

## **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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THE APPEALS OFFICE, PO BOX [REDACTED]230, LONDON EC1N 2XA, UNITED KINGDOM

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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**

### **PANEL DECISION**

The Appeals Panel 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] 1919 in Breslau, Germany (now Wrocław, Poland). He is the son of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] in Breslau and died in the ghetto of Lodz on 31<sup>st</sup> October 1942; [REDACTED] was born on [REDACTED] 1888 and died on an unknown date. The Appellant had a sister, [REDACTED], née [REDACTED], who was born on [REDACTED] 1918 in Öls, Silesia (Germany, now Oleśnica, Poland) and died in 1988 or 1998 in England where she lived following emigration. [REDACTED] had six children.

2. The Respondent is [REDACTED] as the legal successor of “[REDACTED]”. In 1998 “[REDACTED]” was merged with “[REDACTED]” and now forms, after other mergers and renamings, among others with “[REDACTED]”, part of “[REDACTED]”.
3. The Appellant submitted an “unnamed” claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), which was received on 11<sup>th</sup> July 2000, in which he claims that an insurance company he could not name issued a policy or policies of life insurance.
4. The ICHEIC submitted the claim to the [REDACTED] companies and the German companies.
5. In a letter dated 7<sup>th</sup> March 2002 the Respondent (then [REDACTED]) informed the ICHEIC that it had not found life insurance policies issued pre-war in its records.
6. In a decision letter dated 7<sup>th</sup> May 2003 [REDACTED], which also had been sent the unnamed claim, informed the Appellant that it had found an entry in its central register and that this entry was marked “[REDACTED]”. This signifies, according to [REDACTED], that another insurance company referenced by number [REDACTED] had informed [REDACTED] that a proposal had been made to take out life assurance with a health condition (the note “*m.B.*” in the index card is an abbreviation for “*mit Beeinträchtigung*”, which, translated into English means “*with impairment of health*”). This decision letter, which noted the possibility of an appeal and to which an appeal form was attached, was not appealed by the Appellant.
7. The Respondent (then [REDACTED]) having been informed by the Appellant about [REDACTED]’s findings stated in its decision letter dated 21<sup>st</sup> November 2003 that the ICHEIC had forwarded his application for further investigation in 2001 and that at that time the ICHEIC was informed that it was not possible to ascertain the existence of a policy. The Respondent continued: “*From your exchange of correspondence with [REDACTED] (letter of 7<sup>th</sup> May 2003) we gather that a reference in [REDACTED]’s central register indicates an application for a life insurance with [REDACTED] was possibly submitted in or prior to 1928. In this regard we would like to explain as follows: [REDACTED]’s business was transferred to our company in 1998. The application documents and policies that had been filed before the end of the war in 1945 were archived at the company’s headquarters in Leipzig. These archives were destroyed during the total destruction of the administrative building in Leipzig during the Allied blitz bombing. In the post-war period, when the administration was re-established in Munich, the only documents that could be reissued were those for which the Insured or the Agent could supply details of those policies. Amongst other things, a file was set up containing the names of all those for whom it was possible to reconstruct the documents. A life policy for your father is not contained in this file, so it is not possible to demonstrate a contractual relationship. Whether a contractual relationship existed between him and [REDACTED], will remain open, since the reference discovered at [REDACTED] only indicates that the company registered a rated **proposal** (i.e. not at the normal premium). Speculation may lead to the assumption that your father did not accept this weighting and therefore submitted another application to [REDACTED]*”.
8. The Appellant submitted a non-dated appeal form against the Respondent’s decision letter to the Appeals Office, which was accompanied by attachments setting out the reasons for the appeal. The sole subject of this appeal is the decision letter of 21<sup>st</sup> November 2003.
9. The Appeals Office received the appeal form on 30<sup>th</sup> December 2003 and mailed a copy to the Respondent on 26<sup>th</sup> January 2004.

10. The Respondent (now [REDACTED]) answered in a letter dated 3<sup>rd</sup> February 2004 and pointed out for reasons it had set out before that *“since the Appellant had been unable to provide any new or additional information with the appeal, our rejection of 21 November 2003, ... , is correct”*.
11. Independent from the appeals process the competent ICHEIC body has awarded the Appellant with a humanitarian payment of 1,000 \$.
12. On 2<sup>nd</sup> March 2004 the Appeals Office informed both parties that the appeal will be 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.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
14. 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.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

## **THE CLAIM**

15. The Appellant has submitted the following information relating to the claim for the proceeds of a life insurance policy in his claim form:
  - a) In section three the Appellant does not identify the company that issued the policy, but states that the policy was *“most likely”* bought in Frankfurt am Main, Germany.
  - b) In section four concerning *“documents”* he writes, *“my father acted i.a as travelling salesman for the kitchen furniture factory, [REDACTED] in Osnabrück, which still existed after the war. He also owned a car “Adler”. As a normal, educated and responsible head of a family must have had a life-insurance. Helping my father with personal accountancy, I remember clearly a life insurance item – monthly or quarterly”*.
  - c) In section six the policyholder is identified as [REDACTED], the Appellant’s father, who was born on [REDACTED] 1881 in Breslau and died on 31<sup>st</sup> October 1942 in the ghetto of Lodz, Poland. With regard to the question of living heirs he writes, *“no”, “unless the children (6) of my only sister, [REDACTED], who died about 2 years ago in England”*.
  - d) The insured person is identified as the Appellant’s father. His date of birth is stated as being [REDACTED] 1881.
  - e) The beneficiary is identified as the Appellant. He states that there are no living heirs, and writes, *“my only sister [REDACTED] died last year in England...”*.
  - f) In answer to question 9 concerning compensation the Appellant marks *“yes”* to having received compensation and writes, *“through URO, DM 10,000. Later entered BFA of*

*which I am now beneficiary after downpayment of ca. DM 35,000 (Rente – [?] DM 1330 – per month)”.*

- g) In answer to question 11 regarding further information the Appellant writes, “*I personally sang at the choir of the Hauptsynagoge for about two years until the Kristallnacht in [REDACTED], Frankfurt/Main. I earned about DM 60 to 80 monthly. It is not unlikely that the informal Jewish administration paid for the members of the choir an all-risk-life-insurance for safety-sake”.*
16. In his statement submitted with his appeal form the Appellant writes, “*for some years I have been dealing with the application of my father’s insurance on the basis of an entry found at [REDACTED] [REDACTED] in Stuttgart. Halfway through this year Mrs [REDACTED] from [REDACTED]’ alerted me to the fact that this entry indicates that my father contacted [REDACTED]’ about life insurance. Mrs [REDACTED] then directed me to [REDACTED]’, the successor to [REDACTED]’. This is also the reason why [REDACTED]’ would not progress the matter further and they put me in touch with Mrs [REDACTED] at [REDACTED]’ for further enquiries”.*
17. Attached to this statement was a copy of the letter dated 10<sup>th</sup> November 2003, which the Appellant sent to [REDACTED] and a typed extract of the response. Underneath the response the Appellant has made the following remarks: “*In view of the fact that my father, as the responsible head of a family and as a middle class businessman, would certainly not have neglected to provide for his family, I am firmly convinced that he took out life insurance. If ultimate proof on the part of one or the other insurance companies cannot be demonstrated due to actions during the war, proving the existence of the customary insurance documents remains incumbent upon the insurance companies. The fact that such proof can no longer be found cannot be laid to my charge. I therefore request that the Appeals Panel not allow payment of my father’s life insurance to me as sole surviving heir (I am 84 years old) to be withheld, also in view of the fact that at my time of life such a payment may have a positive influence on the quality of my life. In other words – in this case of bureaucratic doubt, the decision should be made in my favour”.*

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

18. In its decision letter the Respondent disclosed the results of its research (see above paragraph 7).
19. The Respondent added the following further comments in a letter dated 3<sup>rd</sup> February 2004: “*...The Applicant, [REDACTED], completed the claim form for ICHEIC on 22.4.2000. Under Item 3.1 (Name of company) the Applicant replied: ‘I do not know’. The correspondence we received from the Applicant was dealt with first of all by [REDACTED], as is apparent from the copies. [REDACTED] rejected this claim on 26.5.2003. In a later letter, dated 17.10.2003, [REDACTED] informed the Applicant that it had discovered an entry in its central register, according to which the company recorded there under the number [REDACTED] had informed [REDACTED] in reply to an enquiry by the latter that a proposal had been made for life assurance with a health impairment. We can only assume that [REDACTED] made the inquiry at that time because it had received a proposal. It is no possible for us to check [REDACTED]’s notification, since the central register in question is an internal [REDACTED] document. In his Registration Form, the Applicant stated under Item 9.1 that compensation proceedings had taken place, with a positive outcome. The replies from [REDACTED] held by the authorities do not give any indication of a previous life assurance [policy]. Under the above Agreement, Appendix B*

(Paragraph A 1), **substantiation** of a claim in connection with an insurance policy is one of the duties of an Applicant. The Applicant **has been unable to produce any documents confirming the existence of such a policy**. The documents still available in the [REDACTED] archives likewise contain no such indication. As already notified to the Applicant, [REDACTED]'s statement about an announcement by [REDACTED] (insofar as it is applicable here) refers only to a proposal for a life assurance policy with a health impairment (thus, probably with a surcharge) having been made to [REDACTED]. That an insurance contract was actually concluded has not been substantiated”.

## THE ISSUES FOR DETERMINATION

20. The main issue for determination in this appeal is whether the Appellant has met his 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.
21. 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.
22. The Panel concludes that the Appellant has not met his burden of proof that [REDACTED] issued an insurance policy to his father. His evidence lacks the requisite authenticity and particularity, and there is no 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]. The Appellant’s only recollection is that his father “*as a normal, educated and responsible head of a family must have had a life-insurance*” and that his father “*in view of the fact that [he], as the responsible head of a family and as a middle class businessman, would certainly no have neglected to provide for his family...*”. For these reasons the Appellant is “*firmly convinced that he took out life insurance*”; in addition the Appellant stated in the claim form “*helping my father with personal accountancy, I remember clearly a life insurance item – monthly or quarterly*”. However, the only facts which may be reconstructed from the written documentation located by the companies in question are, that his father applied for a life insurance policy with [REDACTED] and that [REDACTED] marked in its index card that there was a (previous) application for a life insurance with health impairment (“m.B.”) with company no. [REDACTED] [predecessor company of the Respondent]. This evidence from the

[REDACTED] archives makes it plausible that there was no contract between the predecessor company of the Respondent and the Appellant's father, and that this was the reason why another application to [REDACTED] was made. Furthermore, in the archives of [REDACTED] - even if they are incomplete - nothing could be retrieved that would prove that [REDACTED] did issue a life insurance policy. Consideration of all of these aspects (the Appellant's rather vague recollection based on assumptions rather than on actual knowledge, that there were from the beginning serious problems in taking out a life insurance policy because of the Appellant's father's health condition, the absence of any documentary evidence indicating the existence of a life insurance contract, and, finally the documentary evidence that [REDACTED] marked in its index card that company no. [REDACTED] had a (previous) application with health impairment ("*m.B.*") supports the conclusion that there is insufficient evidence to make the existence of a policy taken out with [REDACTED] plausible.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 8<sup>th</sup> day of July 2004

The Appeals Panel

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Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member