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

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], born on [REDACTED] 1958 in Bratislava (Pressburg), Czechoslovakia (now Slovakian Republic). She is the granddaughter of [REDACTED] and

[REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1886 in Olomouc (Olmütz), Austria-Hungary (now Czech Republic) and died on 17th September 1941 in the concentration camp of Auschwitz; [REDACTED] was born on [REDACTED] 1894 in Olomouc and survived the Holocaust. [REDACTED] and [REDACTED] had three children, [REDACTED] and [REDACTED] and [REDACTED], née [REDACTED].

The Appellant has a co-claimant, who is her cousin [REDACTED], born on [REDACTED] 1948 and now living in Völs (Austria). [REDACTED] signed a power of attorney for the Appellant to represent her in this appeals procedure.

The Appellant also spells [REDACTED]'s name "*[REDACTED]*", but the signature of [REDACTED] on the above-mentioned power of attorney is "*[REDACTED]*".

2. The Respondent is [REDACTED].

3. The Appellant submitted several claims to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that several insurance companies, among those [REDACTED], issued policies of life insurance to her grandfather [REDACTED].

4. The ICHEIC submitted the claims to the German companies.

5. [REDACTED] informed the Appellant in its decision letter dated 28th July 2003 that it was "*able to identify the existence of a policy No.[REDACTED] of Mr [REDACTED] in our own records but also with the help of external files*". [REDACTED] further confirmed that it was "*able to find out that the a/m policy was kept by the Prague Office as liable to premiums up to 1941, i.e. your grandfather must have paid his premiums up to 1941"* and continued *"Further details are not available, mainly we were not able to find out ... as to how the Prague Central Office – being subject to "sequestration" by the Czech Government – has continued to work in each individual case. Thus your grandfather's policy constitutes an exception as the decision of the Olomouc District Court ... dd 14th August 1950 ... says that the Prague Central Office under sequestration was obliged to pay the insured sum of the policy on which you claim compensation in equal parts to the children of the late Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mrs. [REDACTED] née [REDACTED]. As this is a court decision we have to assume that the Central Office under sequestration has acted accordingly which is confirmed by the fact that your grandmother, Mrs. [REDACTED], has expressly refrained from a claim in the compensation proceeding initiated by her in 1959 with the Berlin Restitution office under file No. [REDACTED]. The "Agreement" between ICHEIC, the Foundation and [REDACTED] stipulates that a policy is not eligible for additional compensation if that specific policy had been subject-matter of a prior decision of a German restitution or compensation authority. We are confident that you will understand our decision not to submit an offer under the given circumstances and we cannot share your opinion with regard to the amount of the compensation awarded*".

6. The Appellant submitted an appeal to the Appeals Office dated 11th August 2003, which was accompanied by an attachment setting out the reasons for the appeal and was received on 18th August 2003. On 20th August 2003 the Office mailed a copy to the Respondent.

7. [REDACTED] responded in a letter dated 11th September 2003 and requested the Appeals Panel for reasons it had set out before to reject the appeal. It summarised its point of view as follows: "*Of course we are aware that this case and its circumstances are rather exceptional. Nevertheless, in view of the a/m reasons and failed investigations to obtain further information we see ourselves compelled to confirm our assessment and the resulting conclusion, i.e. not to consider the claim eligible for compensation according to the "Agreement*".

8. In a letter dated 27th February 2004 the Appeals Office asked the Appellant at the direction of the Appeals Panel to give more specific information about [REDACTED] and additional information about a letter dated 26th June 2003 from the "*Wiedergutmachungsämter von Berlin*" (the Berlin compensation authorities). A copy of this letter was forwarded to the Respondent, which was asked to answer the questions with regard to the afore-mentioned letter as well. In a further letter dated the same day the Berlin compensation authorities were also asked for explanations about its letter dated 26th June 2003.

9. The Appellant responded in a letter dated 1st March 2004, in which she explained that [REDACTED] is her cousin and that she is not aware of any (restitution) decisions taken in cases that are described as "*pending*" for [REDACTED], [REDACTED] and [REDACTED]. In this letter she confirmed once again that no compensation payments had been made to her family in the past.

   The Respondent informed the Appeals Panel in a letter dated 1st March 2004 that it has only the letter from the Berlin compensation authorities dated 26th June 2003 plus attachments (copies of index cards) and no additional information or documentation about the restitution procedure.

10. On 2nd March 2004 the Appellant provided a power of attorney from her cousin [REDACTED].

11. In a letter dated 16th April 2004 the Appeals Office reminded the Berlin compensation authorities that it was awaiting an answer to the letter, which the Office had sent on 27th February 2004 (see above paragraph 8). The Berlin compensation authorities informed the Appeals Office by letter dated 26th April 2004 that it had responded by letter dated 24th March 2004. It attached a copy of this letter, which the Appeals Office had not received. The letter dated 24th March 2004 was a covering letter for several copies of rulings issued by the Landgericht Berlin – Rückerstattungskammer - (District Court of Berlin – Restitution Department -).

12. On 14th May 2004 the Principal Legal Adviser of the Appeals Office inspected the above-mentioned rulings in the State Archive of Berlin. The rulings do not deal with compensation procedures for an insurance policy, which is the subject of this appeal.

13. On 16th 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.

14. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.

15. 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

16. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.

a) "*[REDACTED]*" is identified as the insurance company that issued a life insurance policy, no. [REDACTED].

b) In section four regarding '*documents*' the Appellant writes, "*a protocol of heritage of [REDACTED], deceased in Auschwiz on 17.09.1941. Done by the Nazi regime in Olomouc, Czech Rep. on 26.01.1942. Consist of names and numbers of life insurance policies and sums*".

c) In section five concerning policy specific details, the policy is identified as number [REDACTED]. In addition, the currency is identified as Czech crowns, with 30,000 given as the sum insured. The answer to question 5.10 states that all premiums were paid to the best of the Appellant's knowledge. The answer to question 5.11 is given as '*no*' to the question, "*has anybody approached the insurance company about this insurance policy?*".

d) In section six the policyholder is identified as [REDACTED], the Appellant's grandfather, born on [REDACTED] 1886 in Olomouc, Czech Republic, who died on 17th September 1941 in Auschwitz. She names living heirs of the policyholder as [REDACTED], née [REDACTED] of Innsbruck, Austria.

e) In section seven the insured person is identified as [REDACTED].

f) In section eight the beneficiary is identified as [REDACTED], née [REDACTED], born on [REDACTED] 1894 in Olomouc, Czech Republic, the Appellant's grandmother. [REDACTED] is again identified as a living heir of the beneficiary.

g) In the answer to question 9 regarding '*compensation*', the Appellant answers '*no*' and writes, " *did not have the knowledge of such a possible claim*".

17. In addition, the Appellant submitted the following documents of relevance to the present appeal:

a) Together with the claim form a copy of a document in Czech, dated 14th August 1950, was submitted. This document, according to the English translation, is a ruling from the Olomouc District Court with regards to [REDACTED]'s estate. The court establishes that [REDACTED]'s estate was in debt of 196,800 Crowns and states*:* "*The court is sending the records to the Tax Authority, stating that according to report no. [REDACTED] under [REDACTED], the inheritance duties were set at 38,430 CSK. This sum was paid and according to report no. [REDACTED], this estate was declared clear of duties. In light of the above and also due to the fact that any inheritance duties are covered by immovable assets, the court has issued the heirs with a certificate of assignment, which may, however, only be implemented in one year's time, unless the Tax Authority grants authorisation beforehand or unless it is confirmed that insurance duties will not be set on this estate. For the above reason, the court has informed '[REDACTED]', a State-run concern based in Prague, as the legal successor of the insurance companies below, that it may pay to '[REDACTED]' in Olomouc (= [REDACTED]) any amounts withheld as security for inheritance*

duties for bereaved children [REDACTED], [REDACTED] and [REDACTED], in equal shares of the sum insured:

a) [REDACTED] insurance company, Prague II, policy.: [REDACTED]
b) The above insurance company, policy no,: [REDACTED]
c) [REDACTED] insurance company, [REDACTED], Prague I, policy no.: [REDACTED]
d)
e) [REDACTED] insurance company, Prague Office, policy.: [REDACTED]
f) The above insurance company, policy.: [REDACTED]".

b) In the related claim, file number [REDACTED], there is an extract of a document issued on 26th January 1942. While the translated document is incomplete it does state that it is "*record of proceedings*" and identifies a life insurance policy with "*[REDACTED]*", inter alia, *"in Prague no. [REDACTED] (illegible)…30,000 Crowns.*" This document apparently has been sent by the Appellant; in a letter to the ICHEIC dated 27th April 2001 (again to be found on claim file number [REDACTED]) she writes, "*I have an original document – a list of properties of my grand father [REDACTED] confiscated by the Nazis – which shows the life policies…*".

18. The Appellant submitted a statement, dated 11th August 2003, as grounds for appeal in which she maintains that [REDACTED] is obliged to pay out the insurance benefit. She asserts that "*it is written in the court decision that [REDACTED] can pay the insurance which means is allowed to and not is obliged to.*" She continues, "*after the end of the war the [REDACTED] management in Prague was placed under receivership. As you are surely aware the communists confiscated property, left to the victims of war. It is therefore not to be accepted that the communist regime was interested in the receiverships of the insurance companies paying out on life insurances. It is not to be assumed that a life insurance was paid out because the life insurance policy was inherited and recognised in a court decision as an 'estate'* ". She also states that her family have never received the proceeds of a life insurance paid out by [REDACTED]. She finally mentions that "*[REDACTED]*" has paid out compensation and states, "*the above mentioned court decision was available to [REDACTED], however no false conclusions were drawn from it*".

19. The Appellant submitted a further statement to the Appeals Office dated 3rd September 2003 in which she addresses the '*compensation proceedings issue*' and states: "*one of your 'grounds' for refusing to reimburse the life assurance of my grandfather, [REDACTED], was that, in the compensation proceedings held before the reparations office in 1959 under reference [REDACTED], my grandmother 'expressly waived claiming loss of policy damages'. This, you write, should confirm that your belief that the money had already been paid out is correct. You furnished copies of your correspondence with the Berlin reparations office at my request. These copies show that my grandmother claimed compensation for my murdered grandfather for jewellery, securities and* ***policies. My grandmother could not claim any life assurance for herself as the life assurance policies were taken out in the name of my grandfather!*** *[emphasis in the original] My grandmother was alive in 1959. It would therefore appear that these grounds for rejecting my application are also irrelevant*".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

20. In addition to the above (paragraph 5) already mentioned decision letter dated 28th July 2003 the Respondent provided the following information in the above (paragraph 7) mentioned letter dated 11th September 2003: "*The transfer of [REDACTED]'s Czech subsidiary as per the Government decree dd 19th May 1945 into government's sequestration also entailed that all documents had to remain in Prague. We know from our investigations and their findings that the business activity was continued locally and under stated control which also applied to the period after 1st January 1947 when – after the reorganization of the Czech insurance system – the '[REDACTED]' ('[REDACTED]') took over the insurance portfolio of [REDACTED] in Prague and thus all rights and liabilities resulting from the relevant policies. The fact that a precise court's decision with regard to this issue could be made on 14 August 1950 in which not only 18 March 1942 plays an important role, but also 27 August 1947, leads to the conclusion that the plaintiff were able to submit documents to the court which made the decision possible in its contents. Mrs [REDACTED], who is mentioned in the court's decision dd 14th August 1950 as a legal heir was able to protect her interests in 1959 by initiating compensation proceedings which was kept with the Restitution Office in Berlin under file no. [REDACTED]. As evidenced by the information obtained (see encl.2)* [letter from the Wiedergutmachungsämter von Berlin dated 26th June 2003] *the assertion of an insurance loss was refrained from which also speaks in favour of the implementation of the court's decision dd 14th August 1950*".

THE ISSUES FOR DETERMINATION

21. There is no doubt that the Appellant's grandfather had an insurance policy with the policy number [REDACTED] issued by [REDACTED] and that the Appellant and her cousin [REDACTED] as heirs of their parents, who were heirs of their, the Appellant's and [REDACTED]'s, grandparents could be entitled to the proceeds of this policy. There are also no doubts that the Appellant's grandfather [REDACTED] was a Holocaust victim. Therefore the Appellant's and her cousin's claim is in general under the scope of the Agreement dated 16th October 2002.

22. The main issues for determination are whether there is a still unpaid insurance claim and whether the Respondent succeeded in establishing a valid defence in accordance with the Agreement. Where the Appellant – as is the case in this appeal – pursuant to section 17.2 of the Appeal Guidelines has made plausible the existence of an insurance contract within the meaning of the Agreement the relevant German company pursuant to section 17.3 of the Appeal Guidelines may enter a defence in accordance with the Agreement under the same relaxed Standards of Proof. The Appellant is not entitled to payment if:

    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.

23. The Panel concluded that the insurance policy in question was paid as required by the insurance contract. By applying the Relaxed Standards of Proof it seems plausible that the insurance policy, which is subject of this appeal, was settled by paying out the proceeds to the beneficiary. The ruling issued by the Olomouc District Court dated 14th August 1950 is important. It states that "*the court has informed '[REDACTED]', a state-run concern based in Prague, as the legal successor of the insurance companies specified below* (amongst them [REDACTED])*, that it may pay to '[REDACTED]' in Olomouc any amounts withheld as security for inheritance duties for the bereaved children [REDACTED] ..., [REDACTED] and [REDACTED], in equal shares of the sum insured*". In this ruling it was further stipulated that "*the court has issued the heirs with a certificate of assignment, which may, however, only be implemented in one year's time, unless the Tax Authority grants authorisation beforehand or unless it is confirmed that insurance duties will not be set on this estate*". Even if such a ruling might be unusual for the time, there is no reason to believe that such a court ruling would not have had any consequences with regard to payments, especially since these proceeds were only withheld as a security for inheritance duties; and, according to the court ruling, immovable assets were substituted in their place as security. The Appellant's assertion that she is not aware of any payments resulting out of the insurance policy cannot be accorded great weight since the relevant events occurred before she was born or when she was very young.

24. The second reason supporting the Appeals Panel's conclusion is that the later restitution proceedings explicitly did not cover the insurance policy in question or insurance policies at all. The Respondent's argument that the Appellant's grandmother refrained from claiming for compensation for the loss of proceeds of the insurance policy/ies in a [REDACTED] procedure, makes it more plausible that those proceeds were indeed paid out, since there is no indication whatsoever that there was another reason for [REDACTED] not to claim for losses of insurance policy proceeds.

    The Appellant's assertion that copies of the compensation procedures documents, which the Respondent disclosed, "s*how that my* (the Appellant's) *grandmother claimed compensation for my* (the Appellant's) *murdered grandfather for jewellery, securities and* ***policies***" is in no way confirmed by the content of the restitution and compensation files. The word "*Polizzen*" (insurance policies) on the index card for the restitution proceeding "*[REDACTED]*" only appears under the name of [REDACTED] (described as "*Gesch.*", which means "*injured party*") whereas this word under the name of [REDACTED] (described as "Ast", which means "*applicant*") is left out from the list of lost assets. This confirms the assumption that the policies for a specific reason, namely payment, were not included among the subjects of an all-embracing restitution proceeding by [REDACTED]. The complete files of the restitution proceedings consequently do not contain anything connected to insurance policies. This conclusion seems plausible, because following the Czech court ruling, there remained no justification for a restitution claim with regard to the policy/ies.

    The Appellant's statement that her "*grandmother could not claim any life assurance for herself as the life assurance policies were taken out in the name of my* (the Appellant's) *grandfather*" and that her "*grandmother was alive in 1959*" is not convincing and seems to be based on a misunderstanding. According to the Appellant's statements, the policyholder and insured person was the Appellant's grandfather [REDACTED], whereas beneficiary was her grandmother [REDACTED]. Since the policyholder and insured [REDACTED] died in 1941 and her grandmother [REDACTED], the beneficiary, lived until 1959 this is exactly the situation, where her grandmother (as beneficiary) could have claimed the proceeds of a life insurance policy taken out by the deceased grandfather. Only if her grandmother would have been the insured person, i.e. the one whose life was insured, would she have been prevented from claiming the proceeds of the policies.

25. That [REDACTED] recently has made payments with regard to its policies is, contrary to the Appellant's reasoning, not relevant to the Appeals Panel's decision in this case. This is especially true, since the reasons for [REDACTED]'s decision are unknown. It is also unclear whether [REDACTED] was aware of the details of the restitution proceedings.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

_____	_____	_____
Timothy J. Sullivan	Rainer Faupel	Abraham J. Gafni
Chairman	Panel Member	Panel Member