

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 NUMBER: [REDACTED]

BETWEEN

[REDACTED]

APPELLANT

AND

[REDACTED] ([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], born on [REDACTED] 1946 in Tel-Aviv (Israel). He is the son of [REDACTED] and [REDACTED], née [REDACTED].

The Appellant has two brothers, [REDACTED] and [REDACTED].

His grandparents are [REDACTED] and [REDACTED], née [REDACTED].

His great-grandparents are [REDACTED] and [REDACTED], née [REDACTED].

[REDACTED] had three siblings, [REDACTED], [REDACTED] and [REDACTED].

[REDACTED] was married to [REDACTED]. [REDACTED] was married to [REDACTED], née [REDACTED]. [REDACTED] was married to [REDACTED] and later to Mr. [REDACTED]. [REDACTED] and [REDACTED] had two children, [REDACTED] and [REDACTED].

The family tree reflects that [REDACTED] and [REDACTED] (the persons involved in this appeal) did not have any children.

The entire family perished in the Holocaust with the exception of the Appellant's mother [REDACTED], née [REDACTED].

2. The Respondent is [REDACTED] ([REDACTED]), the [REDACTED].
3. The Appellant submitted eight claim forms issued by the Washington State Insurance Commissioner and eight ICHEIC declarations of consent in which he claims that a company he could not name issued policies of insurance.
4. Initially the ICHEIC assigned numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] to the eight claims. In a letter dated 3rd April 2002, the ICHEIC informed the Appellant that it was possible to amalgamate his files and to process his file as a single claim. It asked him to disregard any correspondence that he had received bearing any claim number other than [REDACTED].
5. The ICHEIC submitted the claims to the MOU Companies and to the German companies [MOU is the acronym for Memorandum of Understanding signed by those companies which have submitted to ICHEIC jurisdiction].
6. The Appellant has received an offer for a payment from the humanitarian fund which is managed by the [REDACTED]. [REDACTED] explained in its decision letter dated 8th November 2004 that it had searched its records for the following persons: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] ([REDACTED]); [REDACTED]; [REDACTED]. It then stated: *"We regret, no entries exist in the register for the above mentioned persons except for Mr [REDACTED] and Mrs [REDACTED]. ... Our central register does contain an entry for Mr [REDACTED] and Mrs [REDACTED] (enclosure 1). This means that Mr [REDACTED] and Mrs [REDACTED] have applied for a combined life insurance coverage with [REDACTED]. Therefore, based on the policy application number [REDACTED], we have started to search for a corresponding file in our files archives. Unfortunately, no corresponding file exists. ... To obtain further information, we have contacted the German State Compensation Restitution authorities. ... None of these authorities, however, could help us in this matter. We regret, we have to inform you that*

there is no proof of a contract taken out by Mr [REDACTED] and Mrs [REDACTED] with us. Furthermore, we know that if a policy had existed the insurance benefit was duly settled. ... However, it has recently been agreed between our company, the ICHEIC and the [REDACTED] ([REDACTED]) that a payment will be offered from the humanitarian fund of ICHEIC in those cases where we found an entry in our central register but have no further reference that a life insurance contract actually came into existence. We are pleased to propose your claim concerning policy application number [REDACTED] for a payment out of this fund. The responsibility for this procedure rests with the [REDACTED] that will provide you with all the information and relevant documents. The [REDACTED] will render a conclusive decision concerning your inquiry". [REDACTED] enclosed with this letter a copy of its central register entry.

7. [REDACTED] wrote on 12th November 2004: “[REDACTED] has found an entry for your great-uncle, Mr [REDACTED] in its central register. ... Although your claim would concern an insurance policy that was paid by [REDACTED] you are entitled to a humanitarian payment of the same amount as if the policy had remained unpaid. ... Given the fact that the calculated current value of the policy of Mr [REDACTED] of € 1261.16 is less than the agreed minimum payment we are pleased to offer you US \$ 3,000.00 for the compensation of this policy. You have declared that Mr [REDACTED] was your great-uncle. We therefore understand that you are his legal heir”.
8. The Appellant submitted an appeal to the Appeals Office dated 29th December 2004 in which the reasons for the appeal were set out. The subject of the appeal was defined as the decision [REDACTED] made in its decision letter dated 8th November 2004 (see paragraph 6). Attached to his appeal form was a copy of the afore-mentioned decision and of the register card from [REDACTED]’s central register.
9. The Appeals Office received the appeal form on 4th January 2005 and mailed a copy to [REDACTED].
10. [REDACTED] replied in a fax dated 17th January 2005. It stated: “*It is an appeal against the [REDACTED]. Thus, we will forward the Appeal form to the [REDACTED]*”.
11. [REDACTED] responded in a letter dated 25th January 2005 and requested the Appeals Panel for reasons it had set out before to reject the appeal (for details see paragraph 19). Attached were copies of all documents [REDACTED] has relating to this claim.
12. On 17th February 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.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
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 Panel Decision is made there.

THE CLAIM

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:
- a) In the first claim form, in section three, the Appellant identifies his great-cousin, [REDACTED], as the insured person. She was born on [REDACTED] 1923 in Berlin (Germany) and died in Auschwitz. In section five, regarding the basis for belief that a policy was not paid, the Appellant writes: *“Before she died, [REDACTED] (my mother), said that she didn’t believe that her mother, [REDACTED] (aunt to [REDACTED] and only survivor of the [REDACTED] family) ever received insurance payments for any family members”*.
 - b) In the second claim form, in section three, the Appellant identifies his great-cousin, [REDACTED], as the insured person. He was born on [REDACTED] 1927 in Berlin and died on 15th February 1945 in Auschwitz. Section five is the same as the first form with the name [REDACTED] replacing [REDACTED].
 - c) In the third claim form, in section three, the Appellant identifies his great-aunt, [REDACTED] née [REDACTED], as the insured person. She was born on [REDACTED] 1897 in Deutschkrone (Germany). In section five, she states: *“Before she died, my mother ([REDACTED]) said that she didn’t believe that her mother ([REDACTED]) ever received any insurance benefits/payments for any member of the extended family of which she was the ONLY surviving member. My mother was an only child and my brothers and I are her only heirs”*.
 - d) In the fourth claim form, the Appellant identifies his great-uncle, [REDACTED], as the insured person. He was born in Deutschkrone and died in a concentration camp. He was the son of [REDACTED] and [REDACTED]. Section five is the same as the first form with the exception that [REDACTED] is described as a sister to [REDACTED].
 - e) In the fifth claim form, the Appellant identifies his great-uncle, Mr [REDACTED] (first name unknown), as the insured person. He was the husband of [REDACTED] ([REDACTED]) [REDACTED]. Section five is the same as the third form.
 - f) In the sixth claim form, the Appellant identifies his great-aunt, [REDACTED] née [REDACTED], as the insured person. She was born on [REDACTED] 1887 in Deutschkrone and died in a concentration camp, possibly on 31st December 1942. Section five is the same as the first form with the exception that [REDACTED] is described as a sister to [REDACTED].
 - g) In the seventh claim form, the Appellant identifies his great-aunt, [REDACTED], as the insured person. She was the wife of [REDACTED]. Section five is the same as the third form.
 - h) In the eighth claim form, the Appellant identifies his great-uncle, [REDACTED], as the insured person. He was born on [REDACTED] 1891 in Deutschkrone and died in Riga. Section five is the same as the first form with the exception that [REDACTED] is described as a sister to [REDACTED].
16. The Appellant sets out the reasons for her appeal as follows: *“On page 3 of the above referenced letter [which is the decision letter dated 8th November 2004 issued by [REDACTED]], I note that the ‘central register does contain an entry for Mr*

[REDACTED] and Mrs [REDACTED] (enclosure 1). This means that Mr [REDACTED] and Mrs [REDACTED] have applied for a combined life insurance coverage with [REDACTED]'. This suggests that there were two policies, one on her life and one on his life. I am not familiar with what is referred to as a 'combined' policy and suspect that there were, in fact, two policies. That suggests that there should now be two minimum compensations, presuming no new information is subsequently uncovered revealing the actual policy amounts".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. For the reasons given in its decision letter dated 8th November 2004, [REDACTED] denied the claim as to alleged policies of members of the [REDACTED] family with the exception of a so-called combined life insurance policy with the application number [REDACTED] which might have been issued to [REDACTED] and [REDACTED]. It transmitted this claim to the Respondent, the [REDACTED] (see paragraph 6).
18. [REDACTED] offered a payment of US\$ 3,000.00 for the reasons set out in its decision letter dated 12th November 2004 (see paragraph 7).
19. In response to the appeal [REDACTED] wrote in a letter dated 25th January 2005: *"We believe that our decision in this case was completely in line with the 'Agreement signed on 16th October 2002' between ICHEIC, the German Foundation and the [REDACTED]. ... The company has provided us with a copy of the only document retrievable from their archives. In addition the company has explained that a name card with two names but only one application number on it was only used in cases of a single but joint policy (or the application thereof). Therefore the claimant's assumption that two policies existed – if any at all – is not correct. In case the Panel requires more information regarding the archive situation and practice, we respectfully suggest to contact this company, i.e. [REDACTED] in Stuttgart, directly, as we at the [REDACTED] are probably not capable to describe the situation as well as the company who administered the archives"*.

THE ISSUES FOR DETERMINATION

20. The first issue for determination is to define the subject of the appeal. Although the Appellant stated in his appeal form that he is appealing the decision of [REDACTED] dated 8th November 2004, he, in fact, is appealing [REDACTED]'s decision to award a payment for one instead of for two policies (*"...This means that Mr [REDACTED] and Mrs [REDACTED] have applied for a combined life insurance coverage with [REDACTED]'. This suggests that there were two policies, one on her life and one on his life. I am not familiar with what is referred to as a 'combined' policy and suspect that there were, in fact, two policies. That suggests that there should now be two minimum compensations, presuming no new information is subsequently uncovered revealing the actual policy amounts"*). The reasons given by Appellant for his appeal concern only whether [REDACTED] should have offered a payment for one or two policies. There no stated challenge to the denial of the other six claims for which no payment was offered based upon [REDACTED]' failure to find matches in its central register.
21. 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.
22. 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.
23. Whereas there is no doubt that the members of the [REDACTED] family living at that time were Holocaust victims and that the Appellant together with his brothers (see paragraph 28 below) are entitled to the proceeds of any insurance policies issued to members of their family, it is concluded that he did not meet his burden of proof that [REDACTED] and [REDACTED] applied for more than one policy (“*one on her life and one on his life*”). The term “Combined life insurance policy” can be confusing, as it can be understood to mean one of two different types of insurance policy. The first is combined in the sense that it covers two people, paying out a lump sum on the death of the first of the insureds and then expiring; the second is where life insurance is combined with another level of insurance (e.g. critical illness insurance). However, more often, it refers to the first of these.
24. The advantage in a combined life insurance policy for two people which pays out only upon the death of the first is that it is cheaper than if both people had taken individual life insurance policies. This is because it only involves one payout, which will be sufficient for many couples, as there is only a need to provide for the one surviving partner. For many policyholders such provision is preferred, as they expect to be dealing with such a payout at a time when necessary living expenses shall have been reduced as their offspring will be self-sufficient and their mortgage paid off.
25. If life insurance is “combined” with, for example, critical illness cover, the life insurance part of the policy will not differ from a stand alone life insurance policy. But, with the addition of, for example, critical illness cover, premiums will be higher than for life insurance alone, but may well be significantly cheaper than the cost of purchasing two separate policies from the same or different companies.
26. If the policy issued by [REDACTED] was of the kind described in paragraph 25 above, the nature of the non-life insurance aspect of the policy cannot be determined and, accordingly, whether the insured event ever occurred remains unknown and the policy would not, therefore, be eligible for compensation.
27. As noted above, however, the more plausible likelihood is that what was involved was a “combined life insurance policy” providing for the payment of death benefits only upon the death of the first of the insured lives. Accordingly, only a single award may be made.

28. Finally, a decision must be made as to whether only the Appellant is entitled or whether the Appellant must share the proceeds with his brothers. In matters concerning the right of the Claimant to succeed to or to inherit the benefits of an insurance policy (“the Proceeds”) from the person who was entitled to the Proceeds at the insured event (the “Deceased Person”) the Panel must apply the Succession Guidelines as set out in Annex C of the Agreement. Here, the only survivor of the “Holocaust generation” of the [REDACTED] family was the Appellant’s mother [REDACTED]. All proceeds are distributed to issue as provided in Paragraph 2(i) of the Succession Guidelines (Annex C of the Agreement). Where the Proceeds or part of the Proceeds are to be divided in accordance with this Paragraph 2 (i), those proceeds shall be divided into as many equal shares as there are (a) living members of the nearest generation of issue then living; and (b) deceased members of that generation who leave issue then living. Here the Appellant’s mother was the only survivor and sole heir of her entire family. Her heirs are her three children. Therefore, the payment offered by [REDACTED] must be shared among the three of them.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal is dismissed.
2. The decision made by [REDACTED] is amended to require that the offer of US\$ 3,000.00 be divided in equal shares among the Appellant and his two brothers [REDACTED] and [REDACTED].

Dated this 19th day of May 2005

[REDACTED]