

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 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 [REDACTED] was born on [REDACTED] 1914 in Altenstadt (Germany), survived Sachsenhausen concentration camp and presently resides in Jerusalem, Israel. He is the son of [REDACTED], born [REDACTED] 1870 in Oberwaldbehrungen (Germany), a senior mathematics teacher in Swabia and who died on 25th July 1936, and of [REDACTED] (née [REDACTED]) who was born [REDACTED] 1877 in Homburg am Main (Germany). [REDACTED] was deported on 4th April 1942 to Piaski in Poland and she perished on an unknown date. The Appellant’s older brother, [REDACTED], was born on [REDACTED] 1900 and was deported to Birkenau in 1942 where he was killed. During the appeals process the Appellant stated that he was the youngest brother of four older

siblings – three brothers and a sister. The fate of his remaining siblings is not known, but the Appellant is the sole survivor of his immediate family.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted two claim forms dated 10th May 2000 and 10th August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims insurance policies from [REDACTED], in one claim a life insurance, in another claim property insurance and “50 % part of life insurance”.
4. The ICHEIC instituted Claim file numbers [REDACTED] (life insurance) and [REDACTED] (property insurance and “50 % part of life insurance”) and submitted the claims to [REDACTED]. [REDACTED] states in its decision letters dated 21st March 2005 for claim no. [REDACTED] and 18th April 2005 for claim no. [REDACTED] that no record of any policy with the Appellant or his parents could be found and offered him the right of appeal.
5. The Appellant submitted an appeal form dated 27th April 2005 to the Appeals Office quoting only claim no. [REDACTED].
6. [REDACTED] responded to the appeal in its letter dated 16th June 2005 and repeated its reasons for denial. [REDACTED] quoted only claim no. [REDACTED] but referred to claim no. [REDACTED] as well.
7. Since Claim file numbers [REDACTED] and [REDACTED] relate to insurance company [REDACTED] and, as far as life policies are concerned, the same policies might be claimed by the Appellant in both matters, it seems appropriate to include claim no. [REDACTED], as far as a life or “50 % part of life insurance” is concerned, into the appeal. Insofar, pursuant to Section 14.1 of the Appeals Guidelines (Annex E of the Agreement) the claims are joined and consolidated in this appeal and one decision will be issued.
8. On 13th July 2005 the Appeals Office informed the 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. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.
9. During the appeals process Panel Member [REDACTED] requested that [REDACTED] provide its central register cards that were found for the Appellant; his brother [REDACTED] and his mother which resulted in the payment of US\$12,000 for three policies during 2004 for claim number [REDACTED], which is not the subject of this appeal. This documentation has been considered and disclosed to both parties.
10. The Appellant wrote a letter dated 22nd July 2005 where he stated that his claim was legitimate and he wanted [REDACTED]’s acknowledgement of this rather than compensation. He stated: “*For me, the case has come to a conclusion and history will prove this.*” This was interpreted by [REDACTED] as a wish to withdraw his appeal and it requested clarification. The Appeals Office wrote in error to the Appellant on 12th August 2005 and later clarified in a further letter dated 17th October 2005 that his appeal was not considered withdrawn and would be decided by the Panel, unless otherwise formally notified which was not the case.
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, 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

12. The Appellant has submitted the following information for the proceeds of a life and property insurance policies in the ICHEIC claim form dated 10th May 2000 for claim [REDACTED]: he claims insurance policies with "[REDACTED]" were purchased from the agent Alfred Laub whose offices were in "Nuremberg, but lived at Ottingen". He claims "insurance of personal property including about 50% part of life insurance". He notes himself as policyholder and insured, and his mother as beneficiary. The policy, as he said, was for approximately 25,000 RM, but the exact figures are forgotten. The insurance allegedly was purchased in Bavaria during 1935. In section 11 for further information he states: "the sons of the insurance agent Alfred Laub migrated as far as I can remember to the States, yet no address ever was known to me."
13. In the Appellant's ICHEIC claim form dated 10th August 2000 for claim [REDACTED] he submits in section 3 that "[REDACTED] then known as [REDACTED]" issued the policy in July 1935, that it was purchased in "Nürnberg" and that the issuing agent was Alfred Laub, who lived in Öttingen, Bavaria. In section 4 he states that he is unable to provide further documentary evidence because it was lost as a result of the events of 1938 and the Appellant's internment in Sachsenhausen camp until 15th February 1939. In section 5 he states that the policy was a life insurance policy with accident coverage because he rode a bicycle often. The policy was purchased in 1935 for approximately 5,000 RM with quarterly premium payments to the value of approximately 30-40 RM per month. The Appellant states that premiums were paid from 1935 until 1937, but ceased at the beginning of 1938 due to persecution. He states that he approached [REDACTED] about the policy, but was told that no documents existed with respect to it. In sections 6 and 7 he names himself as the policyholder and the insured.
14. The Appellant appealed the denial of his claim by submitting an appeal form dated 27th April 2005 with a letter dated 5th May 2005, stating: "The agent Laub worked as an insurance broker in Öttingen, where I on Saturdays and Sundays worked for the Israeli community. As a result of this I gave the money to his wife. He himself worked for a group of insurance companies in Nürnberg during the week and also for [REDACTED] at that time- that was 1935/36.

From the 1.9.36 I did not return to Öttingen but worked instead for the Jewish community in Hörstein, in the Spessart, a remote place. As a result of this I sent the money by post to Laub. I suspect that Laub set the insurance up in his name.

The fact that Laub's name is not included on the lists of Agents' names is not proof of anything, because in 1937 all insurance policies held by Jews were voided by the Nazi minister Funk and the funds were absorbed by the 'state'."

In a letter dated 18th July 2005 the Appellant enclosed a copy of his letter to Dr. [REDACTED] of [REDACTED], stating certain alleged misunderstandings by [REDACTED] concerning the different insurances of family members resulting from age differences, and explaining that, due to the circumstances of that time, the application for his policy was made by the agent Laub. He concluded: "Dear Mr [REDACTED], you are too young to understand and to know what happened behind the curtain during the Nazi

era. I insist on the formal acknowledgement of my small claim, especially since I am one of the very few survivors of Sachsenhausen.”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. [REDACTED] denied claim [REDACTED] in its decision letter dated 21st March 2005 that states: *“Regrettably, the searches in our files were unsuccessful. We were unable to identify any policy in your name or in the name of your parents, [REDACTED] and [REDACTED], in the file that encompasses the insurance policies that belonged to the German portfolio of [REDACTED] for the period from 1920 through 1945, nor in the other still extant records from that time”.*
16. [REDACTED] denied claim [REDACTED] in its decision letter dated 18th April 2005 that states: *“Based on the information that you provided in the claim forms we have intensively searched all relevant archives and records, our electronic and manual database referring to policies taken out in the period between 1920 and the end of 1945 with [REDACTED] (at that time operating in Germany under the name “[REDACTED]”). We have to point out that most of the records and documents have been destroyed in a bombing attack in 1944 when the office building in Leipzig was totally destroyed [...]. In the pre-war period [REDACTED] had no operations in the territory of Bavaria. Also the name of an agency Alfred Laub (Nurnberg / Oettingen) does not result in our records.”*
17. In response to the appeals process [REDACTED] states in its letter dated 16th June 2005: *“Mr [REDACTED] has written a letter to our headquarters, [REDACTED] ([REDACTED]) in Trieste on 31st February 1998 [which is not before the Arbiter as evidence] with respect to life insurance concluded prior to the war. [REDACTED] has answered him on 28th April 1998 that it was unable to locate such an insurance agreement.*

Prior to that date, on 14th April 1997, Mr [REDACTED] had written to the [REDACTED] insurance in Stuttgart. During the following correspondence, Mr [REDACTED] pointed out that his father, [REDACTED], had been an agent with [REDACTED] insurance. On 3rd February 2000, [REDACTED] confirmed that life insurances had indeed been concluded for his father ([REDACTED]), his mother ([REDACTED]), his brother ([REDACTED]) and for himself.

Consequently, the claimant submitted two claims to ICHEIC (no. [REDACTED] on 10th May 2000 and no. [REDACTED] on 13th August 2000). He named [REDACTED] as the responsible insurance company in both claims (“named claims”). ICHEIC sent the first claim to [REDACTED] in Trieste. In turn, [REDACTED] informed Mr [REDACTED] on 2nd March 2001 that it was unable to locate an agreement. We received the second claim in Frankfurt and answered Mr [REDACTED] on 23rd April 2001, stating again that no agreement could be located. These were interim notifications. On 21st March 2005 ([REDACTED]) and 18th April 2005 ([REDACTED]) we notified Mr [REDACTED] conclusively (pointing out the possibility to appeal) that no agreement concluded with our company was found either for his parents or himself.

[...] In his claims, Mr. [REDACTED] says that he concluded the life insurance with [REDACTED] with the aid of agent Alfred Laub in Nürnberg or Öttingen in July 1935. According to his statement, he lived in Oettingen,(Bavaria) in Würzburg and Hörstein (Franconia) at that time.

Unfortunately, we are unable to verify whether an agent named Laub was indeed working for our company at that time. Back then, [REDACTED] was operating in Germany with the name ‘[REDACTED]’ ([REDACTED]) and was selling life insurances in the areas of

Berlin, mid-Germany (Saxony) and Northern Germany prior to the war. The company was not operating in Mr. [REDACTED]'s previous areas of residence.

Moreover, the fact that Mr [REDACTED]'s father was working as an agent for [REDACTED] insurance and that he himself along with other members of the family were insured with [REDACTED] (a copy of the confirmation issued by [REDACTED] on 3rd February 2000 is included in the claims file) lets us assume that a life insurance agreement with our company was rather unlikely. In addition, it was highly unusual for a young man (Mr [REDACTED] was 21 years old in 1935) to conclude two life insurances back then.

We were unable to find any indication of life insurance agreement in our documents.

Even considering the relaxed standards of proof (Appendix B, Part A of the Agreement) we were unable to determine that the existence of a life insurance agreement with our company was plausible.

On the contrary: the domicile of the claimant is in an area in which the company was not operating and the confirmed relationship of the family with [REDACTED] Insurance (Proven life insurance for himself – father working as an agent for [REDACTED]) substantiate the assumption that no agreement was ever concluded with [REDACTED].”

THE ISSUES FOR DETERMINATION

18. 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.
19. There is no doubt that the Appellant and his family are Holocaust victims and that the Appellant would be entitled to the proceeds of any insurance policies.
20. Where the relevant 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 to establish 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.
21. The Appellant submitted a direct claim to [REDACTED] for insurance policies in 1997. This was prior to the establishment of the ICHEIC process. In 2000 he submitted two

ICHEIC claim forms for the alleged policies with [REDACTED]. Each claim form has similar, yet distinct, information.

22. In both claims the Appellant states that:

- the insurance agent Alfred Laub sold him and his family [REDACTED] policies in Bavaria during 1935;
- he was the policyholder and insured for the [REDACTED] policies; and
- premium payments were paid until 1937, but then ceased due to persecution.

In claim [REDACTED] he asserted that “[REDACTED]” issued a property insurance policy that had 50% life insurance component for the insured sum of approximately 25,000 RM, but he is unsure of the amounts. In claim [REDACTED] he asserted that “[REDACTED] then known as [REDACTED]” issued a life policy that included an accident coverage component for the insured sum of approximately 5,000 RM, with monthly premium payments of approximately 30-40 RM. There are inconsistencies about whether the insurance was purchased in his name or that of the agent Alfred Laub; the name of the issuing company and the amount of the policies and/or premiums paid.

23. There are also certain inconsistencies in the evidence presented by [REDACTED]. In claim [REDACTED] it states that it has complete records of all registers for policies issued in Germany for the period 1920 to 1945. However, in claim [REDACTED] it states that although there are records from 1920 to 1945, there was a bombing in Leipzig during 1944 that destroyed most of its records and documents.

24. After analysing the evidence as a whole, the deciding Panel Member does not consider it plausible that [REDACTED] issued an insurance contract to him. No sufficient corroborative details have been provided, and neither [REDACTED] nor the ICHEIC have found a research match in their databases. Even if sometimes very detailed, and convincing in part, the Appellant’s recollection has also certain inconsistencies (understandable after so many years and experiences), which make it impossible for the Panel Member to regard his assertions as fully plausible. Apart from that, the most persuasive evidence that there was no policy with [REDACTED] is, firstly, the fact that [REDACTED] was not issuing policies in Bavaria during 1935 when the Appellant claims the insurance was purchased. Secondly, there is proof that the Appellant had insurance with [REDACTED]; [REDACTED]’s argument that it is not very probable that such a young man, apart from the policy with the company where his father was an insurance agent, had another insurance policy, therefore is of some plausibility. Taking all this together, the deciding Panel Member is not of the opinion that the Appellant has met the burden of proof that a policy or policies were issued by [REDACTED].

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 20th day of December 2005

[REDACTED]