

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 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], née [REDACTED], born on [REDACTED] 1933 in Vienna (Austria). She is the granddaughter of [REDACTED] (formerly [REDACTED]) and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1878 in Vienna (Austria-Hungary) and died on 16th January 1946 in New York (United States of America). [REDACTED] was born on [REDACTED] 1885 in Austria and died in New York in 1976.

The Appellant's parents are [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1900 in Znaim (Austria-Hungary, now Znojmo Czech Republic) and died on 20th July 1979 in Vienna (Austria). Biographical details about [REDACTED] were not given in the claim form.

The Appellant has a sister, [REDACTED], née [REDACTED].

The Appellant's grandfather was a co-owner of the “*Ditmar & Urbach*” company in Znojmo (Znaim). The Appellant's grandparents were forced to leave Prague, their last residence in Europe, and emigrated via Switzerland and the United Kingdom to the United States of America in May 1939. Their assets were confiscated by the Gestapo (“*Geheime Staatspolizei*”).

2. The Respondent is [REDACTED].
3. The Appellant submitted several claim forms dated 28th August 2000, 21st August 2003 and 26th August 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that among other [REDACTED] issued policies of life insurance.
4. The ICHEIC processed these claims as follows:

The claim which is the subject of the appeal

a) Claim number [REDACTED]

This claim is based on a claim form dated 28th August 2000, claiming for the proceeds of a life insurance policy issued by [REDACTED] in Czechoslovakia to [REDACTED].

The claims which are related but not the subjects of the appeal

b) Claim number [REDACTED]

This claim is also based on the claim form dated 28th August 2000. The ICHEIC database contains an entry dated 14th January 2003 reading: “*This file has been raised due to a match being found on the ICHEIC database*”. After [REDACTED] (the “[REDACTED]”, the [REDACTED]) had declined the claim on 9th November 2004, the ICHEIC sent it again to [REDACTED]. The reason given on ICHEIC's database is “*research match found*”. Another entry made on 9th November 2004 reads: “[REDACTED], MT5, NARA 71151, [REDACTED]/[REDACTED]” [MT5 is a classification of a probable match; NARA 71151 indicates that documents from archives were retrieved].

c) Claim number [REDACTED]

This claim is based on a claim form dated 26th August 2003, claiming for the proceeds of an insurance policy issued by an unnamed insurance company to [REDACTED], the

Appellant's other grandfather. In section 4 of this claim form (asking "Can you provide us with copies of any document and/or statement and/or information substantiating your claim?") the Appellant states: "Only ICHEIC Internet listing [REDACTED] csr". The claim file also contains a copy of an ICHEIC website print-out showing three entries for [REDACTED]. 1) Last known residence: Germany; Insurance company: List B. 2) Last known residence: Csr. 3) Policy issued in Zborowitz; Insurance company: [REDACTED]. The ICHEIC database shows that this claim was sent to [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] in 2004. [REDACTED], and [REDACTED] have not yet responded, [REDACTED] and [REDACTED] have not accepted responsibility for the existence of a policy.

- d) Claim number [REDACTED]
This claim is based on a claim form dated 21st August 2003, claiming for the proceeds of an insurance policy issued by an unnamed insurance company to [REDACTED], the Appellant's father. In section 3 of this claim form the Appellant states: "Name of father listed on ICHEIC website". The ICHEIC database shows that this claim was sent to [REDACTED], [REDACTED], [REDACTED] and [REDACTED] in 2004. There has as yet been no decision.
- e) Claim number [REDACTED]
This claim is again based on the claim form dated 28th August 2000. According to the ICHEIC database this claim was sent to [REDACTED]. Also in this case there has as yet been no decision.
5. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 12th March 2004: "*On the basis of the information given in your claims-form and after intensive research of all relevant internal and external archives the existence of a life insurance policy taken out by Mr. [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*".
 6. The Appellant submitted an appeal to the Appeals Office dated 20th May 2004 in which the reasons for the appeal were set out.
 7. The Appeals Office received the appeal form on 27th May 2004 and mailed a copy to the Respondent on 9th June 2004.
 8. [REDACTED] responded in a letter dated 15th June 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 14th July 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 5th August 2004 the Appeals Office received a letter from the Appellant with a request for an oral hearing. This letter ended: "*Because I never named [REDACTED] in my applications, I would like to know why [REDACTED] is responding. Should there, however, be a policy in addition to the one I am interested in pursuing a claim on behalf of the descendants of [REDACTED]. ...*". In a letter dated 5th August 2004 the Appeals Office acknowledged receipt of that request and informed the Respondent.

11. On 11th August 2004 the Appeals Office realised that documents with detailed information on the insurance policy from the claim file had not been forwarded to the Respondent. The Appeals Office forwarded these documents the same day to the Respondent and provided copies to the Appellant.
12. [REDACTED] acknowledged receipt of these documents in a fax on 12th August 2004 and confirmed that these documents never had been disclosed to it before. It confirmed that a further research would be performed and that the Appeals Office would be informed as soon as results were obtained.
13. In a letter to the Appeals Office dated 25th October 2004 [REDACTED] disclosed the results of its further research as follows: *“Following extensive research on the basis of the documentary evidence furnished to us for the first time within the context of the Appeal Procedure, we must inform you that the Claimant is not entitled to any claim under the terms of the Agreement. The Claimant evidently is not aware of the fact ... that the policy in question here was the object of a Lastenausgleichsverfahren [a procedure to compensate damages suffered under the Nazi regime] instituted by the heirs to the [REDACTED] estate – consisting of Mrs [REDACTED], Mr [REDACTED] and Mrs [REDACTED], represented by the attorney, Dr [REDACTED], from Karlsruhe – on February 17, 1963 at the Berlin-Zehlendorf District Office under the File Number [REDACTED] USA. The District Office then ruled in favour of the heirs on this policy, in the partial decisions dated June 24, 1971 and September 14, 1971, setting an amount of 12,767.53 Reichsmarks to cover the total damages. For your information, we are enclosing the relevant rulings and the supporting documentation. Based on the above, we request that the Panel rejects the appeal filed by the Claimant for the reasons given and to confirm the decision made by [REDACTED]”*. Attached to this letter were copies of the correspondence which was exchanged in the *“Lastenausgleichsverfahren”* (for details see paragraph 21).
14. After having translated the above-described letter and its attachments, the Appeals Office forwarded the German documents and the English translation to the Appellant on 18th November 2004. The Appellant did not comment.
15. On 1st February 2005 it was decided that an oral hearing would be held by telephone conference call on 14th February 2004 and that the interview would be conducted in English. The Appeals Office informed both parties 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, 13.30 BST (8.30 EDT / 14.30 CEST).
16. 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, Mr. [REDACTED] and Mr. [REDACTED].
17. 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

18. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:
- a) In section three, she identifies the company that issued the policy as “[REDACTED]”. She states that the policy was purchased in Czechoslovakia.
 - b) In section four, she states that she can provide copies of correspondence to substantiate her claim.
 - c) In section five, she identifies the insurance policy as a life insurance policy. She is not aware of any payments resulting from the insurance policy.
 - d) In sections six and seven, she identifies her grandfather, [REDACTED], as the policyholder and insured person. In response to a question about his former places of residence before 1945, she states: “*Znaim, Moravia, Czechoslovakia, Bruno, Slovakia, Czechoslovakia, Switzerland, London, England, Sao Paulo, Brazil, 91 Central Park West, NY NY USA*”. Regarding his profession, she states “*Manager, Director, Dietmar Urbach Znaim/Znojmo Czechoslovakia*”. She identifies her mother, [REDACTED], as another living heir.
 - e) In section eight, she gives the last name of the beneficiary as: “*Probably [REDACTED]*”. She states that the first name is “[REDACTED]”. She provides the same list of former residences as in c) above and adds a further address in New York for the period ca. 1954-1976.
 - f) In section nine, she states that nobody has participated in any compensation/restitution procedure for this claim. Asked why not, she refers to copies of correspondence enclosed.
 - g) In section eleven, under ‘further information’, she states: “*I am enclosing copies of all of my late uncle’s correspondence as well as my own. My late uncle was: [REDACTED], [REDACTED]*.”
19. The claim file contains many documents. It is not always clear whether the Appellant provided these documents or whether the documents were retrieved from research databases. Among these copies were identification papers and certificates confirming the Appellant’s statements about biographical details of her family, correspondence from [REDACTED] (which does not contain relevant information for the claim against [REDACTED]) and the following documents:
- a) A letter dated 6th October 1994 from [REDACTED] to the management of [REDACTED] in Berlin. He explains that he is the son of [REDACTED] and states: “*According to internal records which I came across only recently, it seems that my father took out a life insurance policy with your company. This must have happened in the 1930s, with one of your agents, a Mr Georg Stransky in Brno. My father lived in Znaim, which is nowadays Znojmo, Czech Republic, [REDACTED]. He lived there until 1939. Eventually he then emigrated to America. As all official insurance documents were lost during the war no inquiry has been made to date. I request you to*

check whether, according to your files: a life insurance policy existed; with which details; whether a sum was paid out, and to whom; if not, what happened to the policy; whether there is a valid claim to this policy today”.

- b) A Registration Form B (to be completed by persons administering, owning, holding in safe keeping, looking after or guarding enemy property) relating to [REDACTED] and [REDACTED] [REDACTED] It has been signed by the lawyer Jaroslav Čulík in Prague on 28th May 1940. The form lists the [REDACTED]’s property. Page one, under the heading “*land and forestry property*” contains the entry “*Jew – property confiscated*”. Further assets listed include a family villa in Brno, 2 rented houses in Prague, shares in the business of “*Ditmar Urbach & Co.*” and savings accounts. There is also an entry for an insurance policy with [REDACTED] zu Berlin, policy number [REDACTED] worth RM 40,000 and a pension policy with [REDACTED], Prague, with a capital value of RM 30,000. A note states that, according to a letter from the Gestapo dated 11th March 1940, all of [REDACTED]’s property has been seized.

Further documents are from an exchange of letters between [REDACTED] and [REDACTED] from the early 1990’s and letters from the Holocaust era (written by the Reichsprotektorat for Bohemia and Moravia, the Deputy Reich Commissioner for the Treatment of Enemy Property, the Gestapo and the Brno Higher District Administration) confirming that all the assets of [REDACTED] and [REDACTED] [REDACTED] had been confiscated. However, these letters do not contain specific information about the insurance policy at issue.

20. The Appellant sets out the reasons for her appeal as follows: “*ICHEIC lists the name of my Grandfather, [REDACTED] as having been issued a [REDACTED] policy in Znaim (which is where my grandfather lived from 1912-38). (His brother [REDACTED] as having been issued a [REDACTED] policy in Vienna, where he resided. My father, [REDACTED], and his father, [REDACTED], also residents of Znaim are listed by ICHEIC as having been issued [REDACTED] policies). The trust that my family put into [REDACTED] seems clear. I hereby appeal that [REDACTED] honor its obligations”.*
21. In the oral hearing the Appellant admitted that she was not aware of payments made in 1971 (see paragraph 22). She also stated, for the first time, that she believes that there must have been more than one policy issued by [REDACTED].

THE INVESTIGATION AND DECISION BY THE RESPONDENT

22. [REDACTED] initially declined the claim for the reasons given in its decision letter dated 12th March 2004. After the Appeals Office had provided (for the first time) additional information (see paragraph 11), [REDACTED] evaluated these documents and did further research. Finally, it declined the claim again for the reasons set out in its letter dated 25th October 2004 (see paragraph 12). Attached to this letter were:
- a) A claim form dated 17th February 1963 for damages resulting from war and deportation which was completed by [REDACTED]. In this form, [REDACTED] states that his late father had taken out an insurance policy number [REDACTED] with “*[REDACTED], Berlin, in Prag*” in 1932. The sum insured was Czechoslovakian Crowns 400,000.00. From 1943 there were no more premium payments. The value of the policy, therefore, was determined to Czechoslovakian Crowns 291,722.00.
- b) A “*Zweiter Teilbescheid über die einheitliche Schadensfeststellung nach dem Feststellungsgesetz*” (2nd Partiel Ruling on the standardized assessment of damage

pursuant to the Assessment Law) dated 24th June 1971 in which it is stated that [REDACTED], née [REDACTED], [REDACTED], née [REDACTED] and [REDACTED] are entitled as the heirs of [REDACTED] for compensation for the loss of assets. Among those assets was an insurance policy number [REDACTED] issued by [REDACTED]. For this policy compensation was awarded as follows: “3i) *The loss is proven by a letter dated 17th April 1963 from [REDACTED] Life Insurance Company AG. The insurance claim is applied at 2/3 of the premiums paid in at the date of the loss pursuant to § 17 Abs.3 FG [FG = Feststellungsgesetz, Assessment Law]. Total of the premium instalments: 25,672 Kčs, of which 2/3 = 17,114.66 Kčs, and, pursuant to § 1 Abs.2 of the 11th LDV-LA – Anlage 2 - [LDV-LA = Landesdurchführungsverordnung zum Lastenausgleich, State Implementation Regulation for the System of Financial Compensation for Losses suffered in the Second World War] assessed with an exchange rate of Kčs 1 = RM 0.10 yielding a total of RM 1,711.47’.*

- c) A letter dated 22nd July 1971 from Rechtsanwalt Dr. Walter Bleyer in Karlsruhe to the “Bezirksamt Zehlendorf von Berlin – Ausgleichsamt” [Local Government Authority of Zehlendorf in Berlin, the compensation authority] informing the Bezirksamt about the following: “*As to the assessment relating to the damage caused by the surrender of the insurance policy issued by [REDACTED] in 3i) the loss was assessed with RM 1,711.47. There must be a misunderstanding here, because the life insurance policy number [REDACTED] was issued by [REDACTED] in 1932 and a total of premiums of Czechoslovakian Crowns 232,300.00 were paid. I would appreciate if you could countercheck the correctness of my statement by a query with [REDACTED] and make any necessary adjustment ...*”.
- d) A letter dated 30th July 1971 from the “Bezirksamt Zehlendorf von Berlin – Ausgleichsamt” to Rechtsanwalt Dr. Bleyer stating: “*In our opinion, your appeal against our ruling ... is unfounded. We have a letter dated 17th April 1963 from [REDACTED] to the Bundesaufsichtsamt für das Versicherungs- und Bausparwesen [the Federal Insurance Controlling Authority] reading: “Amount Insured: Kc 400,000.00 Total premiums paid: Kc 25,672.00”.* This letter refers expressly to the life insurance policy number [REDACTED] you mentioned. Therefore, we see no possibility to change the ruling as to this point and consider another information request to the insurance company to be unnecessary. The damage assessment for insurance policies which have not matured yet by using 2/3 of the paid premiums (not 2/3 of the insured amount!) is in line with the legal provisions ... Apart from that, we must refer to your letter dated 12th July 1971 ... in which you expressly waived the right to file an appeal against the afore-mentioned ruling. ...”.
- e) A letter dated 16th August 1971 in which Rechtsanwalt Dr. Bleyer informs the compensation authority that he withdraws his appeal.
- f) A letter dated 1st September 1971 in which Rechtsanwalt Dr. Bleyer informs the compensation authority that [REDACTED] uses the term “*Summe der Beitragsraten*” [sum of premiums] in the sense of “sum of annual premiums” and that the total of annual premiums paid for policy number [REDACTED] is Kčs 191,513.00.
- g) A “*Bescheid über die Änderung der einheitlichen Schadensfeststellung nach dem Feststellungsgesetz*” [ruling on the amendment on the standardized assessment of damage pursuant to the Assessment Law] dated 14th September 1971 in which the compensation for policy number [REDACTED] is revised and assessed as being DM 12.767.53.

23. In the oral hearing the representatives of the Respondent referred to [REDACTED]'s letter dated 25th October 2004 and stated that [REDACTED] is only liable for claims for proceeds of insurance policies which were issued by [REDACTED] and not yet settled.

THE ISSUES FOR DETERMINATION

24. There is no doubt that the Appellant's grandfather had an insurance policies with [REDACTED], that the Appellant as heir of her 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

17.3.4 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.

25. [REDACTED] forwarded documents from a compensation procedure (see paragraph 21) which prove without doubt that the policy number [REDACTED] was the subject of a compensation procedure in 1971.
26. As to an alleged second insurance policy issued by [REDACTED] (see paragraph 21) it is concluded that the Appellant did not meet her burden of proof. This statement was not corroborated by any additional information and is contradicted by the documentation available. In a letter dated "6-10-94" from [REDACTED] to [REDACTED] it reads "*According to internal records which I came across only recently, it seems that my father took out **a life insurance** [emphasis added – singular] *policy with your company*". In another letter dated 10th April 1995 to [REDACTED] [REDACTED] again mentions only "... **a possible life insurance policy** [emphasis added – singular] held by my late father [REDACTED] ...". Finally, also in the asset declaration of 1940 only one policy issued by [REDACTED] is declared (which is policy number [REDACTED]). The same applies to the ruling from 1971 (see paragraph 22).*

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 22nd day of April 2005

[REDACTED]