

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]

[REDACTED]

BETWEEN

[REDACTED]

Represented by:
Rechtsanwalt [REDACTED],
Leipzig, Germany

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel 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], née [REDACTED], born on [REDACTED] 1927 in Chemnitz (Germany). She is the daughter of [REDACTED] and [REDACTED], née

[REDACTED]. [REDACTED] was born on [REDACTED] 1884 in Chemnitz and died on 11th April 1951 in Birmingham (England); [REDACTED] was born on [REDACTED] 1899 in Berlin (Germany). [REDACTED] spent two weeks in so-called “protective custody” in early March 1933, and was allegedly seriously mistreated during that time. At the end of 1938 he was forced to sell his business making gloves and stockings, which was taken over by an “Arianiser” on 1st January 1939. In May 1939 the [REDACTED] family moved to Berlin to prepare to emigrate and emigrated to England in August 1939.

2. The Respondent is [REDACTED], the [REDACTED].
3. In September 2000 her representative submitted two claims to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which she claims that “[REDACTED]” in Munich and “[REDACTED]” in Stuttgart issued policies of life insurance to her father.
4. The ICHEIC forwarded the claims to [REDACTED] in Munich and [REDACTED] in Stuttgart as successors of the above named companies.
5. [REDACTED] informed the Appellant in a letter dated 26th April 2001 that it found an endowment insurance policy Number [REDACTED] taken out by the Appellant’s father, which, however, was compensated by a partial ruling of the compensation authorities in Hildesheim dated 1st August 1961.
6. [REDACTED] informed the Appellant in a letter dated 4th June 2003 that it found an entry in its central records, which shows that [REDACTED] took out a life insurance policy Number [REDACTED], which, however, was also the subject of the compensation procedure mentioned above (paragraph 5).
7. In the final decision letter issued on 27th June 2003 the [REDACTED] explains why the decisions about these two claims is within its competence and gives as reasons for the denial *“the German authorities have informed us that on 1st August 1961, all claims under [REDACTED] policy number [REDACTED] and [REDACTED] policy number [REDACTED] were settled under §§ 127-133 BEG. We enclose a copy of the part order of the head of government, Hildesheim, of August 1st, 1961 (cf. p. 12 et seq.).* A copy of this part ruling was sent with the final decision letter.
8. The Appellant’s representative submitted an appeal to the Appeals Office dated 30th June 2003, which the Appeals Office received on 7th August 2003.
9. The Appeals Office forwarded a copy of it to the Respondent.
10. [REDACTED] responded in a letter dated 2nd September 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to this claim and to confirm our decision”*.
11. On 4th September 2003 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 the date after receipt of this letter.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
13. In a telephone call on 2nd October 2003 the Appellant’s representative explained that he had made an error when completing the Appeal Form, which names claim numbers

[REDACTED] and [REDACTED]. He stated that [REDACTED] has paid out claim numbers [REDACTED] and [REDACTED], which were claims for policies issued to the Appellant's great-uncle, Dr. [REDACTED]. He further explained that the Appellant wishes to appeal against the decision made by the [REDACTED] with respect to her father's policies and these involve claim numbers [REDACTED] and [REDACTED].

14. 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 Panel Decision is made there.

THE CLAIM

15. The Appellant identifies [REDACTED] (claim number [REDACTED]) and [REDACTED] Stuttgart (claim number [REDACTED]) as the insurance companies that issued life insurance policies to her father [REDACTED].

16. Claim number [REDACTED]

- a) In section 4 concerning documents, which would substantiate the existence of the claim she writes, "*letter from the foreign exchange authority and [REDACTED]'s letter to Hildesheim of 7.9.1950*".
- b) In section 5 the Claimant provides the policy number [REDACTED] and states that the insured sum was RM 5000. She states that the policy was issued in 1st July 1927 with the date of maturity 01.07.1952. In answer to question 5.7 which asks if the Appellant is aware of any payments resulting from the insurance policy she writes, "*apparently, on 10.2.1939*". She states that a sum of RM 1,188 was paid to the foreign exchange authority.
- c) In section 6 the policyholder is identified as the Appellant's father. It is stated that he was self-employed with a company named '*[REDACTED] & Co.*'. This company made elastic bindings and all types of knitwear.
- d) In section 7 the insured persons are named as the Appellant's father and the Appellant.
- e) In section 8 the Appellant is identified as the beneficiary.

17. There is also a letter from [REDACTED] dated 21st September 1998 with a copy of the letter sent to the Regierungspräsident in Hildesheim dated 7th September 1960 referencing the terms of policy no. [REDACTED].

18. Claim number [REDACTED]

- a) In section 4 concerning documents the Appellant writes, "*letter to the foreign exchange authority*".

- b) In section 5 the policy number was given as [REDACTED], but the policy details were unknown. The Appellant answers the question, ‘*Has anybody approached the insurance company about the policy?*’ with ‘yes’.
 - c) In section 6 the policyholder is identified as [REDACTED], the Appellant’s father, born on 6th January 1894 in Chemnitz.
 - d) In section 7 the insured person is identified as the Appellant’s father.
 - e) No beneficiary is named in section 8.
 - f) The Appellant answers question 9 concerning compensation with ‘no’.
19. Two documents – a request from [REDACTED] dated 2nd January 1939 to the foreign exchange authority asking for permission to have the repurchase value of policies [REDACTED] with [REDACTED] and [REDACTED] with [REDACTED] transferred to his bank account with [REDACTED], and a positive response from the Supreme finance president dated 05 January 1939 concerning policy [REDACTED] only - were submitted with the Claim Form.
20. In a statement written on the back of the appeal form, received by the Appeals Office on 7th August 2003, the Appellant’s representative states, “*the exclusion of claims in all cases in which BEG proceedings have been previously conducted is improper and illegal...The remarkably minor payments under the BEG proceedings were financed by the German taxpayer. It is neither proper nor legally comprehensible why these payments should release the German insurance companies from the duty of handing over the vast financial profits made from the Jewish persecution. The decision therefore cannot continue to apply*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. In the final decision letter issued on 27th June 2003 the [REDACTED] states, “*the German authorities have informed us that on 1st August 1961, all claims under [REDACTED] policy number [REDACTED] and [REDACTED] policy number [REDACTED] were settled under §§ 127-133 BEG. We enclose a copy of the part order of the head of government, Hildesheim, of August 1st, 1961 (cf. p. 12 et seq.). A copy of this part ruling was sent with the final decision letter.*
22. The ‘*part ruling*’ was made on 1st August 1961 by the compensation authority in Hildesheim. In part V of this ‘*part ruling*’ with regards to ‘*loss of financial betterment*’ both policy no. [REDACTED] with [REDACTED] and policy no. [REDACTED] with [REDACTED] are identified.

In the translated version of this document it is written, “*for reasons of persecution, the testator was compelled to terminate his life assurance policies with [REDACTED] and [REDACTED] prematurely on 01.12.1925 and 01.09.1927 respectively*”. It appears that this translation is however incorrect since the German text specifies that the policies with [REDACTED] and [REDACTED] were taken out on 01.12.1925 and 01.07.1927 respectively and were not terminated on those dates.

The translated version continues, “he suffered loss of financial betterment other than social security, for which, had he survived, he would have been due lump sum compensation under §§ 127, 125 BEG. When calculated in accordance with the settlement statements of [REDACTED] and [REDACTED] of 06.12.1960 and 07.09.1960 respectively, this is as follows

1. [REDACTED] policy no. [REDACTED]

sum insured:	RM 10,000	
policy start date:	1.12.1925	
policy end date:	1.12.1958	
insurance benefits:		DM 3780

Less

premiums unpaid	DM 1497.36	
surrender value	<u>DM 224.15</u>	DM 1721.51
Balance		DM 2058.49

Plus

Long-term savers' compensation		DM 380.00
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4% interest on the sum of DM 380.00 for the period of 01.01.1953 – 30.06.1959		<u>DM 98.80</u>
Gives a total claim of		DM 2537.29

2. '[REDACTED]' policy no. [REDACTED] (sic. in the German version the number is [REDACTED])

Sum insured	RM 5,000	
Policy start date	01.07.1927	
Policy end date	01.07.1952	
Insurance benefits		DM 1250.00
Plus supplementary dividends		<u>DM 43.75</u>
		DM 1293.75

Less

Premiums unpaid	DM 756.82	
Surrender value	<u>DM 118.80</u>	DM 875.62
Balance		DM 418.15

Plus

Long-term savers' compensation		DM 215.00
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4% interest on the sum of DM 215.00 for the period of 01.01.1953 to 31.12.1958		<u>DM 51.60</u>
Gives a total claim of		DM 684.73

3. Summary

<i>Lump sum compensation VI section 1</i>	<i>DM 2537.29</i>
<i>Lump sum compensation VI section 2</i>	<i><u>DM 684.73</u></i>
<i>Gives lump sum compensation for loss of financial benefit totalling</i>	<i>DM 3222.02”</i>

23. In a statement issued by the [REDACTED] with regards to the appeal process dated 2nd September 2003 it writes, “We would respectfully ask the Panel to consider whether it has the appropriate subject matter jurisdiction for this case. Section 2.2 of the Appeal Guidelines states that ‘the Panel [...] shall have no jurisdiction over any of the following: 2.2.1 the validity of these Guidelines’. By challenging the applicability of former decisions rendered by German Restitution Authorities within the claims-handling process and decisions the Appellant is challenging the complete ‘Agreement’ between ICHEIC, the German Foundation and the [REDACTED], including the Appeal Guidelines which are an integral part of the ‘Agreement’... The Appellant does not question the fact that the policies have already been compensated on the decision of the Regierungspräsident Hildesheim (please see our decision dated 27 June 2003 with attachments that we enclose once again). His basic argument is that these policies should be compensated again. This has no legal basis, neither in the ‘Agreement’, nor in the German Foundation Law nor in the American-German Executive Agreement.”

THE ISSUES FOR DETERMINATION

24. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form. They are “related appeals” submitted by the same claimant but relating to different policies, namely an insurance policy issued by “[REDACTED]” and an insurance policy issued by “[REDACTED]”.
25. There is no doubt that the Appellant’s father had insurance policies with “[REDACTED]” in Munich and “[REDACTED]” in Stuttgart, that the Appellant as heir of her parents could be entitled to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as policies [REDACTED] and [REDACTED] are concerned, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from Foundation funds if;

- 17.3.4 the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority in accordance with section 2 (1) (c) of the Agreement.

The Respondent proved that the two policies were subject of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, inter alia, a “Teilbescheid” (part ruling) dated 1st August 1961, which records that the aforementioned policies were the subject of compensation proceedings under BEG law and as a result the Appellant’s mother received a compensation payment of in total DM 3222.02. Since this is the case, the two policies in question undoubtedly were covered by a decision of the compensation authority, and the Panel therefore, according to section 2.2.2 Appeal

Guidelines, lacks jurisdiction to reopen any claim with regard to such policies. The Appeals Panel moreover, according to 2.2.1 Appeal Guidelines, has, as the Respondent correctly pointed out, no power to challenge the validity of the Guidelines which the Appellant does when calling the exclusion of claims in all cases in which BEG proceedings have been previously conducted as “*improper and illegal*”: The Appeals Panel is bound by the Agreement and its Annexes.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 16th day of March 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member