

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 is [REDACTED] who was born in Hamburg, Germany on [REDACTED] 1938. The Appellant and his parents (his father is [REDACTED]) emigrated to the US in the late 1930s, and the Appellant became an American citizen in 1945. The Appellant is the grandson of [REDACTED] who was born on [REDACTED] 1868 in Essingen bei Landau, Germany. [REDACTED] fled to the Netherlands together with the Appellant’s grandmother, [REDACTED] née [REDACTED], in the late 1930s. The couple were deported to Auschwitz on 19th May 1944 where they subsequently died.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim form dated 31st December 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which he claimed payment for life insurance taken out by his grandfather.
4. In its final decision letter dated 30th May 2005, [REDACTED] informed the Appellant that it had found insurance policy No. [REDACTED] taken out by his grandfather with the company [REDACTED], but that it had been the subject of a decision dated 8th November 1960 under the German compensation laws by the restitution authorities in Wiesbaden. Settlement proceeds in the amount of 850.51 DM were paid to the Appellant's father [REDACTED] and his uncle and aunt [REDACTED] and [REDACTED].

The Respondent provided the following relevant documents:

- (i) The decision by the compensation authorities Wiesbaden dated 8th November 1960 confirming [REDACTED] statement in its decision letter
 - (ii) An order for payment dated 12th January 1961 stating that 850.51 DM are to transferred to the co-heirs with power of attorney of [REDACTED].
5. In his Appeal dated 26th September 2005 against [REDACTED]'s decision, the Appellant states that he finds it difficult to believe that
“ the company really is absolved of responsibility for honouring a policy originally issued in he amount of 20,000 Swiss Francs based on the fact that another entity, the German government, including a small portion of that amount as an incidental part of a much broader restitution settlement. I question [REDACTED]'s interpretation, and appeal on that basis.”
 6. 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

7. There is no doubt that the Appellant's grandfather had life insurance policy No. [REDACTED] with [REDACTED], that he was a Holocaust Victim because he died in the concentration camp Auschwitz, and that the Appellant as his grandchild and heir is entitled to make a claim. The claim, therefore, is valid within the scope of the Agreement.
8. However, [REDACTED] has succeeded in establishing a valid defence in accordance with Section 17.3 of the Appeal Guidelines, Annex E to the Agreement which is binding upon all parties to this Arbitration as well as the Arbitrator. This states that the Appellant is not entitled to a payment if:

17.3.4 “The policy (or policies) in question is considered to have been covered by a decision of a German restitution or compensation authority”.

9. [REDACTED] provided archive evidence that policy No. [REDACTED] was subject to previous compensation proceedings. The decision by the restitution authorities in Wiesbaden dated 8th November 1960 awarded compensation of DM 850.51 to be paid to [REDACTED], [REDACTED] and [REDACTED] as the legal heirs of [REDACTED]. [REDACTED] therefore has a valid defence within Section 17.3.4.

Accordingly, the claim was the subject of a previous compensation proceeding and falls within the ambit of Sections 2 (1) (c) and 2.2.2 of Annex E of the Agreement which state that the Appeals Panel lacks jurisdiction over claims concerning policies which have been covered by a decision rendered by a German restitution or compensation authority.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 1st February 2006

[REDACTED]