

## 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 18230, 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**

### **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] (or [REDACTED]) and was born on [REDACTED] 1921 in Frankfurt am Main (Germany). She presently resides in Israel. Her former name was [REDACTED]. Her parents were [REDACTED], born on [REDACTED] 1866 in Berlin and died on 31<sup>st</sup> May 1950 in London, and [REDACTED], née [REDACTED], born on [REDACTED] 1889 in Meran (Austria) and died on 5<sup>th</sup> July 1959 in Israel. The Appellant’s sister [REDACTED], née [REDACTED] was born on [REDACTED] 1924. [REDACTED] is the Appellant’s father-in-law and was born on [REDACTED] 1888 in Warsaw and died on 25<sup>th</sup> April 1956 in the United States.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a Claim form dated 3<sup>rd</sup> April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued policies of life insurance to her father [REDACTED]. The ICHEIC processed this claim under number [REDACTED].
4. The ICHEIC submitted the claim to [REDACTED]. In [REDACTED]’ final decision letter dated 29<sup>th</sup> June 2004 it denied the claim by explaining that no contractual relationship had been discovered for [REDACTED] and [REDACTED] despite finding four application entries in the [REDACTED] register. However, as there were no corresponding [REDACTED] files, a recommendation to the humanitarian fund was made. Subsequently, the [REDACTED] ([REDACTED]) offered US\$16,000 for four application entries and the Appellant accepted this offer in 2004. No offer was made for application entry [REDACTED] for [REDACTED] because it was marked “*Abl*” which [REDACTED] argues is an abbreviation for “*Ablehnung*” (denial or rejection). [REDACTED]’ denial of any offer for application [REDACTED] is the subject of this appeal.
5. The Appellant’s representative submitted an appeal to the Appeals Office dated 27<sup>th</sup> December 2004. The Appeals Office received the appeal form on 10<sup>th</sup> January 2005 and sent a copy to [REDACTED] on 12<sup>th</sup> January 2005.
6. [REDACTED] responded in a letter dated 28<sup>th</sup> January 2005 and requested the Appeals Panel to “*reject the appeal submitted with respect to this claim*”.
7. On 18<sup>th</sup> February 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.
8. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
9. 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 Decision is made there.

## **THE CLAIM**

10. From 1997 the Appellant has been trying to obtain compensation for the alleged policies with [REDACTED]. The Appellant instructed her representative [REDACTED] to act on her behalf claiming her family’s insurance policies from [REDACTED] and a Power of Attorney is dated 6<sup>th</sup> December 1999.
11. ICHEIC was established in 1998. The Appellant completed an ICHEIC Claim form on 3<sup>rd</sup> April 2000. This appeal concerns only application number [REDACTED] for the Appellant’s father, [REDACTED].

12. The Appellant's representative wrote a letter dated 30<sup>th</sup> September 2002 to [REDACTED]. Enclosed with this letter a copy of the "Verordnungsblatt für Groß-Berlin" dated 3<sup>rd</sup> August 1949. This is the law gazette for the area of greater Berlin issued by the Allied Command. It sets out a Decree dated 26<sup>th</sup> July 1949 regarding the "restitution of ascertainable assets to victims of the national-socialist measures of oppression". In his appeal letter, the representative refers to this Decree and argues that it establishes that the burden of proof rests with the insurance company. The legal representative also refers to the section explaining the presumption of unlawful seizure.
13. The Appellant's representative wrote to the Appeals Office on 5<sup>th</sup> September 2004: "*Hereby we appeal the decision of the above-named claim taken by [REDACTED] insurance company dated 26<sup>th</sup> June 2004 for the following reasons: You base your decline on the assumption that the policy was not issued although there is an entry in the central register. The reason for that is the abbreviation 'Abl' which is noted next to the policy application number and which you interpret as a 'decline'. We cannot follow this interpretation. [REDACTED] Insurance company has not explained why it interpreted in that way, especially why it can be concluded that such a combination of letters was used at that time to mark the refusal of an application for insurance. There is a possibility of a different interpretation. The insurance company bears the burden of any difficulty to find proof resulting from the lack of documentation. Therefore, on behalf of our client, we would urgently like to ask 1. to cancel the decision of [REDACTED] dated 29<sup>th</sup> June 2004 and 2. to present our client an acceptable offer of payment in accordance with the regulation VO BK/O 49, 180 dated 26<sup>th</sup> July 1949 and the ICHEIC rules which is in both parties' interest. Furthermore we would like to thank you for the time you spent and the work you did. Nevertheless it is to the detriment of the insurance company that no information could be found. We are hoping to resolve this matter soon and unbureaucratically.*"
14. The Appellant's representative submitted an appeal form dated 27<sup>th</sup> December 2004 stating the Appellant's reasons for appeal:
1. *The negative decision of [REDACTED] is not based on facts, but on conjecture.*
  2. *A life assurance contract materialised on the part of our client.*
  3. *The fact is that his name was entered into the central register.*
  4. *After registration, he received a policy claim number.*
  5. *In addition, our client comes from a wealthy family and he has contracted other types of insurance with different insurance companies.*
  6. *Therefore, no reason exists, neither health or financial, to dismiss his claim for life assurance.*
  7. *Furthermore, the insurance company bears the burden in the event of difficulties of proof resulting from the absence of records."*

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

15. [REDACTED] state in a letter dated 16<sup>th</sup> March 1998 to the Appellant: "*We have an inventory of over 1.3 million files from the years predating 1948. The index numbers for the contract files are identical to the index numbers pertaining to the entries in our central register. These entries are only able to tell us that an application was submitted to us for a life assurance policy. This does not necessarily mean that a contractual agreement came into being. You can find the information contained in the central register entry in the copy attached. [...].*"
16. Annexed to the letter dated 16<sup>th</sup> March 1998 were copies of ZRG entries for [REDACTED] and the Appellant's father-in-law, [REDACTED]. The entry for [REDACTED] is as follows:

[REDACTED]

[REDACTED]	<del>[REDACTED]</del>
	<del>[REDACTED]</del>
	<del>[REDACTED]</del>
	A Abl
[REDACTED]	[REDACTED]
Director	
15.4.86 Berlin	
Berlin	
Aug 33 [illegible handwritten mark resembling an initial]	
[illegible] Berlin 556 VI/38	

The entry for [REDACTED] is as follows:

	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	
Business man	
4.4.88 in ?	
Berlin	

17. [REDACTED] explained in correspondence to the Appellant that it had found no files for the Appellant's father and father-in-law. Therefore, it did not know if the applications resulted in insurance contracts.
18. In its final decision letter dated 29<sup>th</sup> June 2004 [REDACTED] states: *"We rejected the application regarding the policy application numbers [REDACTED], [REDACTED], [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) because we were only able to find records of these numbers in our central register. These records alone do not provide sufficient evidence of the subsequent existence of any contractual arrangements. Furthermore we rejected the claim submitted by your client regarding the policy number [REDACTED] ([REDACTED]) because we know, based on a remark entered in our register, that this application for an insurance policy was rejected by our company. In the letter attached by our correspondence dated 05.09.2002 we explained that, following the completion of our formal investigation procedures, we would contact you once again via an independent auditing company. The auditing process carried in conjunction with the ICHEIC has now been completed. The investigation conducted by an external auditor has confirmed that our internal findings were justified. Independently of the receipt of confirmation regarding our processes, it was recently agreed between our company, the ICHEIC and the [REDACTED] that in cases regarding entries found only in the central register, a payment would be offered to claimants from the humanitarian funds held by the ICHEIC. We are very pleased to inform you that we are able to recommend that the application made by your client be considered for payment from these funds. The subsequent processing of your application falls under the responsibility of the [REDACTED] [...]. With regards to the policy application number [REDACTED] our decision from 05.09.2002 remains intact."*

**THE ISSUES FOR DETERMINATION**

19. It is clear from [REDACTED]' register card that the Appellant's father, [REDACTED], applied for four insurance contracts with [REDACTED]. Three of the four applications have been compensated. The issue in this appeal is whether [REDACTED] should have sent application number [REDACTED] for payment to the humanitarian fund. [REDACTED] claim the application was denied or rejected and never formulated into an insurance contract.

20. The Appellant's representative argues that a Decree dated 26<sup>th</sup> July 1949 is relevant to the ICHEIC processes. This is incorrect. The presumption of unlawful seizure referred to in the Decree does not apply because it was the state and not insurance companies that took away the property in question. The Appeals Panel follows the Rules and Annexes in the Agreement (see paragraph 9 above).
21. The Appeal Guidelines (Annex E of the Agreement), Section 17, 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.
22. 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. If the company can retrieve written records that there was an application for an insurance policy which, however, did not lead to the issuing of a policy, the Appellant fails in establishing that there was an insurance contract. The register card for [REDACTED] states "Abl" next to the application number [REDACTED]. The German word for 'decline' is 'Ablehnung'. The Appellant's representative has argued that this interpretation is based upon conjecture and not facts. There have been other appeals presented to the Panel on the same issue – the interpretation of "Abl" or "Ableg". In those appeals it has been held that the insurance company's arguments were consistent with company practice, even today. Consequently, it is accepted that no insurance contract was issued for application number [REDACTED].

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 11<sup>th</sup> day of July 2005

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[REDACTED]