

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], born on [REDACTED] 1922 in Darmstadt (Germany). He is the son of [REDACTED] and [REDACTED], nee [REDACTED]. [REDACTED] was born on [REDACTED] 1879 in Darmstadt and died in November 1939 in Darmstadt. [REDACTED], nee [REDACTED] was born in Berleburg (Germany) on [REDACTED] 1889 and died when she was deported to Auschwitz in 1941. The Appellant’s two brothers, [REDACTED] and [REDACTED], were also killed in Auschwitz. The Appellant left Germany in 1939 when he was seventeen years old. His uncle Dr [REDACTED] (or [REDACTED]) [REDACTED] survived the Holocaust and emigrated to Australia in 1938. Dr [REDACTED] and the Appellant’s father were brothers.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant submitted a claim form to the International Commission on Holocaust Era Insurance Claims (ICHEIC) dated 13th March 2000 in which he claims that [REDACTED] issued a life insurance policy to his father [REDACTED].
4. The ICHEIC submitted the 2000 claim to [REDACTED]. In its decision letter dated 16th September 2004 [REDACTED] states that they were unable to prove the existence of a life insurance policy issued to [REDACTED].
5. The Appellant submitted an appeal to the Appeals Office dated 8th November 2004, in which he set out the reasons for the appeal.
6. The Appeals Office received the appeal form on 22nd November 2004 and sent a copy to [REDACTED] on 23rd November 2004.
7. The Appellant submitted further reasons for the appeal in a letter dated 1st December 2004. [REDACTED] responded in a letter dated 20th December 2004.
8. On 4th January 2005 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. The Appellant wrote a further letter dated 8th January 2005 reiterating his previous correspondence, however no request for an oral hearing was made by either parties. The appeal proceeded on a “*documents only basis*”.
10. 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

11. The Appellant first wrote to [REDACTED] in 1998, which was before ICHEIC was established. He has maintained that his father, [REDACTED], was an agent for [REDACTED].
12. The Appellant provides the following information in relation to the claim for the proceeds of a life insurance policy in his claim form:
 - a) In section three the Appellant states that the name of the company that issued the policy was “[REDACTED]”. In response to question 3.2 (“*place where insurance policy was purchased*”) he writes, “*Darmstadt*” in Germany. He also states that his father was an agent for [REDACTED].
 - b) In section five, he indicates that the policy in question was a life insurance policy.
 - c) In section six the policyholder is identified as the Appellant’s father, [REDACTED].

- d) In section seven and eight the insured person is identified as the Appellant's mother [REDACTED], nee [REDACTED].
 - e) In section nine the Appellant states that no one has participated in any compensation/restitution procedure for this claim.
 - f) In response to section eleven ("*Further Information*"), the Appellant writes, "*It is possible that my father, [REDACTED], was also insured with a company I am not aware of.*"
13. The Appellant submitted a declaration of consent and a copy of his Israeli ID card with his claim form confirming his name and date of birth.
14. The Appellant set out his reason for the appeal in his appeal form and states (translation):

"I am utterly convinced that my father, [REDACTED], took out a life assurance policy with the [REDACTED] life assurance company with the named beneficiaries being my mother, [REDACTED] and my brothers [REDACTED] and [REDACTED], all of whom were murdered in Auschwitz. My father died in Darmstadt in November 1939.

A point in favour of this is the fact that my father was an agent for [REDACTED] for many years and this I remember very well. Another point is that, according to a letter from [REDACTED] dated 16.9.04, my Uncle, Dr. [REDACTED] from Hamburg, had also had policies with [REDACTED]. He only took these policies out for my father because he was an agent for [REDACTED] at the time and it for this reason that both of them were insured [REDACTED].

I am unable to remember any compensation application being made in 1965, which according to the letter from [REDACTED] dated 16.9.04, I made as the sole heir of Dr. [REDACTED], and where compensation was apparently paid out.

I left Germany on 14.8.39"

15. In a letter dated 1st December 2004 the Appellant further writes, "*In the letter dated 16th September 2004 from [REDACTED] were mentioned. According to that letter I am supposed to have claimed compensation in 1965 and received a payment. Dr [REDACTED] was the brother of my father, so I am the sole heir. I do not know anything about a compensation claim At that time I asked you to send me forms for a claim for Dr [REDACTED] but have not received any. I would like to politely ask you now to send the forms.*"
16. In a letter dated 8th January 2005 the Appellant states that he cannot remember a settlement on 30th September 1965 due to the time that has passed. He confirms that his father, who was an agent [REDACTED], had a life insurance policy. The Appellant recalls the logo and sketches a symbol to demonstrate his recollection of [REDACTED]'s logo.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. In [REDACTED]'s decision letter dated 16th September 2004, it writes "*On the basis of the information provided in the application form, and the intensive research that we have carried out into the various internal and external files, we have been unable to prove the existence of a life assurance policy taken out for [REDACTED] with the [REDACTED] life assurance company under the conditions defined by the "Relaxed Standards of Proof" in*

the “agreement”[...]. We hope that you are able to understand the reasons behind our decision in rejecting to offer you any compensation payment.” Further, [REDACTED] informs the Appellant that it found records of a compensation claim submitted for the Appellant’s Uncle, Dr. [REDACTED] in 1965 and that “Compensation was paid out on the [REDACTED] policy for Dr [REDACTED] and can therefore no longer form the basis of any compensation claim”.

18. In a letter in response to the Appeals process dated 20th December 2004 [REDACTED] writes the following:

“Claimant for the Dr [REDACTED] compensation case in 1965 was Mr [REDACTED], born [REDACTED] 1922. This was therefore the same claimant as in named claim [REDACTED]. Research in our archives did not yield any indication of a contractual relationship with [REDACTED]. In our view, the information in claim no. [REDACTED] cannot sufficiently prove the existence of a contractual relationship even if we apply ‘Relaxed Standards of Proof’. Based on our fragmentary records, we were unable to establish that Mr [REDACTED] worked as an agent for [REDACTED]. If, after the end of the war, claims from the contractual relationship with [REDACTED] had existed as described in claim no. [REDACTED], it is incomprehensible to us why the claimant, on consultation with a lawyer, made efforts regarding the compensation case concerning his uncle Dr [REDACTED] but not regarding possible claims concerning his father [REDACTED] (we have not been informed of any further compensation procedures, in any case). It does not emerge from claim no. [REDACTED] that the claimant would only have received information about possible policies of his father after the conclusion of the compensation procedures in the 1960s. According to the Foundation Law and Agreement, a claim is to be rejected in the event that no sufficient and satisfactory proof exists of a contractual relationship with the insurance company named in the claim. We consider that we have refused claim no. [REDACTED] in compliance with these regulations.”

[REDACTED] encloses copies of various documents relating to Dr [REDACTED]’s compensation case:

- a) A letter dated 15th March 1957 from [REDACTED] to a Mrs Helga Jönsson, Dr [REDACTED]’s representative, providing details of the policy to assist her proceed with a compensation claim for Dr [REDACTED].
- b) A letter dated 12th June 1958 from [REDACTED] to the Department for Compensation in Hamburg confirming the calculations for policy numbers [REDACTED] and [REDACTED]. There are two documents of the same date detailing the terms of the two policies.
- c) A letter dated 16th August 1965 from [REDACTED] to Dr [REDACTED]’s representative awarding compensation for various damages including DM 739.25 for policy number [REDACTED] and DM 1981.53 for policy number [REDACTED].
- d) A letter dated 30th September 1965 from the Compensation Office in Hamburg confirming the settlement of damages to Dr [REDACTED]. The document also states that Dr [REDACTED] died in Australia on 31st May 1958 and that [REDACTED] would receive the compensation sum of DM 13,020.00.

THE ISSUE FOR DETERMINATION

19. It is clear from the submitted BEG documentation that the Appellant’s uncle, Dr [REDACTED], was compensated for two [REDACTED] life policies in the sum of DM 13,020.00 that was paid to the Appellant as heir. This appeal only concerns the Appellant’s claim for his father’s life insurance.

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 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in Section 14 of the 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 to establish 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. There is no doubt that the Appellant as heir to his father would be entitled to the proceeds of any life insurance policy and that all family members were Holocaust victims. The remaining and decisive question is whether the Appellant’s father had a life insurance policy with [REDACTED].
23. No weight is placed upon the Appellant’s recent recollections of the [REDACTED] logo because this is likely to have been prompted by the disclosure of [REDACTED] documentation during the appeals process. It has not been adequately explained why the Appellant cannot recall receiving his uncle [REDACTED]’s BEG compensation payment in 1965 for the sum of DM13,020.
24. Nevertheless, throughout the Appellant’s claim he has consistently maintained that his father was an agent for [REDACTED]. There is no documentary evidence to prove this employment. [REDACTED] has “*fragmentary records*” as a result of World War II. The Appellant wrote to [REDACTED] about his father’s policy in 1998 before the ICHEIC process was instituted.
25. [REDACTED] submitted BEG documentation and claimed that the Appellant instituted compensation and restitution proceedings for his uncle Dr [REDACTED], but not for his father. However, this is incorrect because during the 1950’s the Appellant’s uncle Dr [REDACTED] began the proceedings while he was living in Australia. Dr [REDACTED] instructed the solicitor Helga Jonsson of MM Warburg & Co to institute the BEG proceedings. Dr [REDACTED] died in Australia during 1958 and the Appellant was contacted in Israel as Dr [REDACTED]’s heir and this is documented in the BEG papers. The Appellant claims that his uncle, who was his father’s brother, only purchased insurance from [REDACTED] because his father was an agent for the company. This seems plausible in light of the BEG documentation. It is also plausible that a family man with three sons and a wife would have insured his family’s financial interests prior to the war, especially if

his business was that of an insurance agent. The Appellant has met his burden of proof and [REDACTED] has not submitted an adequate defence.

VALUATION

26. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel was required, as the value of the policy cannot otherwise be determined, to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). In cases, in which, as here, the amount of the policy cannot be determined, Section 7.1 of the Valuation Guidelines requires that the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (Section 7.1 of the Valuation Guidelines).
27. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X.
28. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 gives RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, must be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30. That is the value to the end of 1969. To update the values for the end of the year 1969 to the end of the year 2000, pursuant to Step 2 No. 3 of Schedule 2, the 1969 value must be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.
29. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (Section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex, additions must be made to the value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003, 2004 and 2005 by a Memorandum of ICHEIC after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4%; 2002: 5.0%; 2003: 4.75%; 2004: 5%; 2005: 5% according to the month, in which the decision is made, plus two months, i.e. 7/12 of 5%), which leads to the amount of DM 2,127.39 for 2001, DM 2,233.76328 for 2002, DM 2,339.8669 for 2003, DM 2,456.8602 for 2004, DM 2,528.5402 for 2005 which results in €1,292.8221 on the basis of an exchange rate of DM 1.95583 = €1.00. A conversion of €1,292.8221 to US dollars is US \$1,626.5448 on the basis of an exchange rate of 1 Euro = 1.25814 US dollars.
30. Notwithstanding the above calculation, however, pursuant to Section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company a minimum payment of at least US\$4,000, if he or she is a survivor of the Holocaust, as the Appellant is in this case.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal succeeds.
2. The Respondent, [REDACTED], shall pay the Appellant the sum of US\$4,000.00 no later than the last day of the second month following the month of the Decision, which is 31st July 2005.

Dated this 26th day of May 2005

[REDACTED]