

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 [REDACTED] (formerly [REDACTED]) was born on [REDACTED] 1973 in Petah Tikva, Israel. He is the son of [REDACTED] (dates of birth and death unknown), and the grandchild of [REDACTED] who was born on [REDACTED] 1911 (date of death unknown) in Mrotschen, Prussia.

His great-grandfather [REDACTED] ([REDACTED] or [REDACTED]) [REDACTED] was born in Mrotschen on [REDACTED] 1877 in Mrotschen,

Germany, and died on 24th January 1944 in Auschwitz. His great-grandmother, [REDACTED] (formerly known as [REDACTED]) was born on [REDACTED] 1876 and died in approximately 1945 in Auschwitz.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 29th October 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming policies issued to his great-grandfather [REDACTED] by an unnamed company in Königsberg, then Germany. He named his great-grandmother, [REDACTED], as a possible beneficiary.

He states in the claim form that there are no further heirs to his great-grandfather's policies. At section 11 of the claim form he states:

"The name [REDACTED] born 1877 appears in list A. The family living in Königsberg till deportation in 1942/3. Both [REDACTED] and [REDACTED] died in the Holocaust..."

The Appellant submitted biographical documentation with his claim form.

4. The ICHEIC submitted the claim to all companies that were active in this area before the Second World War. The Respondent found a match and requested the claim file.
5. [REDACTED] declined the claim on 15th August 2005 stating in regards to the policy no. [REDACTED]:

"Due to the war related loss of all original records relating to policies, we have not been able to establish further findings as to e.g., the commencement of the policy, the insured person (s) the beneficiary or beneficiaries, the duration, the amount of premiums, possible advance payments or exemptions from payments, and, above all, the agreed sum insured.

As a matter of fact, the technical registers covering the years 1937 and 1939 do not contain any reference as to the policy at issue. As these two registers give a complete overview of all [REDACTED] policies valid in the relevant years, we have to conclude that these policies had been disposed of previously or that the policy had been properly settled at maturity in the year 1933 – and [thus] prior to the compulsory and persecution measures.

We have, however, been able to find out that there was a correspondence in the year 1961 with Mr. [REDACTED] who inquired about the fate of his parents' insurance policy indicating the a/m policy number. In our letter of 19th December 1961 we have only been able to communicate the a/m details. [...]

Further investigations in external archives did not produce more findings, either. [...]

Based on the information provided by you in the claims-form and after our intensive in all relevant internal and external archives, the existence of a life insurance policy taken out by Mr [REDACTED] with [REDACTED], which had not been compensated or which had been confiscated, could not have been established, even under the "Relaxed Standards of Proof" of the "Agreement".

[REDACTED] enclosed with this letter its letter to the Appellant's great-grandfather, Mr [REDACTED], dated 19th December 1961. In this letter, [REDACTED] states that it was unable to find any documentation relating to policy [REDACTED] issued to Mr [REDACTED], but that it was clear from the policy number that the policy was issued in old Marks and would have been revalued in Reichsmarks following the period of hyperinflation in Germany in 1923. As there was no record of the policy in

the company's registers from 1937 and 1939, it assumes that the policy was paid out prematurely, probably during the early 1930s.

6. The Appellant appealed the decision on 31st August 2005 stating:

“My claim for the insurance policy of my grandfather ([REDACTED]) was filed after I saw his name published under List A. It also stated [his] exact birth year (1877). In my understanding, the fact that the name was published under List A means that at least one Insurance company found a policy under his name [...]. If the only entry that [REDACTED] Insurance Company had found was the letter (attached) from 1961 written by my Grandfather's brother, then it would not make sense that the name will be published and [REDACTED] should have removed this entry. Furthermore, it is my opinion the existence of this letter only supports my claim. It is a wonder for me, how [REDACTED] (a brother of my grandfather) knew the exact Insurance company and policy number in 1961. After all, he left Germany in 1938 to Holland when he was only 17 again until his meeting with the sole survivor who was my grandfather in about 1947. The fact that he knew the actual details of the policy and tried to claim it in 1961 (unsuccessfully) proves that indeed there was an unpaid policy. Also, [REDACTED] writes that the policy was not found in the registers of 1937 – 1939. For me, this is no proof that the policy was paid. It was possible that the money went to a blocked account. In any case, in my understanding the company did not prove that the money was paid to the rightful heirs of [REDACTED].”

In addition, the Appellant states that he has files of compensation proceedings in which his grandfather and great-uncle had participated, although these do not mention insurance policies. He asserts that, notwithstanding this, the documents are an indication of his great-grandfather's wealth.

The Appellant also enclosed an application by [REDACTED] for BEG compensation for [REDACTED]' loss of assets dated 17th May 1952. This only mentions a policy issued by another insurance company.

7. The Respondent responded to the appeal on 27th September 2005 confirming its decision and stating:

“As [the registers from 1937 and 1939] give a complete overview of all [REDACTED] policies valid in these years, we have to assume...that the policy had been disposed of prior to the year 1937 and/or that the policy had to be paid out prior to maturity or expired without value after the conversion from “old mark” into Reich mark following the hyperinflation of the 1920ies.”

[REDACTED] enclosed an additional letter from Mr [REDACTED] dated 6th December 1961, which states that he had been informed by the Association of Life Insurance Companies that his parents held a policy number [REDACTED] with [REDACTED].

8. On 21st September 2005 the Appeals Office informed both parties that the appeal will be on a “documents only” basis unless it received notification from either party requesting an oral hearing within 14 days of receipt of the letter.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a “documents only” basis.

10. 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.

CONCLUSIONS OF LAW

11. In this case it is accepted as plausible that the Appellant’s great-grandfather, [REDACTED], held an insurance policy number [REDACTED] with the Respondent. The Appellant was able to provide correspondence from the 1960s as evidence of this contractual relationship. His great-uncle [REDACTED]’ letter to the Respondent dated 6th December 1961 refers explicitly to policy number [REDACTED]. This states that Mr [REDACTED] received confirmation from the Association of Life Insurance Companies that policy number [REDACTED] was issued to Mr. [REDACTED] by [REDACTED].
12. [REDACTED] responded to this enquiry on 19th December 1961, declining the claim on the basis that it could find no evidence of the policy in its records from 1937 or 1939. It did not deny the claim on the ground that the policy did not exist, but rather because it assumed that the policy had been paid out in full sometime during the early 1930s. In these circumstances, the arbitrator finds there is sufficient evidence on the Relaxed Standards of Proof to establish that a contractual relationship existed between Mr. [REDACTED] and the Respondent.
13. As the Appellant’s great-grandfather was clearly a Holocaust victim for the purposes of the Agreement, and the Appellant is entitled to bring this claim as his heir, the claim, in general, would be eligible for compensation.
14. However, the Respondent declined payment on the basis that the policy must have been paid out prior to the commencement of the Holocaust era in Germany. Therefore, the sole issue for determination in this appeal concerns whether the Respondent has established a valid defence.
15. Pursuant to section 17.3.2 of the Appeal Guidelines (Annex E to the Agreement) a company shall have a defence where it can be established on the Relaxed Standards of Proof that:
 - 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.

Section 5.1 of the Valuation Guidelines states that a policy shall be given the same valuation as applies to unpaid claims where there is evidence that the proceeds of the policy were paid into a blocked account.

16. In this case, the arbitrator concludes that the Respondent has provided insufficient evidence to establish that the policy was paid out prior to the commencement of the Holocaust era in Germany in 1933 (Schedule 1 of the Valuation Guidelines). The Respondent's assertion that it could find no record of the policy in its registers from 1937 or 1939 is not evidence that the policy was paid out properly prior to 1933, in accordance with the terms of the insurance contract. It is plausible that the proceeds of the policy were paid into a blocked account during the period 1933 – 1936.
17. Moreover, the Respondent has been inconsistent in stating in its decision letter that the policy was paid out properly on its maturity in 1933, and then stating on appeal that the policy either expired without value after the German currency conversion of the 1920s, or that it was paid out *prior to* maturity. If the policy was paid in 1933, this would have been after the commencement of the Holocaust era in Germany and the policy would be entitled to compensation under the terms of the Agreement. The arbitrator concludes, therefore, that the Respondent has failed to establish a valid defence in this case. The appeal succeeds on the basis that it is plausible that the Appellant's great-grandfather held an unpaid life insurance policy with the Respondent during the Holocaust era.

VALUATION

18. Under the Agreement the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the Agreement.
19. In cases where, as here, the value of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that the offer be based on a multiple of three times (3x) the average value for policies issued in the respective country, as set out in Schedule 3.
20. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation and applying a multiplier of eight (8x).
21. According to Schedule 3 of the Valuation Guidelines, the average value of life insurance policies in Germany in 1938 was RM 841. This value when multiplied by 3 results in a base value of RM 2,523.00.
22. The value of the policy is then converted into Deutsche Marks by applying a conversion factor of RM 10 = DM 1, resulting in DM 253.30.
23. A multiplier of 8 is then applied to calculate the value of the policy up until the end of the year 2000, resulting in DM 2,018.40.
24. Interest is then added to calculate the value of the policy up until the month two months after the offer is made. These interest rates were provided by the Valuation Guidelines for 2001 and 2002, and have been set for 2003, 2004, 2005 and 2006 by ICHEIC Memorandum at the following rates: (2001: 5.4%; 2002: 5.0%; 2003: 4.75%; 2004: 5%; 2005: 5%; and 2006 5%). This results in the amount of DM 2,127.39 for 2001, DM 2,233.76 for 2002, DM 2,339.86 for 2003, DM 2,456.85 for 2004, DM 2,579.69 for 2005 and DM 2,622.69 up until April 2006.
25. This value, when converted into Euro applying a conversion factor of Euro 1 = DM 1.95583, results in a final value of €1,340.96.

26. However, as pursuant to section 2.3 of the Valuation Guidelines each claimant shall receive a minimum payment of at least US \$3,000 if s/he is not a victim of the Holocaust, the Appellant is eligible for a payment of US\$ 3,000 for policy number [REDACTED] issued to his great-grandfather, [REDACTED].

IT IS THEREFORE HELD AND DECIDED:

1. The appeal is allowed.
2. The Respondent shall pay the sum of US\$ 3,000 to the Appellant no later than 30th April 2006, being the last day of the month, two months after this award is made.

Dated this 24th day of February 2006

[REDACTED]