

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 NUMBERS: [REDACTED]

[REDACTED]

BETWEEN

[REDACTED] AND [REDACTED]

APPELLANTS

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 Appellants are [REDACTED], born on [REDACTED] 1926 in Ulm, Württemberg (Germany), and [REDACTED], born on [REDACTED] 1928 in Ulm. They are the daughters of Dr. [REDACTED] and [REDACTED], née [REDACTED]. Dr. [REDACTED] was born on [REDACTED] 1887 in Ulm and died on 22nd March 1975 in New Orleans (United States of America); [REDACTED] was born on [REDACTED] 1905 in

Ludwigsburg, Württemberg (Germany) and died on 10th September 1983 in New Orleans. Dr. [REDACTED], a lawyer, was self-employed until 1936 when the Nuremberg Laws banned him from the practice of his profession. Two years earlier he had been awarded the honorary cross for front-line soldiers by a decree issued by Field Marshal von Hindenburg on 13th July 1934, which was established to honor combat veterans of World War One. Following “*Reichskristallnacht*” in November 1938 he was arrested and later became an ombudsman between the Jewish Community and the Gestapo. On 20th March 1939 the [REDACTED] family emigrated to the United States.

2. The Respondent is [REDACTED].
3. The Appellants submitted claim forms dated 26th June 2000 and 12th July 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which they claim that a company, which they could not name issued policies of life insurance. [REDACTED]’s claim was given claim number [REDACTED]; [REDACTED]’s claim was given claim number [REDACTED].
4. The ICHEIC submitted the claims to the [REDACTED]-companies and the German companies.
5. [REDACTED] informed both Appellants in letters dated 27th December 2000 and 8th February 2000 that it had checked its central register on the basis of the following data: - Dr. [REDACTED], born on [REDACTED] 1887 in Ulm; - Mrs. [REDACTED], née [REDACTED], born on [REDACTED] 19085 in Ludwigsburg; - Mrs. [REDACTED], born [REDACTED] 1928 in Ulm. In the letter dated 27th December 2000 they informed [REDACTED] that they also had checked her name ([REDACTED, née [REDACTED] [REDACTED], born [REDACTED] 1926 in Ulm). [REDACTED] continued: “*We regret, no entries exist in the register for yourself, Mrs. [REDACTED] or Mrs. [REDACTED]. For this reason we know that no life insurance contract for yourself or your family members existed with us. Our central register does contain an entry for Dr. [REDACTED]. This means that Dr. [REDACTED] had applied for life insurance coverage with [REDACTED]. Based on the application numbers, we have searched for corresponding files in our archives. Unfortunately, no such files exist. However, on account of the fact that during the war a substantial part of our files was destroyed, this is not unusual*”. [REDACTED] described further research and announced that it would inform the Appellants immediately after having obtained information concerning their cases.
6. In further letters dated 10th August 2001 [REDACTED] admitted issuing policies [REDACTED] and [REDACTED] to the Appellants’ father. However, it denied the claims producing compensation and restitution authority archive evidence in the form of, among others, two decisions which record that these policies were the subject of compensation proceedings under the BEG law, and that as a result the Appellants’ father received a total compensation payment of DM 1185.12 for policy numbers [REDACTED] and [REDACTED].
7. The Appellants submitted an appeal to the Appeals Office dated 14th September 2003, which the Appeals Office received on 2nd October 2003. In this appeal the reasons for the appeal were set out and copies from the claims procedure were attached.
8. When checking the claim files the Appeals Office realised that [REDACTED] had not yet made a final decision. The final decision was made in its letter dated 19th December 2003.

9. In a letter dated 13th January 2004 the Appeals Office advised the Appellants that they had filed an appeal before a decision had been made and asked them to re-file their appeal.
10. On 27th January the Appeals Office received a further appeal form dated 20th January 2004 from [REDACTED]; on 2nd February it received an appeal form dated 27th January 2004 from [REDACTED].
11. The Appeals Office mailed copies of these two appeal forms to the Respondent on 2nd February 2004.
12. [REDACTED] responded in a letter dated 19th February 2004 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 on it*”.
13. On 27th April 2004 the Appeals Office informed the parties that the appeal would 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 Appellants have submitted the following information in relation to the claim for the proceeds of a life insurance policy in their claim forms:

Claim [REDACTED] – [REDACTED]

- a) The Appellant did not identify an insurance company in the claim form.
- b) In section four regarding “*documents*” the Appellant writes: “*I was ten years old when we luckily got out of Germany. This kind of information was not discussed with children*”.
- c) She is unable to provide any policy specific details.
- d) She identifies the policyholder as Dr. [REDACTED], her father, who was born on [REDACTED] 1887 in Ulm, Germany.
- e) The insured persons are identified as [REDACTED] and [REDACTED], her parents. Her mother was born on [REDACTED] 1903.
- f) The beneficiaries are identified as [REDACTED], who is deceased, and [REDACTED] [REDACTED] [REDACTED] and [REDACTED].

- g) In section nine the Appellant has answered “yes” to the question of whether compensation proceedings have occurred and she writes: “Wiedergutmachung – I vaguely remember receiving a few hundred dollars and only maybe 40 or more years ago”.

Claim [REDACTED] – [REDACTED] [REDACTED]

[REDACTED]’s sister, [REDACTED] [REDACTED] born [REDACTED] 1926, submitted a claim form and provided the same information as her sister.

17. In their appeal forms both Appellants write: “I am assuming based on your original report that my father received part of his life insurance. I knew nothing about this. Now I feel that I – his heir – should receive the remainder of his life insurance plus interest. I also feel he must have had a professional insurance”. [REDACTED] writes in her appeal form, received by the Appeals Office on 2nd February 2004, “I understand that my father got a portion of his insurance long ago. I’m appealing, therefore to retrieve the remainder of his life insurance plus interest. Being an attorney in Germany, he probably also carried professional insurance. This is the second reason for the appeal”.

[REDACTED] adds in her appeal form, received by the Appeals Office on 27th January 2004, “I am assuming based on your original report that my father received part of his life insurance. I knew nothing about this. Now I feel that I – his heir – should receive the remainder of his life insurance plus interest. I also feel he must have had a professional insurance.”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. In its letter dated 10th August 2001 [REDACTED] writes, “within the framework of the German State compensation procedure, your father received a compensation payment in the amounts of DM 1062.12 (# [REDACTED]) and DM 123.00 (# [REDACTED]) for the losses from the life insurance due to persecution. Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims, which have remained unsettled so far. However, this does not apply to your father’s life insurance contracts as the surrender values were paid out and the policies were compensated in the course of the compensation proceedings”.

19. The Respondent provided copies of the following documents in response to a letter the Appeals Office sent on 2nd February 2004, requesting copies of all correspondence relating to the claim:

- a) A letter from [REDACTED] to the compensation authorities of Stuttgart dated 16th February 1954 referencing policies [REDACTED] and [REDACTED] that reads:”

[REDACTED]

[REDACTED]

The main policy details were as follows:

Sum insured	RM 10,000	RM 7500:
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<i>Policy started</i>	<i>01.11.24</i>	<i>01.05.28</i>
<i>Expiry date</i>	<i>01.11.49</i>	<i>01.05.73</i>
<i>Dr. [REDACTED] paid premiums up to</i>		<i>31.10.38</i>
<i>31.10.38</i>		

The sums insured would have been paid to the insured if he survived; in the event of his death, Dr. [REDACTED] appointed his statutory heirs as beneficiaries under policy [REDACTED] and his wife as beneficiary under policy [REDACTED].

Our policyholder terminated the policies on 11.08.1938; we paid the redemption values

<i>RM 3973.50</i>	<i>RM 1230.00</i>
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to Dr. [REDACTED]'s postcheque account as instructed on 21.09.1938 on receiving the signed notices of redemption on 20.09.1938".

This document calculates the unpaid premiums for the period 01.11.1938 to 31.10.48 as DM 361.61 for policy [REDACTED] and as DM 499.70 for the period 01.11.48 to 31.10.49, which totals DM 861.31.

- b) A ruling by the compensation authority of Stuttgart dated 27th July 1957. The Appellants' father is awarded compensation for losses arising out of insurance policies taken out with [REDACTED] (no. [REDACTED]) and with [REDACTED] (no. [REDACTED]). The calculations for policy [REDACTED] under § 128 para. 1 BEG are as follows: “

<i>Sum insured</i>	<i>RM</i>	<i>10,000</i>	
<i>converted to</i>			<i>DM 1,540.00</i>
<i>At a premium reserve of RM 66.00 per RM 100.00</i>			<i>DM 660.00</i>
<i>sum insured, long-standing savers' compensation</i>			<i>DM 120.78</i>
<i>Plus 4% interest from 1.1.1953 to 27.07.1957</i>			<i>DM 2,320.78</i>
<i>Less redemption value</i>			
<i>converted on the ratio</i>			
<i>of 10:1</i>	<i>DM</i>	<i>397.35</i>	
<i>Less premiums unpaid</i>	<i>DM</i>	<i>861.31 =</i>	<i>DM 1,258.66</i>
			<i>DM 1,062.12</i>
			<i>=====</i>

Further calculations are made for policy [REDACTED] under § 128 para. 3 BEG.

<i>“Redemption value</i>	<i>RM</i>	<i>3,973.50</i>	
<i>converted in the ratio</i>			
<i>of 10:2 to</i>			<i>DM 794.70</i>
<i>Less the sum of</i>	<i>RM</i>	<i>3,973.50</i>	
<i>which the insurers paid to</i>			
<i>the applicant, converted in</i>			
<i>the ratio of 10:1</i>		<i>=</i>	<i>DM 397.35</i>
			<i>DM 397.35</i>
			<i>=====</i>

The compensation under the provisions of § 128 para. 1 BEG was more favourable in both cases, and was therefore set at

DM 1,062.12 and [for policy number [REDACTED]]

DM 1,192.14

Giving a total of DM 2,254.26”.

- c) A second decision of the compensation authority of Stuttgart of 10th February 1958 relates to policy [REDACTED] concluded with [REDACTED]. The amount of compensation calculated under § 128 para. 3 BEG for this policy was DM 123.00. The instruction of payment is stamped on the front page with the date 21st February 1958.

THE ISSUES FOR DETERMINATION

20. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement) to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in separate appeal forms. They are “*related appeals*” submitted by the two Appellants but relating to the same policies, namely two life insurance policies and a non-life insurance policy (“*professional insurance*”).
21. There is no doubt that the Appellant’s father had several insurance policies with [REDACTED], and that the Appellants as heirs of their parents could be entitled to the proceeds of these policies. All family members were Holocaust victims. The Appellant’s father, who was awarded an honorary cross for front-line soldiers World War One was banned from his profession thus deprived of his livelihood. The family lost its assets and finally had to flee Germany. The claims of the Appellants are within the scope of the Agreement. However, as to policies [REDACTED] and [REDACTED], the Respondent has succeeded in establishing a valid defence. 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.
22. The Respondent proved that the two policies [REDACTED] and [REDACTED] were the subjects of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of two “*Bescheide*” (decisions) dated 27th July 1957 and 10th February 1958, which record that the afore-mentioned policies were the subjects of compensation proceedings under BEG law and as a result the Appellant’s father received a compensation payment of in total DM 1,185.12. 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 consider claims in respect to such policies.
23. As to “*professional insurance*” a further issue for determination is whether the Appellants have met their burden of proof in conjunction with section 2 (2) of the Agreement and section 1.3 of the Appeal Guidelines in so far as the Appellants are claiming the proceeds of a non-life insurance policy.

24. The Relaxed Standards of Proof require that the Appellant establish that a non-life insurance policy issued by a German insurance company was in force between 1st January 1920 and 8th May 1945 and has become due because of the occurrence of the insured risk.
25. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish the existence of a policy is a heavy one. 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 that a policy was issued by the company
26. The Panel is not persuaded that the Appellants have met their burden of proof that [REDACTED] issued "*professional insurance*" to their father in addition to the life insurance policies. Such a policy was not mentioned in their claim forms. The first assertion of the existence of such a policy was made in the appeal form. The Appellants themselves noted that they only "*believe that he would have had professional insurance as well*". [REDACTED] writes in her appeal form that "*he **probably** (emphasis added) also carried professional insurance*".

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 8th day of July 2004

The Appeals Panel

Timothy J. Sullivan
Chairman
Signing on behalf of all the
Members of the Appeals Panel

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member