

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]

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
CLAIM NUMBERS: [REDACTED], [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 [REDACTED] was born on [REDACTED] 1948 in Bratislava, Czechoslovakia. The Appellant is the daughter of [REDACTED] who was born on [REDACTED] 1893 in Frauenkirchen, then Austro-Hungarian Empire, and died on 5th February 1992 in Trnava, Slovak Republic. The Appellant's grandfather [REDACTED] was born on [REDACTED] 1866 and died in 1935 in Trnava.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted two claim forms dated 5th September 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims property insurance her father and grandfather had taken out from [REDACTED]. Enclosed with her claim form she submitted copies of insurance policies with [REDACTED].
4. The ICHEIC submitted the claims to [REDACTED]. [REDACTED] states in its decision letter dated 6th April 2004: *"We have carefully examined the information you provided. We have also carried out a search of all the information available to us that could support your claim. However our documentation is limited because the archives relating to policies issued in Eastern Europe were held locally and are no longer in our possession. Unfortunately we have to inform you that, based on the information you provided and our search, in respect of the non-life policy at issue no supporting evidence of any claim eligible for compensation under the policy's conditions has emerged."*
5. The Appeals Office received the Appellant's appeal form on 13th August 2004. The Appellant had completed three separate appeal forms for three claim numbers [REDACTED], [REDACTED], [REDACTED]. However, ICHEIC wrote to the Appellant on 19th August 2004 to inform her that she could not appeal claim number [REDACTED] because it was an unnamed company claim. Claims numbers [REDACTED] and [REDACTED] are the subjects of this Appeal.
6. [REDACTED] responded in its letter dated 14th September 2004 and repeated its reasons for denial.
7. During the Appeals proceedings additional documentation (from the claim files and related files) on life insurance policies for the Appellant's father was sent to [REDACTED] by the Appeals Office. On 4th March 2005 [REDACTED] offered the Appellant a payment of US\$ 12,000 for two life insurance policies taken out by her father. The Appellant accepted the payment. However, her letter to the Appeals Office dated 15th April 2005 evidenced that the Appellant wished to continue with her appeal regarding the non life insurance policies, and this was disclosed to the [REDACTED] on 21st April 2005.
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 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 of 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

10. The Appellant has submitted the following information in the ICHEIC claim form as to claim number [REDACTED]:
 - a. In section three the name of the company that issued the policy is identified as [REDACTED]. The place where the policy was purchased is stated as Bratislava in Czechoslovakia.
 - b. In section four the Appellant states that she can provide copies of policy documents to substantiate her claim.
 - c. In section five the type of insurance is identified as (translation), “*House and Contents*” insurance. The policy number is identified as [REDACTED] and the sum insured as 70,000 Slovak Crowns. The date of issue of the policy is stated as 27th August 1941 and the date of maturity as 27th August 1951. The mode of payment of the premium is stated as being weekly/monthly/annual payment and the amount of the premium is identified as 141 Slovak Crowns.
 - d. The policyholder and beneficiary of the policy are identified as [REDACTED], the Appellant’s father.
 - e. In section seven the insured is identified as (translation), “*Household insurance and property insurance.*”
 - f. In section nine the Appellant states that she has not participated in any compensation or restitution procedure for this claim. The Appellant writes that the reason no previous application had been made was (translation), “*there was no possibility.*”
 - g. In section eleven the Appellant writes, “*The insurance policy was strictly a household and property insurance – not a life insurance policy (see enclosure).*”

11. The Appellant has submitted the following information in the ICHEIC claim form as to claim number [REDACTED]:
 - a. In section three the name of the company that issued the policy is identified as [REDACTED]. The place where the policy was purchased is stated as Bratislava, Czechoslovakia.
 - b. In section four the Appellant states that she can provide copies of the policy documents and premium payments to substantiate her claim.
 - c. In section five the type of insurance policy is stated as (translation), “*House, household contents and the fixtures and fittings of the business.*” The policy number is identified as [REDACTED]/[REDACTED] and the sum insured as 230,000 Czech Crowns. The date of issue of the policy was 20th December 1934 and the date of maturity was 20th December 1944. The Appellant states that she is not aware of any payments resulting out of the policy. The mode of payment of the premium is stated as being weekly/monthly/annual payment and the amount of the premium as 465 Czech Crowns.
 - d. The policyholders and beneficiaries of the policy are identified as [REDACTED], the Appellant’s father, and [REDACTED], the Appellant’s grandfather.
 - e. In section seven the insured is stated as being (translation), “*property and household contents insurance.*”

- f. In section nine the Appellant states that she has not participated in any compensation or restitution procedure for this claim. The Appellant writes that the reason no previous application had been made was (translation), “*up until now there has been no possibility.*”
- g. In response to section eleven the Appellant writes (translation), “*This request concerns the property and household contents insurance (see the enclosure). The policyholder’s of this insurance policy were father and son, which is why the policy is in both their names; [REDACTED] and [REDACTED].*”

12. The Appellant submitted the following documentation with her claim forms:

- a) Three copies of insurance policy [REDACTED]/[REDACTED] issued by [REDACTED] to [REDACTED] and [REDACTED] for house and contents insurance against fire and lightning. The insured amount is stated as 230,000 Czech Crowns and the premium as 465 Czech Crowns. The date of issue of the policy was 12th December 1934 and the date of maturity was 12th December 1943.
- b) Two copies of insurance policy numbers [REDACTED] and [REDACTED], issued by [REDACTED] to [REDACTED] for house and contents insurance against fire and lightning. The insured amount is stated as 70,000 Czech crowns and the premium as 141 Czech Crowns. The date of issue was 14th August 1941 and the date of maturity was 14th August 1951.
- c) Three copies of a receipt of payment made in respect of [REDACTED]’s insurance policy [REDACTED]/[REDACTED] against fire with [REDACTED] in the sum of 230,000 Czech Crowns. 466 Czech Crowns were paid for the year 1939.
- d) Two copies of a premium payment invoice for fire insurance policy number [REDACTED]/[REDACTED] issued by [REDACTED]. The policyholder is stated as [REDACTED] and the insured amount as 230,000 Czech Crowns. The bill states that a premium of 466 Czech Crowns has been paid for the year 1937/1938.
- e) Three copies of a premium payment invoice for fire insurance policy number [REDACTED]/[REDACTED] issued by [REDACTED]. The policyholder is stated as [REDACTED] and the insured amount as 230,000 Czech Crowns. The invoice states that a premium of 466 Czech Crowns has been paid for the year 1938. There is also a copy of a slip recording the payment of 466 Czech Crowns to the [REDACTED] Bratislava branch. The slip has been signed by Mr [REDACTED] and dated 31st December 1940.
- f) Four copies of premium payment invoices for fire insurance policy number [REDACTED]/[REDACTED] issued by [REDACTED] for the years 1935 and 1936. The policyholders are stated as [REDACTED] and [REDACTED]. The insured amount is stated as 230,000 Czech Crowns and the premium as 466 Czech Crowns.
- g) Three copies of the Slovak Republic passport of [REDACTED].

THE INVESTIGATION AND DECISION BY [REDACTED]

- 13. [REDACTED] denied the claim for the reasons given in its decision letter dated 6th April 2004 (paragraph 4).
- 14. In response to the appeal [REDACTED] reiterated its position in a letter dated 14th September 2004 stating that it had researched its archives without finding any results. Furthermore, [REDACTED] states, “*the claims at issue relate to an Eastern European*

country, where [REDACTED]'s former independent branch office was completely nationalised and expropriated immediately after the end of World War II. As a consequence of that, the only complete archives of the insurance activities – which were kept locally in compliance with local laws, as well as the financial reserves covering the value of the policies – were subtracted to [REDACTED]'s control.” [REDACTED] states that “the only records related to Eastern European activities which remained in [REDACTED]'s possession consist of very limited and fragmentary information” which has now been thoroughly analysed and recorded into an electronic database. [REDACTED] adds: “the correctness and completeness of this process has been duly verified by the ICHEIC Peer Review Audit.”

Concerning the Appellant's claim, [REDACTED] writes “no related documents further to the ones already submitted by the claimant have been found by [REDACTED] or by the ICHEIC Archive Research Programme. This is the reason for our impossibility to produce to the Panel any document. However, we have to confirm our previous decision on this claim, as there is no evidence of any claim eligible for compensation under the terms of the non-life policy submitted by the Appellant.”

15. In a letter dated 8th March 2005 from the Appeals Office the Appellant was afforded the opportunity to give further information about an insured event with regard to the property policies. The relevant passage of this letter read: “Please provide, if possible, any further information and evidence with respect to the fire insurance that an insured event occurred. Your appeal submission just asks for a reconsideration of the decision on the basis of the documents submitted which is not enough to make any claim regarding fire insurance plausible.” No such information was provided.

THE ISSUES FOR DETERMINATION

16. This appeal concerns claim files [REDACTED] and [REDACTED] regarding non life insurance policies (paragraph 5). In conformity with Section 14.1 Appeal Guidelines the two claims are consolidated for the appeals decision; they are submitted by the same claimant, subject of the same decision letter and appealed with the same appeal form.
17. The main issue for determination in this appeal is whether the Appellant has met the 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 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.

These general provisions apply to non-life policies as well as life insurance policies.

18. The Appellant submitted copies of the policy number [REDACTED]/[REDACTED] and [REDACTED] and [REDACTED] for house and contents insurance against fire and lightning. Several receipts of premium payments were also submitted. Therefore, there is clear documentary evidence that policies existed in the Appellant's family. This has not been disputed by [REDACTED].

19. Section 2.2.a of the Agreement stipulates for non-life policies:

“A claim concerning non-life insurance is eligible for compensation, if the insured event occurred while the policy was in force at the time of the event. Notwithstanding the above, a non-life insurance claim shall not be eligible if it was caused by war unless it can be attributed to racial or religious persecution [...]”

20. The Appellant has not submitted any information about damage caused by fire or lightning to her family's home or business. For the Appellant's claims to succeed there would need to be plausible evidence, anecdotal or otherwise, that her family's property was damaged as a direct result of racial or religious persecution. In spite of being specifically asked for further information, the Appellant has failed to provide such evidence and the claims must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated: 17th May 2005

[REDACTED]