

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 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 is Dr. [REDACTED], born on [REDACTED] 1945 in Santiago (Chile). He is the grandson of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1877 in Schwedt an der Oder (Germany), and died probably in 1942 or 1943 in Warsaw, having been deported there in May 1942. [REDACTED], née [REDACTED], was born in Schönebeck an der Elbe (Germany) on [REDACTED] 1880 and died in 1942 or 1943. She too was transported to Warsaw and later further to the East. [REDACTED]'s father was [REDACTED] (the son of [REDACTED]), who was born on [REDACTED] 1903 in Schwedt an der Oder and died on 17th August 1975 in Andalsnes, Norway.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted two claim forms dated 17th April 2000 and 19th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued policies of life insurance.
4. The ICHEIC processed these two claims as claim number [REDACTED] and [REDACTED].
5. The ICHEIC submitted both claims to the Respondent.
 - a) [REDACTED] stated in its decision letter dated 1st September 2004 on **claim number [REDACTED]**: *“We refer to your inquiry regarding life insurance policy taken out by your grandmother, Mrs [REDACTED], with [REDACTED]. ... Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives the existence of a life insurance policy taken out by Mrs. [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”.*
 - b) [REDACTED] stated in its decision letter dated 2nd September 2004 on **claim number [REDACTED]**: *“We refer to your inquiry regarding the life insurance policy No. [REDACTED] taken out by your grandfather, Mr [REDACTED], with [REDACTED] ... we were able to find out that your father, Mr [REDACTED], together with your aunt, Mrs [REDACTED], - being the heirs of the late Mrs [REDACTED] - had already filed a claim with the Regierungspräsident Hildesheim (Chief Official of the Administrative District of Hildesheim) in January 1958 under file no. [REDACTED] for compensation for the loss of insurance benefits and loss of maintenance payments. Mr [REDACTED], Berlin, was your father’s and aunt’s authorised person. It was Mr [REDACTED] who withdrew the claim in his letter dd 24th February 1960 after it turned out in the proceedings that the authorities could not identify at least a loss of insurance benefits. For your information we enclose a copy of the letter dd 24th February 1960. For the sake of completeness we wish to mention that in no other proceedings initiated by the community of heirs in the following time a loss of insurance benefits to the prejudice of your grandmother was mentioned. Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives the existence of life insurance policies taken out by Mrs [REDACTED] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the ‘Agreement’. ... We are confident that you will understand our decision not to submit an offer under the given circumstances”.*

6. The Appellant submitted an appeal to the Appeals Office dated 6th October 2004 in which the reasons for the appeal were set out.
7. The Appeals Office received the appeal form on 28th September 2004 and mailed a copy to the Respondent on 3rd November 2004.
8. [REDACTED] responded in a letter dated 11th November 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*”.
9. On 10th December 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. On 4th January 2005 the Appeals Office received a letter dated 16th December 2004 from the Appellant with a request for an oral hearing
11. On 1st February 2005 it was decided that there would be an oral hearing by setting up a telephone conference call on 14th February 2004 and that the interview would be conducted in English. The Appeals Office informed both parties about this decision by letter dated 4th February 2005. This hearing needed to be re-scheduled twice owing to illness. On 4th April 2005 the Appeals Office informed the parties that the oral hearing would take place on 13th April 2005, 13.00 BST (8.00 EDST / 14.00 CEST / 15.00 Israeli Time).
12. The oral hearing took place on 13th April 2005 as scheduled. The participants in the hearing were the Arbitrator, the Appellant, and, on behalf of the Respondent, [REDACTED] and [REDACTED].
13. On 14th April 2005 the Appellant called the Appeals Office and made it aware that he had not made all remarks he wished to make in the oral hearing as to the alleged policy of his grandmother [REDACTED]. At the direction of [REDACTED], the Appeals Office requested in a letter dated 27th April 2005 that the Appellant states in writing any new information he has regarding this claim. In a letter dated 29th April 2005 the Appellant informed the Appeals Office that he considers the appeal form he sent to the Appeals Panel as relevant and that he “*did not get any further information with respect to the Life Insurance claims against [REDACTED] concerning my Grandmother [REDACTED] ...*”. In this letter the Appellant also asked for a decision on the basis of his written submission.
14. 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 CLAIMS

15. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:

Claim number [REDACTED]

- a) In section two (asking about name changes), he writes: “[REDACTED]”.
- b) In section three, he identifies the company that issued the policy as “[REDACTED]” but adds that he is not 100% sure. He states that it was purchased in Schwedt an der Oder, Germany.
- c) In section five, he describes the policy in question as one of life insurance. He is unable to provide any further details. He states that he is not aware of any payments resulting from the policy and that no one has approached the company about this policy.
- d) In section six, he identifies his grandfather, [REDACTED], as the policyholder. He names his (the Appellant’s) brother, [REDACTED], as another living heir of the policyholder.
- e) In section seven, he describes the insured person as: “[REDACTED] and his wife [REDACTED]?”. He again names his brother as another living heir.
- f) In section eight, he states in response to a question about the identity of the beneficiary: “*Perhaps my father [REDACTED]?*”. He also names his brother as another living heir.
- g) In section nine, when asked whether anyone has participated in any compensation/restitution procedure for this claim, he ticks the boxes “no” and “don’t know”. Asked why not, he states: “*Restitution claims for insurances are just recent!?*”.
- h) In section eleven, under the heading “*Further information*”, he writes: “1) *All the information I have is from my father [REDACTED], son of [REDACTED] (policyholder). 2) It is quite probable that there was also an insurance contract for my grandmother: [REDACTED] née [REDACTED] born in Schönebeck an der Elbe in [REDACTED]1880 and deported to Warsaw in May 1942 and later transferred to the east and killed. 3) It is possible that the brother of my grandfather [REDACTED] also had an insurance contract*”.

Claim number [REDACTED]

- i) In section three, regarding the name of the company that issued the policy, he writes: “[REDACTED]. I am not 100% sure. It is also possible that the [REDACTED] was bought by another company!”. He again states that the policy was purchased in Schwedt an der Oder, Germany.
- j) In section five, he identifies the policy as one of life insurance. He is not aware of any payments resulting from the policy and states that no one has approached the insurance company about this policy.
- k) In sections six and seven, he names the policyholder and insured person as [REDACTED] (his grandmother). He identifies his brother, [REDACTED], as another living heir.
- l) In section eight, when asked about the identity of the beneficiary, he writes: “*Perhaps my father [REDACTED]?*”.

- m) In section nine, he states that he is not aware of any application for compensation for this claim.
- n) In section eleven, under further information, he writes: “1) *Proof of identity, I already sent it with the application form for my grandfather [REDACTED]. Do you need it again? See claim number: [REDACTED].* 2) *All the information I have is from what my father [REDACTED] told me.* 3) *It is quite possible that the brother of my grandfather, [REDACTED], also had an insurance policy. Could you please look at it? He is also from Schwedt an der Oder, Germany, and lived later in Berlin and Munich, Germany.* 4) *Use my email address [REDACTED], it is more rapid”.*

16. The claim files contain copies of the following documents:

Claim file number [REDACTED]

- a) A letter dated 25th February 2003 from the Appellant to ICHEIC. It states: “*Please add following information to my claims that can help you in your search: Life insurances of [REDACTED]: [REDACTED] No. [REDACTED]; [REDACTED]No. [REDACTED]; [REDACTED] No. unknown; [REDACTED] No. unknown; [REDACTED] No. unknown; [REDACTED] No. [REDACTED]; [REDACTED] No. unknown. Life insurances of [REDACTED]: [REDACTED] No. unknown”.*
- b) Letter dated 8th October 2004 from the Appellant to a member of staff at ICHEIC, Washington. It states: “*Attached is a photocopy of the typewritten note. From the contents of the note I conclude it was written by my father [REDACTED] probably to his representative [REDACTED] in Germany. The typewritten note was send to me by my brother and I assume it was written between 1955 → 1965 (during that period my father dealt with restitution claims from Germany) from Santiago de Chile. I hope that this time there will be no more excuses like ‘change of address’ and that I will get a serious answer to my claims (answers like we couldn’t found or all the documents got ‘lost’ during the war, will not satisfy me)”.*
- c) The document attached to the letter of 8th October 2004 states: “*I have checked whether any claims on insurance policies exist and found the following records: Life insurance policy for [REDACTED], [REDACTED] No. [REDACTED]. Two thirds of this policy were repurchased by the company in 1939. It was registered at the Berlin compensation office on 9th December 1951*

Life insurance	[REDACTED],	[REDACTED], No. [REDACTED]
"	"	[REDACTED], [REDACTED], No. [REDACTED]
Revalorisation "	"	[REDACTED]
" "	"	[REDACTED]
" "	"	"[REDACTED] [REDACTED] [?] & [REDACTED]
" "	"	"[REDACTED]/[REDACTED]No. [REDACTED]
" "	"	[REDACTED]→
" "	"	[REDACTED]
" "	[REDACTED]	[REDACTED] [REDACTED]

I gleaned this information from an asset declaration which my father had to submit to the regional finance office of Brandenburg at the start of January 1939 after the Frankfurt/Oder customs investigators seized his assets owing to the suspicion that he was trying to emigrate. I sent you a copy of this asset declaration at the time. I am giving you this information once more so that an attempt can also be made to claim insurance monies at [REDACTED], [REDACTED] and [REDACTED], on the

condition that these companies have legal successors in Federal Germany. If not, doesn't the compensation office have to take action? It is therefore probably too early to withdraw the compensation claims".

Claim file number [REDACTED]

This file contains a copy of the letter dated 25th February 2003 from the Appellant to ICHEIC. It is listed under (a) above.

17. The Appellant submitted two appeal forms, one for each claim. Both were dated 6th October 2004.

Appeal form for claim number [REDACTED]

The Appellant stated: *"From the copy of the letters that [REDACTED] (date 7.7.59) and the letter from [REDACTED] (17.11.1958) to the Regierungspraesident - Entschaeidungsbehoerde (20a) Hildesheim we can conclude that the total insured sum was 3000 + 1534 = 4534 Feingoldmark. [REDACTED] paid to my father [REDACTED] a total of 280.80 Deutsche Mark! There is a sentence for that... The so-called unpaid part (1534 Feingoldmark) has not been proven as unpaid by [REDACTED], and in their letter (17.11.1958) they did not claim that! According to my research in 6.11.1925 begin of the policy 1 Goldmark was 0.36 [gr] gold, so that 4536 Feingoldmark are 1632.96 [gr] gold. 1 {ounce} gold is 28.35 [gr], so that we have the equivalent of 57.6 {ounce} gold. The price of 1 {ounce} gold today is USD 420.- and we conclude the value of the policy of my Grandfather [REDACTED] is USD 24192.-. My grandfather was killed by the Nazis in 1942 at the Warsaw Ghetto and he could not reclaim his policy. I am sure that my father accepted the decision of the Authorities only because he was in serious economical distress, at the time in Santiago de Chile. Of course, at that time I was a 13 years old boy and lived in a boarding school 300 km from Santiago and he did not inform me about his decisions, so I reject categorically the statement of [REDACTED] that I should have known that he was paid a very low sum (~ 140 USD) restitution. Only in this last years I am getting a picture of what happen. My father died in 1975 and he did not give me the picture to understand the situation".*

Appeal form for claim number [REDACTED]

The Appellant stated: *"It is clear from the letter from [REDACTED] with date: 1.09.2003? (I received the letter just last week because at ICHEIC they did not given them my new address at time) is written that my father [REDACTED] and my Aunt [REDACTED] filled a claim for loss of insurance benefits (file n. [REDACTED]) of my grandmother [REDACTED], at the Regierungspraesident Hildesheim. It does not say that she had a life insurance policy at [REDACTED]. It is clear that my grandfather had a policy at [REDACTED] (No.: [REDACTED]) and also my father had one (No. [REDACTED]), so it is logical to conclude that my grandmother [REDACTED] made also a life insurance policy at [REDACTED]. I do not have a definitive proof with the number of the policy but according to the 2 previous arguments there is a high probability that it is so. Now, the letter of [REDACTED] from the 24.2.1960 does not say a single word that my father and my aunt are annulling his rights for the life insurances that my grandmother had!! It says about Schaden an Eigentum, Vermoegen und Zahlungen von Sonderabgaben [losses in terms of property, assets and payments of special fees]... Even though I do not understand the logic behind this letter and not my father nor some one else told me and explained about it, I conclude that this letter does not affect insurance rights of my family! It is remarkable that [REDACTED] does not find the life insurance of my grandmother [REDACTED] but certainly they find this difficult to apprehend from [REDACTED] that is supposed to represent the interest of our family. Today I cannot follow the logics behind that letter but*

certainly I can follow the logics of [REDACTED]. My aunt [REDACTED] made later in Brisbane, 29.10.1980 a Verzichtserklaerung (renounce of rights) on her part and rights about the inheritance of her parents. Let me tell the committee that my grandmother was a very clever woman (according to what I was told). She was send together with my grandfather to the Warsaw Ghetto and later to WORK AT THE EAST... but before that she was able to talk to a Swedish nurse from the Red Cross in Warsaw and give her the address of my parents in Chile and telling her about the fate that she is expecting. The Swedish nurse used the consular diplomatic post and in the middle of WW II a letter arrived in Santiago de Chile telling about the fate of my grandparents (both murdered by the German Nazis)".

18. In the oral hearing the Appellant challenged that the compensation authorities in Hildesheim ever made a decision because he had not received such a signed decision. He further questioned that his father ever accepted a compensation payment because there is no signed consent and waiver saying that he accepted such a payment. In addition, he made comments that in his appeal forms he might not have expressed himself properly because he is not a lawyer.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. [REDACTED] declined both claims for the reasons given in its decision letters dated 1st and 2nd September 2003 (paragraph 5).
20. As to **claim number [REDACTED]** the following additional information was given in the decision letter: *"The investigations of our company records revealed that your grandfather had taken out the a/m policy on 6th November 1925 for an insured sum of 3,000 Feingoldmark (German fine gold marks). An annual premium of 261.00 Feingoldmark was agreed upon and the policy was to fall due on 6th November 1950. Moreover, we were able to find out that the policy had the status of 'unpaid' policy" [NB: the translation is misleading here: the original German text says it had paid-up status from 6.2.1939] as of 6th February 1939 and the insured sum for this 'unpaid' policy was 1534.00 Feingoldmark. Beneficiaries in case of the policyholder's death should be your grandmother, Mrs [REDACTED] and your father, Mr [REDACTED] as well as your aunt, Mrs [REDACTED]"*.
21. Attached to the decision letter dated 2nd September 2004 were
- a) A copy of a letter dated 7th July 1959 from the Berlin-based financial adviser [REDACTED] to the compensation authority in Hildesheim. It states: *"Regarding: [REDACTED] – community of heirs for [REDACTED]. I hereby inform you that the following conversion sum has been paid including long-term savings compensation: 1) [REDACTED] life insurance for the policies Aw. [REDACTED] + [REDACTED] = DM 134. 2) [REDACTED] insurance for the life insurance policy [REDACTED] = DM 280.80"*. The letter continues by describing unresolved issues regarding other policies.
 - b) Another attachment to this letter is a letter from [REDACTED] dated 17th November 1958 in which [REDACTED] sets out the details of policy number [REDACTED]. This letter clearly states that in 1958 proceeds had not been paid out and states: *"The insurance can be found listed in our premium-free register from the year 1940, still comprising of a sum of Fgm.1,534.00. If the insurance was not confiscated after 1940 we would accept a claim for the remainder of the premium-free insurance, to a sum of DM 101.30, assuming that the beneficiary had been resident on 20th June 1948 or at a later point in time, the latest being 21st December 1952 in either the Federal Republic*

of Germany; in West Berlin; in the Saargebiet (the Saar area); or in a state, which had recognised the Federal Republic of Germany. The beneficiary should contact us in case of any questions

22. The decision letter for **claim number [REDACTED]** contains additional information given in an attachment which is a copy of a letter dated 24th February 1960 from the financial adviser [REDACTED] to the compensation authorities in Hildesheim. It states: “*Re [REDACTED]. Compensation for the community of heirs of [REDACTED] and [REDACTED]. Ref: your letter of 23rd of this month: In my letter of 17.8.1959 I withdrew the claims for [REDACTED] regarding damages to property, assets and the payment of additional duties, as well as in professional advancement. The condition regarding restrictions was only made as a provision because [REDACTED] was active within her husband’s business in a support role. But in order to avoid any delay in the processing of this case I hereby confirm that the application for compensation regarding the professional advancement of [REDACTED] is being withdrawn without limitation*”

THE ISSUES FOR DETERMINATION

23. It is decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED] and [REDACTED]. Although they were denied by two decision letters and are appealed in two appeal forms, they are “*related appeals*” submitted by the same Appellant and relating to policies taken out by his grandparents (one policy in fact and one allegedly).
24. The main issue for determination as to **claim number [REDACTED]** 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.
25. 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.
26. It is concluded that the Appellant did not meet his burden of proof establishing that his grandmother [REDACTED] had taken out an insurance policy with [REDACTED]. In his

claim forms he provides only little information relevant to proving the existence of a policy. The only statement he made was that *“it is quite probable that there was also an insurance contract for my grandmother”* without naming a company which possibly issued such a contract or giving any further details as to such a policy. In addition, in a compensation procedure for [REDACTED] there were obviously no claims for an insurance policy issued by [REDACTED].

27. The main issue for determination as to claim number [REDACTED] is whether the Respondent has established a valid defence. There is no doubt that the Appellant’s grandfather had an insurance policies with [REDACTED], that the Appellant as heir of his parents could be entitled to the proceeds of this policy and that all family members living at that time were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as policy number [REDACTED] is concerned, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from Foundation funds if;

17.3.2 the insurance policy in question was fully paid as required by the insurance contract. However, where it appears that the policy was paid or surrendered into a blocked account the provisions of section 5 of the Valuation Guidelines shall apply; and

17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with section 2 (1) (c) of the Agreement.

28. Here, there is no doubt that [REDACTED] paid the proceeds which were mature as described in its letter dated 17th November 1958 [see paragraph 18 c)]. This is corroborated by written evidence in the letter dated 7th July 1959 of the financial adviser [REDACTED] to the compensation authorities in Hildesheim which reads: *“Regarding: [REDACTED] – community of heirs for [REDACTED]. I hereby inform you that the following conversion sum has been paid including long-term savings compensation: 2) [REDACTED] insurance for the life insurance policy [REDACTED] = DM 280.80”*. This quoted information makes it clear that the [REDACTED] insurance company paid the sum of DM 280.80 (converted from Reichsmark) to the heirs of [REDACTED]. It is also clear that this sum specifically constituted compensation for the life insurance policy (rather than, for example, a fee for the representative) as it is said to include long-term savings compensation. Such compensation related to insurance policies.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 3rd day of May 2005

[REDACTED]