

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

Represented by:
[REDACTED] [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] 1929 in Marienbad (Marianske Lazne, Czechoslovakia). She is the granddaughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1875 in Brüx (in Czech: Most, Austria-Hungary, now Czech Republic) and died on 12th July 1953 in Tangier (Morocco). [REDACTED] was born on [REDACTED] or [REDACTED] 1884 in Rvenice (in German: Seestädtl, Austria-Hungary, now Czech Republic) and died on 7th May 1973 in Toronto, Ontario (Canada).

[REDACTED] is the daughter of Dr. [REDACTED] and [REDACTED] née [REDACTED]. [REDACTED] was born on [REDACTED] 1899 in Neumarkt (in Czech: Úterý, Austria-Hungary, now Czech Republic) and died on 28th November 1958 in Ontario (Canada). [REDACTED] was born on [REDACTED] 1904 in Brüx and died on 27th June 1987 in Toronto. [REDACTED] née [REDACTED] is the daughter of [REDACTED] and [REDACTED].

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 27th February 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claims that [REDACTED] issued a policy of life insurance. In addition, a “*European Insurance Policy Claim Form*” issued by the Holocaust Claims Processing Office (HCPO) of the State of New York Banking Department was forwarded. In both claim forms the proceeds of a life insurance policy with the policy number [REDACTED] issued by [REDACTED] are claimed.

In addition, she submitted another claim form dated 12th June 2002 in which she claims the proceeds of an insurance policy which was issued by “(likely) [REDACTED]”.

4. The ICHEIC processed the claims follows:

The claim which is the subject of the appeal

- a) Claim number [REDACTED]

This claim is based on the claim form dated 27th February 2000 and the HCPO claim form. The subject of this claim is apparently policy number [REDACTED] taken out by Dr. [REDACTED] with [REDACTED] in former Czechoslovakia.

The claim which is partly the subject of the appeal

- b) Claim number [REDACTED]

This claim seems to be also based on the claim form dated 27th February 2000. The subject of this claim is, among others, a life insurance policy number [REDACTED] issued by [REDACTED] in Brüx, Czechoslovakia. In its decision letter dated 8th September 2004 [REDACTED] states initially that Dr. [REDACTED] took out the policy. On the second page of this decision letter, however, [REDACTED] states that policyholder was [REDACTED]. The claim as to policy number [REDACTED] was declined for the same reasons as claim number [REDACTED] was declined (for more details see paragraph 5).

In ICHEIC’s database claim number [REDACTED] is recorded as concerning policy [REDACTED]. The database states that the offer of US\$ 6,000 was paid on 2nd November 2004.

Claims which are not the subject of the appeal but related

c) Claim number [REDACTED]

This claim file contains two claim forms both dated 12.06.2002. They are both claims against “(likely) [REDACTED]”. The latest two entries in the ICHEIC’s database indicate that the [REDACTED] has denied this claim (no match found), and another claim number exists for this claim ([REDACTED]). This claim is recorded in the database as being unnamed, yet in the claim form [REDACTED] was named. The database section recording where the claim was sent states: “[REDACTED]: No reply – 12.10.2004; [REDACTED]: Forwarded 9.7.2002”.

On this claim a humanitarian payment was made.

d) Claim number [REDACTED]

This is described as a replica claim in ICHEIC’s database. A claim file does not exist.

e) Claim number [REDACTED]

This claim is described in the ICHEIC’s database as a “[REDACTED] matched claim” and “GMC” [which means “German Matched Claim”] to claim number [REDACTED]. The only document on the electronic file under this number is a decision letter dated 2nd March 2005 from [REDACTED] to [REDACTED] regarding claim [REDACTED] (formerly unnamed [REDACTED]/ [REDACTED]). It denies a claim with regard to the Appellant’s great-uncle, Mr [REDACTED]. It states that it could not find evidence of a policy for him.

5. The ICHEIC submitted the claims for policies issued by [REDACTED] to the Respondent. [REDACTED] stated in its decision letter dated 8th September 2004 referring to “ICHEIC claim number [REDACTED], [REDACTED]/ [REDACTED]”: “We refer to the inquiry of Mrs [REDACTED], represented by you, regarding the life insurance policy No. [REDACTED] taken out by Dr [REDACTED] with [REDACTED] in former Czechoslovakia. ... We have found corresponding evidence and can thus confirm the existence of a policy with the [REDACTED] number as part of the [REDACTED] Czechoslovakian insurance portfolio. ... In the case in question we have indeed been able to find out that – as may have escaped your client’s notice or of which she might not have been informed – Mrs [REDACTED] as the heiress of Mr [REDACTED] and represented by Messrs Roßmeißl and Weidmann, lawyers in Wiesbaden, had filed a claim for compensation under the German compensation laws with Ausgleichsamt der Stadt Bremen (Bremen Compensation Office), i.a. also regarding the [REDACTED] policy in question. ... The excerpts of the compensation office’s records show that in the proceeding under file No. [REDACTED] – [REDACTED] this claim was withdrawn by Mrs [REDACTED] in her lawyers’ letter of 2nd January 1970; as the cause for this withdrawal the lawyers mentioned that meanwhile it had been possible to settle the matter regarding the policy in question, as [REDACTED] had declared its willingness to pay compensation. For your information, we attach a copy of the relevant letter from the compensation file. As the ‘Agreement’ of 16th October 2002 stipulates in Article 2 Section 1 that a life insurance policy is eligible for compensation only if that specific policy was not covered by a prior decision by a restitution or compensation authority or if the beneficiary has not received any compensation from the policy in question, respectively, Mrs [REDACTED] is, thus, not eligible for compensation as per the ‘Agreement’ of 16th October 2002. We are confident that you will understand our decision not to submit an offer for compensation under the given circumstances. For the sake of completeness we wish to point out that we could not

establish any further reference to life insurance policies taken out by Mr [REDACTED] and Dr [REDACTED], even after checking further files relating to compensation proceedings initiated by Dr [REDACTED], Mrs [REDACTED] and Mrs [REDACTED] as the heiress of Mr [REDACTED] with the Amt für Wiedergutmachung in Saarburg (Saarbourg Restitution Office) under the German compensation laws under the file Nos. [REDACTED], [REDACTED] and [REDACTED]. There had been no claims for compensation relating to such policies which is another evidence for the fact that they had been settled earlier”.

In another decision letter also dated 8th September 2004 referring to “ICHEIC claim number [REDACTED], [REDACTED]/[REDACTED]” [REDACTED] declined a claim for policy number [REDACTED] taken out by Dr. [REDACTED] with [REDACTED] in former Czechoslovakia for the same reasons as set out above. This letter also contains an offer of US\$ 6,000.00 for a policy number [REDACTED] taken out by [REDACTED].

6. The Appellant submitted an appeal to the Appeals Office dated 12th January 2005 which was accompanied by an attachment setting out the reasons for the appeal. From the stamp it can be seen that the appeal was sent on 17th January 2005.
7. The Appeals Office received the appeal form on 7th February 2005 and mailed a copy to the Respondent.
8. [REDACTED] responded in a letter dated 11th February 2005 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 16th March 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
11. 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 Panel Decision is made there.

THE CLAIM

12. 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, the company that issued the policy is identified as [REDACTED]. It was purchased in Brůx, Bohemia, Czechoslovakia.

- b) In section four, that Appellant states that she can provide copies of correspondence and premium payments, adding: *“Copies of premium receipts on company letterhead; Copies of letters from [REDACTED]”*.
- c) In section five, the policy is identified as one of life insurance, policy number [REDACTED] issued in Czech Crowns. Against the entry ‘Policy was confiscated by government and proceeds were subsequently to be paid by company directly to government’, a hand-written comment states: *“Likely; [REDACTED]’s name is listed on the Czech government website”*. The Appellant is not aware of any payments resulting from the policy. Against the entry ‘policy loan’, a comment states: *“Probable (as per attached)”*. Regarding the premium, the following information is provided: annual payment; it decreased over time; to the best of the Appellant’s knowledge, all premiums were paid up to October 30, 1939; an approach was made to the insurance company in January 2000; the Appellant also states: *“All [REDACTED]’s assets were seized by the Germans”*.
- d) In sections six and seven, the policyholder and insured person is identified as the Appellant’s grandfather, [REDACTED]. The Appellant does not know any other living heirs.
- e) In section eight, the beneficiary is identified as the Appellant’s grandmother, [REDACTED]. No other living heirs are known.
- f) In section nine, the Appellant states that she does not know if anyone has participated in any compensation/restitution procedure for this claim.
- g) In section eleven, the following information is provided: *“There were two policies with [REDACTED]. The first is in the name of [REDACTED], my grandfather. The second is in the name of my father Dr [REDACTED]. I will fill in a second form for him. I provide all the copies of documentation we have to you”*.

The Appellant also submitted a European Insurance Policy Claim Form. The only additional information provided is as follows: in section seven, it is stated: *“The claimant is the granddaughter of the policyholder and lived with him during and after the war right up to his death on July 12, 1953. She knows for a fact that no payment has ever been made to her family by the insurance company”*; in section eight it is stated: *“On 10.01.2000 copies of premium receipts were sent by electronic mail to [REDACTED]”*.

13. The claim file also contains copies of identification documents which prove the details the Appellant gave about herself and her family and copies of the following documents:
- a) A document dated 4th July 1942 providing a list of names sent to newspapers by the Gestapo in Prague informing of the confiscation of assets of Jews in Bohemia and Moravia. It features the name [REDACTED], who was the great-uncle of the Appellant.
 - b) A document dated 20th October 1942, part of a circular issued by the economic committee for personal insurance to the members of a specialist group dealing with life insurance. It regards the confiscation of life insurance policies by the Gestapo. The names [REDACTED] and [REDACTED] appear in the list.
 - c) An excerpt from a paper on *“Insurance in Nazi Occupied Czech Lands”* by Tomas Jelinek. It includes a list featuring the names [REDACTED] and [REDACTED] as persons whose property was confiscated by the occupation authorities.

- d) Emails between [REDACTED] and [REDACTED] in January 2000 providing details of his claims, which he submitted to ICHEIC in the same month. He attached a copy of a receipt for policy [REDACTED].
- e) A letter dated 25th January 2000 from [REDACTED] to [REDACTED]. It concludes that it cannot be ruled out that the policyholders had control over the insurance contracts.
- f) Email dated 31st January 2000 from [REDACTED] to [REDACTED] stating that he contests the letter dated 27th January 2000.
- g) A letter (undated) from [REDACTED] to [REDACTED] responding to letter of 27th January 2000. It states that he is enclosing a copy of a statement prepared by [REDACTED] and sent from his refuge in Morocco setting out the face amounts and value for both of policies (i.e. his policy and a policy of his son-in-law, [REDACTED]).
- h) Various correspondences between [REDACTED] and [REDACTED] and Česká Pojišťovna retrieving and disclosing information.
- i) Holocaust claim form issued by an organisation called B'nai B'rith re [REDACTED]. It provides the following additional information about her claims: *“Details of this policy were uncovered in January 2000 from a briefcase located in [REDACTED]’s basement belonging to her grandfather and which had never been opened since his death in 1953”*.
- j) Premium receipts for policy [REDACTED].
14. The Appellant sets out the reasons for her appeal as follows: *“Subjects: ICHEIC claim number: [REDACTED], [REDACTED]/[REDACTED]; [REDACTED], [REDACTED]/[REDACTED]... We are seeking your kind consideration to appeal the decisions relating to the above-mentioned claims both postmarked on 08/09/04. The “life” of these policies has exceeded the life of their owner by several generations. [REDACTED] made his first premium payment to [REDACTED] in 1921 and his last in 1939 – a full year after he was robbed of all of his property. Despite such diligent practice and good faith he and his heirs never benefited from his right of ownership to this property. It is our most sincere hope that the following might help you to consider our plea that a portion of this injustice finally be remedied. Both decisions appear to hinge upon the policies having not “previously been covered by a prior decision by a restitution or compensation authority if the beneficiary had not received any compensation from the policy in question”. As to the first proposition on the rendering of a decision, both point towards a particular letter written by Messrs Roßmeißl and Weidmann of ‘withdrawal’ as somehow being construed as equivalent to the rendering of a prior decision. We vigorously beg to differ with this assertion. We would like to speak towards these issues. Some points:*
- *On January 2, 1970, [REDACTED] was in her 86th year, she passed away a bit more than three years later in May of 1973 after being a widow of [REDACTED] for some twenty years.*
 - *In that letter it was stated, “she is old and she can not remember”.*
 - *No evidence has been presented that provides any details that compensation had ever been paid.*
 - *She was a woman of very limited means of income as a widow since 1953 having never been gainfully employed. Being of limited means and of considerable age it appears reasonable to state that she had practically reached the limit of her ability to carry on a battle with a large and powerful insurance company in a quest for compensation.*

- *We also beg your indulgence to consider that it would not be unreasonable to conclude that she had reached the practical limit of her ability to pay a legal firm for representation.*
- *If the above can be considered for the moment to be reasonable then we ask for your further indulgence to consider that it would not be unreasonable that without payment that Messrs Roßmeißl and Weidmann would seek to ‘withdraw’ the claim.*
- *[REDACTED] has never provided proof of payment to [REDACTED].*
- *We ask that you consider that ‘withdrawal’ is not equivalent to abandonment or statement of settlement of the property rights of a claim.*
- *No German compensation authority has made a decision on the merits of the claim.*
- *The reality appears to be that it was the simple march of time against the measure of one’s days and strength to continue the battle that appears to us to be at issue here and we hope that you can consider this to be crucial in the context that the referenced letters are reviewed in.*
- *To consider that in any figurative sense and begging your kind consideration, that the withdrawal mentioned in this letter not be held to constitute a “ruling” or the “rendering of a decision”.*

We also ask you to consider that the existence of these policies has never been in question. As long as it was within [REDACTED]’s ability to do so he diligently paid his premiums. These policies were his property in September 1938 when faced with circumstances beyond his control his property was taken from him unjustly. This was his property in 1938; it was his property in 1942 when it was unjustly confiscated by order of the Gestapo. It was his family’s property at the time of [REDACTED]’s death in June of 1953 as it was at the time of [REDACTED]’s death in May of 1973 – it remains as such to this day. It was right that these policies be compensated at every point in time and we humbly request and implore that you consider them as such to this day and that you please act so as to finally settle this matter. In 1938 [REDACTED], [REDACTED]’s Granddaughter, was a child of nine years of age – today she is a seventy-six year old woman. Like her Grandparents and her Parents she has waited a lifetime for justice. We can only pray that by your action she receives what has been denied to her forbearers”.

15. The Appellant’s representative enclosed copies of the Company’s two decision letters of 8.9.2004 which cover claims a) [REDACTED], [REDACTED]/[REDACTED]and b) [REDACTED], [REDACTED]/[REDACTED].

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] declined the claim for the reasons given in its decision letter dated 8th September 2004 (paragraph 5) and in its letter 11th February 2005 which was written in response to the appeal (paragraph 8).

17. [REDACTED] enclosed copies of the following documents with its decision letter:

- a) Letter dated 20th April 2004 from the compensation office in Bremen to [REDACTED]. It states that a compensation procedure was found for [REDACTED] but it concerned policy [REDACTED] with RAS. It adds that [REDACTED]’s claim regarding two contracts with [REDACTED] – [REDACTED] and [REDACTED] – was withdrawn after it was apparently resolved with the company directly.
- b) Claim by [REDACTED] for damages sustained by [REDACTED]. It is stamped 4th July 1960. It mentions i.a. two insurance policies with [REDACTED] a) Policy: [REDACTED]; Insured sum: Kc 50,000; Premiums paid: Kc 21,902.90; Converted to

DM?: Don't know. b) Policy: [REDACTED]; Insured sum: Kc 50,000; Premiums paid: Kc 33,981; Converted to DM?: Don't know. A hand-written entry states: "Withdrawn. See letter dated 2.1.70 from the authorised person".

- c) Letter dated 12th October 1960 from law firm Roßmeißl and Weidmann to the Bremen compensation office concerning damages resulting from a life insurance policy for [REDACTED] after her deceased husband, [REDACTED]. It enclosed two revaluation letters from [REDACTED] dated 13.4.1938 and 9.12.1937 as proof of the damage sustained. It requests calculation of the damage. A hand-written note states: "*There is nothing to be done for the time being. Re-submit after conclusion of household goods' compensation*".
- d) Letter dated 28th December 1964 from the law firm Roßmeißl and Weidmann to the Bremen compensation office. It states: "*On 12.10.1960 we sent you two revaluation certificates for life insurance policies taken out by [REDACTED] (deceased). According to a letter we received recently from [REDACTED] in Berlin, there is, on the basis of extended instructions, the possibility of payment of compensation for the life insurance in question. [REDACTED] requires that we present the revaluation certificates, so please return them to us*".
- e) Letter dated 25th January 1965 from Bremen compensation office to the above-mentioned law firm regarding d). It states that it is returning this insurance policy [REDACTED].
- f) Letter dated 2nd January 1970 from the law firm named above to the Bremen compensation office. It states that it is enclosing some documents in response to a letter of 9th October 1969. It adds: "*Regarding the life insurance claims, we can inform you that this matter was resolved at the time. We herewith withdraw the compensation claim relating to this. We would like to point out that the claimant has stated that, at her age and after 31 years have passed since the events in question, she can no longer remember anything*".

THE ISSUES FOR DETERMINATION

18. The first issue for determination is whether the appeal was filed, pursuant to section 4 (3) of the afore-mentioned Agreement (see paragraph 13) and its Annex E (the Appeal Guidelines), within 120 days as specified in the Appeal Guidelines. It is concluded that the Appellant did meet this timeline.

Although the appeal form was sent on 17th January 2005 which is 131 days after the decisions were made (on 8th September 2004), it cannot be determined when the Appellant received the decision letters. In light of the uncertainty as to the date the Appellant was notified of the right to appeal and because the appeal document arrived close to the appeal deadline the appeal shall be deemed to have been filed in time.

19. 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]. They were denied by decision letters issued at the same day for the same reasons and are appealed in one appeal form. They are "*related appeals*" submitted by the same Appellant but relating to different policies.
20. There is no doubt that the Appellant's father had two insurance policies with [REDACTED] with the number [REDACTED] and [REDACTED] [[REDACTED] might also have been

taken out by her grandfather, see paragraph 4b)], that the Appellant as heir of her parents could be entitled to the proceeds of these policies, 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 policies number [REDACTED] and [REDACTED] are 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

21. The Respondent proved that the two policies [REDACTED] and [REDACTED] which were, initially, the subject of a compensation proceeding were finally paid by providing compensation and restitution authority archive evidence in the form of a letter dated 20th April 2004 of the “*Ausgleichsamt*” (compensation authority) in Bremen, which states that [REDACTED]’s claim regarding two contracts with [REDACTED] – [REDACTED] and [REDACTED] – was withdrawn after it was apparently resolved with the company directly [see paragraph 17 a)]. In addition there are two letters dated 28th December 1964 and 2nd January 1970 from the law firm Roßmeißl and Weidmann [see paragraphs 17 d) and f)] which confirm that the compensation applications were withdrawn, after [REDACTED] settled the claims outside the procedure (“... *According to a letter we received recently from [REDACTED] in Berlin, there is, on the basis of extended instructions, the possibility of payment of compensation for the life insurance in question ...*” and “*Regarding the life insurance claims, we can inform you that this matter was resolved at the time. We herewith withdraw the compensation claim relating to this*”). The Appellant’s statement that “*no evidence has been presented that provides any detail that compensation had ever been paid*” is contradicted by the two afore mentioned quotations from the letters dated 28th December 1964 and 2nd January 1970. In addition, there is nothing that indicates that the applications for compensation were withdrawn because of [REDACTED] “*had reached the practical limit of her ability to pay a legal firm for representation*”. On the contrary, considering that in the compensation procedure all essential documents were available and the procedure would have been successful there is nothing that indicates that [REDACTED] could have been in a situation in which she had to withdraw her applications because of lack of money and uncertain prospects to succeed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 12th day of July 2005

[REDACTED]