

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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

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### 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 Dr [REDACTED] (previously [REDACTED]) was born in Nitra, Slovakia (previously Czechoslovakia) on [REDACTED] 1929. He claims the proceeds of a life insurance policy taken out by his father [REDACTED] who was born in Galcögz (Hlohovec), Austro-Hungarian Empire on [REDACTED] 1894 and died in September 1944 in Mortort Drazovce near Nitra. [REDACTED] has been persecuted and was shot dead; the Appellant and his mother [REDACTED], née [REDACTED], were forced to flee.

2. The Respondent is [REDACTED] (“[REDACTED]”)
3. The Appellant submitted two claim forms dated 18<sup>th</sup> and 20<sup>th</sup> April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he stated that his father [REDACTED] had taken out life insurance policies number [REDACTED] and [REDACTED] with [REDACTED] (“[REDACTED]”) in Slovakia issued for 33,800 and 40,000 Czech Crowns respectively. He provided documentation confirming his submissions, in particular copies of two life insurance applications dated 5<sup>th</sup> December 1945.
4. By letter dated 26<sup>th</sup> April 2005 [REDACTED] declined payment for insurance taken out with its company. It informed that [REDACTED] was founded in 1987. It stated that it had searched all relevant internal and external archives but that it was not able to find an insurance contract in the name of the Appellant’s family.
5. With his Appeal dated 5<sup>th</sup> July 2005 against [REDACTED]’s decision, the Appellant states his opinion that he has provided sufficient evidence for his claim against [REDACTED] for insurance policies number [REDACTED] and [REDACTED] of his father.
6. In response to the appeal, by letter of 11<sup>th</sup> August 2005, [REDACTED] reconfirmed its earlier decision declining the Appellant’s claim, because it asserts that it was not responsible for the insurance policies, which were taken out in Czechoslovakia. Instead, it was only responsible for claims against the German branch of [REDACTED]. It explains that during the Nazis era, the headquarters of the “[REDACTED]” group had been in Vienna as it is today and was directed and run from there.

The German branch in Berlin, on the other hand, was a subsidiary with no connection to the Austrian, Czechoslovakian or Hungarian business. Those businesses were directed from Vienna and run by the local subsidiaries in Prague, Bratislava and Budapest. [REDACTED] states that it had not admittance to files and records from there.

The Respondent suggests, therefore, that the Appellant’s claim was related to the headquarters of “[REDACTED]” in Vienna and should to be audited in Austria under the rules of the Austrian General Settlement Fund and does not fall under the Agreement among the ICHEIC, the German Foundation and the [REDACTED].

[REDACTED] enclosed a document that lists insurance companies that fall under the jurisdiction of the Austrian General Settlement Fund according to paragraph 18 of the Austrian law regarding the restitution fund (“Entschädigungsfondsgesetz”). Among them is “[REDACTED]” insurance in Vienna.

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 16<sup>th</sup> 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. The Appellant has not met his burden of proof to establish a valid claim in accordance with Section 17 of the Appeal Guidelines.

According to Section 17.2.1 of the Appeal Guidelines, to succeed in an appeal, the claimant must establish, based on the Relaxed Standards of Proof, that it is plausible that the claim relates to a life insurance policy issued by or belonging to a German company.

The Appellant provided evidence of two insurance policies taken out by his father with [REDACTED] “[REDACTED]” in Czechoslovakia.

This company is neither identical with the [REDACTED], which is incorporated in Germany nor is [REDACTED] its predecessor in law. [REDACTED]’s predecessor was the German subsidiary of “[REDACTED]” which was a *separate* entity from the insurance company “[REDACTED]” in Czechoslovakia. It is accepted by ICEIC that [REDACTED] is responsible for policies taken out with the German company “[REDACTED]”.

9. [REDACTED]’s denial of the claim was, therefore, in accordance with the rules of the Agreement and the Appeal Guidelines.
10. However, there is no doubt that the Appellant and his family are Holocaust victims and the Appellant would be entitled to the proceeds of any insurance policies as either a named beneficiary or heir. The Appellant and his family suffered greatly at the hands of the National Socialist Regime.
11. In fairness to the Appellant, this case will be referred to the ICHEIC Claims team so that the matter may be processed in Austria, since [REDACTED] (“[REDACTED]”) insurance was directed from Austria. If this processing is not deemed possible as indicated by the Appellant in his letter of 19<sup>th</sup> October 2005, it is recommended that the Appellant be considered eligible for a humanitarian payment under the relevant ICHEIC procedures pursuant to Section 8A2 of the Memorandum of Understanding.

### IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 15<sup>th</sup> day of February 2006

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[REDACTED]