

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 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]. She was born on [REDACTED] 1948 in Montreal, Quebec (Canada).
2. The Respondent is [REDACTED].
3. The Appellant claims insurance policies purchased by various members of her family and provided the following information in regard to her relatives:

- (i) By claim form of 8th July 2003, the Appellant names her great uncle [REDACTED]. He was born on [REDACTED] 1878 in Würzburg or Schöllkrippen, Germany. He died in the concentration camp in Gurs (France) in 1942. She names her father [REDACTED] as the beneficiary of [REDACTED]' insurance policy. He was born on [REDACTED] 1909 in Ludwigshafen (Germany) and passed away on 5th February 2002 in Victoria, British Columbia (Canada). He had been deported to the concentration camp Dachau for three weeks in 1938. She also names her grandfather [REDACTED] as another heir to [REDACTED]. [REDACTED] was born on [REDACTED] 1876 in Schöllkrippen and died in January 1956 in Montreal. He had been taken to the concentration camp Gurs.
- (ii) By claim form of 19th July 2003, the Appellant names her great uncle [REDACTED] and great aunt [REDACTED]. [REDACTED] was born on [REDACTED] 1894 in Germany. He died on 29th December 1937. The Appellant names their daughter [REDACTED] as the beneficiary of an insurance contract. She was born in the 20s or 30s and came to the U.S. as a child. She married [REDACTED] and had two sons [REDACTED] and [REDACTED]. She died about 15 years ago. The Appellant further states that she does not know where [REDACTED]'s sons are today.
- (iii) By claim form of 13th July 2003, the Appellant names her grandmother [REDACTED], nee [REDACTED]. She was born between 1870 and 1880 in Tauberbischofsheim and passed away in Ludwigshafen in 1936
- (iv) By another claim form dated 13th July 2003, the Appellant names [REDACTED] and [REDACTED]. [REDACTED] who was born on [REDACTED] 1873 in Hurben. The Appellant names her grandfather as heir to half of the estate of their son [REDACTED] who had been deported to the East.
- (v) With a further claim form dated 13th July 2003, the Appellant names her great uncle [REDACTED]. She further states that the insured person might be [REDACTED] whom she believes was born in Kaiserslautern (Germany) and who died in Oranienburg (Germany).

The Appellant submitted a letter from her father to the Department of the Secretary of State of Canada dated 25th January 1949. The letter is part of an affidavit concerning [REDACTED]' claim for loss or damage arising directly from the Second World War and states the following:

“[REDACTED] is the “owner of all my father’s [[REDACTED]]’ property as heir to my mother [REDACTED], nee [REDACTED], who died in 1936 [...].” The statement then lists his ownership of real estate, merchandise and unsettled debts. Concerning successions, [REDACTED] states *“I am co-heir to ½ of the succession of [REDACTED], son of my mother’s sister, who died in the German Concentration camp, Oranienburg, without leaving nearer relatives [...]. So far I could not find out the amount of his succession, neither what it consisted of. My father and myself are heirs to my father’s brother, [REDACTED], who died in camp Gurs, France in 1942. Before his deportation from Germany he lived in Ludwigshafen, Palatinate, French Zone. My father is heir to ½ of the succession of [REDACTED], son of his sister, who resided in Frankfurt...and was deported from there to the east.”* The statement continues to list property losses and damages arising from exclusion from profession and business.

The document also states that [REDACTED] had life insurance policy with “*the same company*” and he had to stop payments due to the foreign exchange control not allowing his premiums to be paid when he left the country. This part of the document refers to an insurance policy by [REDACTED] which is subject to the Appellants claim registered under ICHEIC claim number [REDACTED].

4. In its decision letters dated 5th July 2005, [REDACTED] wrote that it had searched for all names and dates as provided by the Appellant. As a result, it had found entries in its registers only for [REDACTED], [REDACTED], née [REDACTED] and [REDACTED].

However, [REDACTED] declined payment for an insurance policy in the name of [REDACTED] stating that his daughter had filed a claim against [REDACTED] and was entitled to any proceeds of the insurance contract of her father according to the succession guidelines.

In regard to entries found for [REDACTED] and [REDACTED], née [REDACTED], [REDACTED] declined payment stating that [REDACTED]’s two sons, whom the Appellant had mentioned in her claim were the rightful heirs to their mother’s estate. [REDACTED] further states that it could offer payment only upon receipt of proof of the Appellant’s entitlement to [REDACTED]’s and [REDACTED]’s estate.

5. With her Appeal dated 15th July 2005 against [REDACTED]’ decision, the Appellant suggested that [REDACTED] should search for insurance contracts on the basis of the following:

“Mr [REDACTED], born 1870-1889 in Wurtzburg but – he was born [REDACTED] 1878 in Schoellkrippen.

Mr [REDACTED], born [REDACTED] 1876 in Wurzburg but – he was born [REDACTED] 1876 in Schoellkrippen

Mr [REDACTED] born 1893 or later in Wurzburg but – he was born [REDACTED] 1899 in Wurzburg”

6. In response to the appeal, [REDACTED] stated by letter of 5th August 2005, that it had searched its registers again on the basis of the additional information provided by the Appellant but that it could not find a further entry for [REDACTED], [REDACTED] and [REDACTED].
7. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel’s general decision in July 2004, this appeal was assigned to [REDACTED].

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.

The seat of the Appeals Panel is Geneva, Switzerland, and the Decision is made there.

CONCLUSIONS OF LAW

8. In regard to insurance policies for [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED] and [REDACTED] for whom [REDACTED] could not find an insurance contract, the main issue for determination is whether the Appellant has met her 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.
9. 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. The Appellant did not provide any evidence for the existence of further life insurance policies. Her father’s affidavit refers to an insurance policy with [REDACTED] but does not refer to an insurance contract held with [REDACTED]. The Appellant has therefore not met her burden of proof and has not provided a sufficient basis upon which the Appeals Panel might conclude that it was [REDACTED], which issued further policies to the Appellant’s relatives.
10. Furthermore, it must be taken into account that [REDACTED] was not able to find the names of the Appellant’s relatives in its registers. According to [REDACTED]’s statements, its central register contains every application ever received for an insurance policy between 1923 and 1976 and, unlike many other policy records from that time, this register remained intact and was not destroyed during the Second World War. Since [REDACTED], in conformity with ICHEIC procedures, was declared audit compliant there is no reason to believe that there was a policy issued or application made. Under these circumstances it is not surprising that [REDACTED] is not able to produce documents supporting the existence of matches with the names of the Appellant’s relatives.
11. [REDACTED]’s decision to decline payment for entries it has found for the Appellant’s relatives [REDACTED], [REDACTED], née [REDACTED] and [REDACTED] was also correct.

According to the Succession Guidelines (Annex C to Agreement), [REDACTED] is the rightful heir to his estate being a closer kin to him than the Appellant.

Similarly, [REDACTED]’s sons are closer kin than the Appellant and therefore entitled to any proceeds of insurance contracts issued to her by [REDACTED]. [REDACTED]’s decision to decline payment to the Appellant for a policy issued to [REDACTED], née [REDACTED] was therefore correct and must be affirmed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 3rd day of January 2006

[REDACTED]