the only lists of Jewish births were kept by rabbis. Who knows where those lists are now? Now, however, I have obtained the exact dates. They are as follows: [she then provides details of her family] Policy number. I do not have it. Where could I have got it from? I was the only

*one to return from Auschwitz and had nothing. I applied to [REDACTED] in Berlin immediately at the time of unification of East and West [Germany]. The reply [I received] was: 'You picked up the money punctually' (as if it could have been paid out in 1943!!). Later, during the Stalin regime, it was again impossible to communicate with East Berlin from Israel, and so it has continued up to today. I can still remember how hard my father worked to pay the dollars to [REDACTED] in the years after the First World War, in the hope of ensuring that his daughter would have some money".*

14. On 20<sup>th</sup> May 2004 the Appeals Office received a further statement from the Appellant, in which she writes, "I know that I had this insurance policy with Berlin [REDACTED] and the insurance company has to pay for this".

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

15. [REDACTED] denied the claim in its decision letter dated 5<sup>th</sup> March 2004 for reasons quoted above (paragraph 4).
16. [REDACTED] makes additional comments in its letter of 8<sup>th</sup> April 2004 as follows: "*The only information related to former activities in Hungary 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 searches 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 either been 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 formed 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. Also a new search initiated after receipt of a/m letter of appeal on the basis of the no known personal details of the family members produced no result. This is the reason why we have to confirm the denial of this claim".*

## **THE ISSUES FOR DETERMINATION**

17. 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 [REDACTED] 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.
18. There is no doubt that the Appellant and here family are Holocaust victims and that the Appellant as heir of her parents could be entitled to the proceeds of a policy. The critical point is whether it was [REDACTED] that issued a life insurance policy, which was in force between 1920 and 1945.
19. 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.
20. It is concluded that the Appellant has not met her burden of proof that it was [REDACTED], which issued an insurance policy to her father. Her evidence lacks the requisite authenticity and particularity and there is not enough corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of a life insurance policy issued by [REDACTED]. She provides details about the policy, such as names and personal details of policyholder, insured person and beneficiary and the currency, in which the policy was issued, insured sum, place and time of issue and date of maturity. However, some of these details are contradicting (e.g. the place where the insurance was purchased) and most of the details she gives are marked with question marks, indicating that she is not very sure about this. The insured sum she gives is extremely high, especially for dowry insurance but also for a life insurance policy in those days - US\$ 20,000 were in 1938 the equivalent of Pengö 101,781 (on a rate of 1 Pengö is 19.6500 US Cents). Such a high insured sum is not plausible without further circumstances that indicate that the policyholder was wealthy enough to afford such an expensive insurance contract. Finally, the Appellant does not explain, how she knew about the policy and its details. In a case, where in addition to the uncorroborated assertion of the Appellant, there is not enough further authentic and particular information that makes plausible the existence of a policy, the necessary degree of plausibility has not been established.

Finally, neither the Respondent, nor the ICHEIC found a research match in their databases. Although the Respondent’s databases are very limited, the absence of research matches has to be taken into consideration.

Since it is, nevertheless, regarded as plausible that an insurance policy existed, even if it is not sure with which company, it is concluded that the Appellant should be considered eligible for a humanitarian payment under the relevant ICHEIC procedures. The ICHEIC will be informed accordingly.

Appellant: Dr. [REDACTED]  
No.: [REDACTED]

Appeal No.: [REDACTED]

Claim

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 14<sup>th</sup> day of October 2004

For the Appeals Panel

\_\_\_\_\_  
[REDACTED]