

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

Fax: ++ 44 (0) 207 269 7303

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] (previously [REDACTED]), born on [REDACTED] 1938 in Bamberg (Germany). He is the son, representative and now heir, of [REDACTED] (née [REDACTED]), who was born [REDACTED] 1908, in Insterburg (Germany) and died in Milwaukee (United States of America) in 2004. [REDACTED] and [REDACTED] (née [REDACTED]), born [REDACTED] 1905, were the daughters of [REDACTED], born on [REDACTED] 1878, and [REDACTED] (née [REDACTED]), born on [REDACTED]

1880 or 1881, both of whom were born in Smallenken (Germany) and perished in a place unknown after they were deported from Insterburg on 22nd June 1942.

2. The Respondent is [REDACTED] (“[REDACTED]”).
3. The Appellant, in his capacity as representative of his mother [REDACTED], submitted a European Insurance Policy claim form to the International Commission on Holocaust Era Insurance Claims (“ICHEIC”). [REDACTED] signed the Declaration of Consent on 17th January 2000. The ICHEIC processed the claim under claim number [REDACTED].
4. The Appellant, on his own behalf, submitted a claim form to ICHEIC signed 27th July 2003 for insurance policies taken out by his grandfather [REDACTED]. The ICHEIC processed this claim form as well under claim number [REDACTED].
5. The ICHEIC forwarded the claims to [REDACTED].
6. In its final decision letter dated 24th June 2004, addressed to the Appellant’s mother and copied to the Appellant, [REDACTED] informed them that it was rejecting the claims for policies numbered [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as the “*policies were covered by a prior decision of a German restitution or compensation authority*” (see paragraph 17).
7. On 29th June 2004, by e-mail the Appellant advised [REDACTED] that his mother [REDACTED] had passed away.
8. The Appellant submitted an appeal to the Appeals Office dated 30th September 2004, which was received on 5th October 2004. The Appellant is seeking to appeal all but one of the decisions based on the amounts paid out pursuant to the aforementioned restitution procedure in 1959. The one exception related to policy number [REDACTED], which [REDACTED] had compensated, in its view mistakenly a second time, in 1999 in the sum of DM 7.503.80.
9. The Appeals Office sent a copy of the Appeal Form to [REDACTED] on 8th October 2004.
10. [REDACTED] responded in a letter dated 2nd November 2004. It reiterated the comments it had made in its decision letter and asked the Panel to dismiss the appeal.
11. On 17th November 2004, the Appeals Office informed both parties that the appeal would be decided on a “*documents only*” basis unless it received notification from either party requesting an oral hearing within 14 days of receipt of this letter.
12. No request for an oral hearing was received from either party. The appeal proceeds on a “*documents only*” basis.
13. 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

14. The Appellant, as representative of [REDACTED], submitted a European Insurance Policy claim form in relation to the claim for the proceeds of her father [REDACTED]'s life insurance policies. The following information was provided:
- a) In section two he states: *"Claimant living so she can do this on her own as surviving daughter – if she should become disabled (now 90) I will be her representative"*.
 - b) In section three he states that the insured person is [REDACTED] born [REDACTED] 1878 in Smallenken, Germany. His date and place of death was *"June 1942 – Deported from Insterburg...Rumour – Left on train to Minsk and disappeared or shot"*.
 - c) In section four he indicates that the beneficiary was his grandmother [REDACTED] and states: *"not going to complete as spouse killed with husband so claim goes to daughter [REDACTED] surviving child of [REDACTED]"*.
 - d) In section five he identifies *"[REDACTED]"* as the company that issued life insurance.
 - e) In section six he states: *"Daughter of policyholder murdered by Hitler – [REDACTED] is daughter of [REDACTED] and [REDACTED]. Their sole survivor – sister has died – only [REDACTED] still living."*
 - f) In section seven he states: *"No information [REDACTED] ever paid off from insurance. If was paid off money either confiscated by Nazi officials, Gestapo, or if put in bank accounts were frozen and money removed by Hitler from any Jews and paid to government. [REDACTED] was murdered by Nazi Gestapo in June 1942. [REDACTED] is surviving child of policyholder."*
 - g) In section eight in respect of previous claims: *"Sometime in 1964 approximately case was brought by German lawyer on behalf of [REDACTED] for [REDACTED] – husband being in Dachau – politically persecuted prisoner – case was brought in Bamberg and [REDACTED] receives monthly widow's pension from Germany. Thereafter case was brought in Berlin to get money for [REDACTED]'s father [REDACTED] store being taken away in 1936 – court held store employee's had brought store from [REDACTED] – no money was ever received by [REDACTED] – any money [REDACTED] received placed in bank or with insurance company or when [REDACTED] and [REDACTED] murdered in 1942 Germany [illegible] or insurance companies kept [REDACTED]'s money"*.
 - h) In section nine he states: *"[REDACTED] heard [REDACTED] store in Insterburg was East Prussia and scorched earth policy store was burned down when Russia took over Insterburg of no proof left to make claims for survivor of property survivors result of this policy."*
15. The Appellant submitted a claim form to ICHEIC signed and dated 27th July 2003 in which he supplied the following information:
- a) In section three he indicates that he does not know the name of the company that issued the policy.

- b) In section five he states that the policy is a life insurance policy and that there may be “a business policy for Department Store [REDACTED]”. He indicates that premiums were paid “at least until Kristalnacht and maybe later”.
 - c) In section six the policyholders are identified as the Appellant’s grandparents [REDACTED] and [REDACTED].
 - d) The insured person and beneficiary are identified as [REDACTED].
 - e) In section nine the Appellant states that [REDACTED] lodged “the European Insurance Policy Claim #[REDACTED]” and received \$3,727.52 as compensation or restitution for this claim.
16. Following [REDACTED]’s rejection of his claim the Appellant submitted an Appeal Form dated 30th September 2004. It stated: “...I believe the claim was wrongfully decided in that we only received 20 cents on the dollar. The policy paid in 1999, was actually what should have been paid at the time of the decision when originally paid in 1959. We are not asking for the payment made on policy #[REDACTED]. What was paid in 1959 should be applied, against the four policies that were paid in 1959 at 20% face value without interest.”

THE INVESTIGATION AND DECISION BY [REDACTED]

17. In its final decision letter dated 24th June 2004, [REDACTED] states: “We have received the claims form that you have filed with ...ICHEIC on June 1st 2004. Our records show the following insurance contracts for Mr. [REDACTED] and Mrs. [REDACTED] nee [REDACTED] No. [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. We could not find a reference to the conclusion of insurance on the name of the company [REDACTED] [...]. Based on [the] Agreement your inquiry had been reviewed for possible prior decisions by relevant compensation or restitution authorities with regard to those specific insurance policies [...]. According to the Agreement policies are not eligible for additional compensation, if those specific policies were covered by a prior decision of a German restitution or compensation authority [...]. The German authorities have now confirmed that you, represented by the authorised person Mr. Adolph Kahn, had filed a claim under the German Compensation Laws regarding the policies of your father, Mr [REDACTED], with [REDACTED]. The “Amt für Wiedergutmachung” in Saarburg has confirmed that the [REDACTED] policies No. [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were subject matter of its decision dated May 27th, 1959 in the compensation proceeding of the heirs of Mr [REDACTED] under file-number “[REDACTED]”. Settlement proceedings in the amount of 1,248.70 Deutsche Mark became due with the delivery of the ruling from May 27th, 1959. You can learn this factual situation from the enclosed photocopies of this ruling. For life insurance No [REDACTED] we paid off 7,503.80 Deutsche Mark in the year 1999 to you. We would like to point out, that at the time our offer was established and the payment was made in the year 1999 we did not have any information regarding the already paid settlement proceeds. We are confident you will understand our decision not to submit any offer under the given circumstances [...]. We informed Mr [REDACTED] that we have sent you a letter in reply”.
18. In response to the appeal [REDACTED] states on 2nd November 2004: “the [REDACTED] policies No. [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were subject matter of the decision of May 27th, 1959 in the compensation proceeding of the heirs of Mr. [REDACTED], under file-number “[REDACTED]”.

Settlement proceeds in the amount of 1.248,70 Deutsche Mark became due with the delivery of the ruling from Mai 27th, 1959. According to Section 2 (1) (c) of the Agreement, among others, a claim concerning a life insurance policy is only eligible for compensation, of the policy (policies) in question was/were not covered by a decision of a German restitution or compensation authority [...]. In the year 1999 we paid out 7.503,80 Deutsche Mark for life insurance No. [REDACTED] to Mrs [REDACTED]. At the time our offer was established and the payment was made in the year 1999, we did not have any information about the fact that the insurance was already subject matter of a German compensation or restitution authority's decision, and that a compensatory payment had been made. If we had this information, we would not have established any offer and made any payment. Further, it was not apparent from the documents we have had in the year 1999, that there had already been made an advance payment to this contract, so that we had not deducted the same from our payment. Thereby, we had calculated and paid an overpriced compensatory payment in 1999 for life insurance policy No. [REDACTED], anyway. A claim of higher compensation to the other life insurance contracts does not arise from this fact. In the abstract, even a reclamation would be necessary from the vantage point of the present."

19. Enclosed with the decision letter, and the letter in response to the appeal, were copies of various documents, including:
- a) Compensation ruling dated 4th October 1958 by the compensation authority in Neustadt in favour of [REDACTED] and [REDACTED] as heirs to the estate of [REDACTED].
 - b) Compensation ruling dated 4th October 1958 by the compensation authority in Neustadt in favour of [REDACTED] and [REDACTED] as heirs to the estate of [REDACTED].
 - c) Correspondence between [REDACTED] and Adolph Kahn, [REDACTED]'s representative, relating to compensation proceedings.
 - d) Correspondence between [REDACTED] and the compensation authority in Neustadt, relating to compensation proceedings.
 - e) A ruling dated 27th May 1959 by the compensation authority in Neustadt file number [REDACTED]. The ruling states that as a result of these proceedings the heirs of [REDACTED] and [REDACTED] ([REDACTED] and [REDACTED]) received compensation payments of DM 279.98 for policy number [REDACTED], DM 383.09 for policy number [REDACTED], DM 303.84 for policy number [REDACTED], DM 145.25 for policy number [REDACTED] and DM 136.50 for policy number [REDACTED], the total sum of DM 1,248.70 (rounded up).
 - f) Correspondence between Mr Adolph Kahn and the compensation authority in Neustadt requesting that compensation in the sum of DM 1,248.70 be transferred.

THE ISSUES FOR DETERMINATION

20. There is no doubt that the Appellant's family were Holocaust victims, that [REDACTED] had insurance policies, or that the Appellant as heir would be entitled to the proceeds of the policies. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as the policies in question, namely numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], are concerned [REDACTED] 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 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.

21. [REDACTED] has proven that the policies numbered [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were the subjects of compensation proceedings under BEG law in Neustadt on 27th May 1959. The heirs of [REDACTED] and [REDACTED] ([REDACTED] and [REDACTED]) consequently received a compensation payment of DM 1,248.70 for the policies. A further payment of DM 7,503.80 was made in 1999 by [REDACTED] to [REDACTED] for policy number [REDACTED], which had previously been compensated by the BEG in 1959. The Panel lacks the jurisdiction to reconsider any BEG payment calculation, Similarly, under the Agreement, which is binding for the parties to the appeal as well as for the Panel, there is no authority granted to the Panel to recalculate the compensation for policy numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED] based upon a calculation made by [REDACTED] for policy number [REDACTED] in 1999 when it, apparently, was unaware of the previous restitution proceeding.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 26th day of April 2005

[REDACTED]