

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

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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]
[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], née [REDACTED], born on [REDACTED] 1912 in Usti nad Labem (Aussig, former Austria-Hungary, now Czech Republic). She was married to [REDACTED] who was born on [REDACTED] 1909 and died on 4th October 1945; she is the daughter-in-law of [REDACTED] and [REDACTED].

[REDACTED] was born on [REDACTED] 1882 in Dresden (Germany) and died on 16th June 1947 in London. From approximately 1920 until 1939 he lived in Usti nad Labem before he had to flee to England. [REDACTED] was self employed and a partner of a business in Usti nad Labem, called “[REDACTED]”, a wholesale dealer in iron, petrol and building materials, chemical products and the like. [REDACTED] died on 10th January 1951.

[REDACTED] and [REDACTED] had three children, [REDACTED], [REDACTED] and [REDACTED].

[REDACTED] and [REDACTED], his widow, had two children, [REDACTED] and [REDACTED].

2. The Respondent is [REDACTED].
3. The Appellant submitted - among others not relevant in this appeal - two claims dated 21st July 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued policies of life insurance (numbers [REDACTED] and [REDACTED]). The ICHEIC processed these claims under the application numbers [REDACTED] and [REDACTED].
4. The ICHEIC submitted the claims to the Respondent. [REDACTED] stated in its decision letter dated 24th June 2003 “*we are pleased to inform you that we are willing to offer you, within the framework of the [REDACTED] and ICHEIC procedures, a voluntary payment in the amount of USD 20,116.90 on the policy n. [REDACTED] (ICHEIC claim n. [REDACTED]) ... On the other hand, the ICHEIC claims n. [REDACTED] and n. [REDACTED], related to Mr. [REDACTED]’s policies n. [REDACTED] and n. [REDACTED], are hereby finally declined, as these two policies have been already compensated by the German compensation authorities*”.
5. The Appellant submitted an appeal to the Appeals Office dated 15th July 2003, which was accompanied by an attachment setting out the reasons for the appeal. The Appeals Office received this appeal on 21st August 2003 and mailed a copy to [REDACTED] on 1st September 2003.
6. [REDACTED] responded in a letter dated 26th September 2003 and requested the Appeals Panel for reasons it had set out before to “*immediately dismiss the claimant’s appeal, in the light of the absolute lack of jurisdiction over it*”.
7. On 26th 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.
8. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.

9. 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

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

a) Claim Form no. [REDACTED]

- (i) She identifies [REDACTED] Prague as the insurance company that issued a life insurance policy.
- (ii) She states that the life insurance policy was purchased in Prague, Czechoslovakia and in answer to question 4 regarding ‘documents’ and ‘premium payments’ she writes, “Amount only. No document.” She submits copies of “1. Document signed [REDACTED] 10/06/1939. 2. Document signed [REDACTED] 15/09/1950”.
- (iii) In section 5 the Appellant identifies the policy number as “[REDACTED]”, with an insured amount of 50,000 Czech Crowns. She asserts that the policy was issued on 1st January 1926, with the date of maturity of 1st January 1941. She indicates that a policy loan of Kc 23,814 was taken out. Furthermore, she states that the amount of premium was Kc 39.125. She asserts that all premiums were paid to the best of her knowledge. In answer to the question “why were the payments stopped ?” she writes, “It may have been a single payment. Otherwise war or political conditions”.
- (iv) In section 6 the Claimant identifies the policyholder as her father-in-law, [REDACTED], who was born on [REDACTED] 1882.
- (v) In section 7 the Appellant identifies the insured person as her father-in-law.
- (vi) No beneficiary is named in section 8.
- (vii) In section 9 concerning “compensation” the Appellant crosses “yes” and explains “Foreign Compensation Commission, London. No payment received. I am not sure why not, but I believe that documents were required which were not available”.
- (viii) In section eleven relating to ‘further information’ the Claimant summarises the policy details.

b) Claim Form no. [REDACTED]

- (i) The Appellant provides the same details as shown above and gives specific details about that policy as follows:
- (ii) The policy number is identified as “[REDACTED]”, with an insured sum of 250,000 Czech crowns, issued on 1st July 1934 and maturing on 1st July 1947. She indicates that a loan of Kc 59,520 was taken out against the policy, and that the amount of premium paid was Kc 109,874.

11. In the Appeal Form submitted by the Appellant dated 15th July 2003, she accepts that the German Authorities compensated the policy numbers [REDACTED] and [REDACTED], but believes that the amount received was inadequate.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

12. In its decision letter dated 24th June 2003 [REDACTED] writes, “... *the ICHEIC claims n. [REDACTED] and n. [REDACTED] related to Mr [REDACTED]’s policies n. [REDACTED] and n. [REDACTED], are hereby finally declined, as these two policies have been already compensated by the German compensation authorities. In case you lost the related documentation, you can find herewith attached a copy of it*”.
13. The Respondent provides further comments in its letter of 26th September 2003. [REDACTED] writes, “*this system is very clearly intended to offer a chance of compensation only with respect to policies which have not already been compensated, particularly by the post-war German compensation Authorities. I would simply recall both the Foundation Law [sec.9 (4) n. 3] and the tripartite Agreement Foundation-ICHEIC-[REDACTED] (Sec. 1 ‘Scope of the Agreement’: ‘to compensate...no otherwise compensated insurance policies’; Sec. 2,(1), c: ‘ A claim is eligible for compensation if the policy in question was not covered by a decision of a German restitution or compensation authority’. Furthermore the same Appeal Guidelines (Annex E to the tripartite Agreement) state – Sec. 2.2.2 (Jurisdiction) -: ‘The Panel...shall have no jurisdiction over any...claims concerning policies which are considered to have been covered by a decision rendered by a German restitution or compensation authority.’ Sec. 17.3.4 of the Appeal Guidelines confirms that ‘the claimant is not entitled to payment from the Foundation funds if...the policies in question are considered to have been covered by a decision of a German restitution or compensation authority*”.
14. Attached to the decision letter dated 24th June 2003 were the following documents:
- a) Two letters from the Compensation office to the lawyer Dr. [REDACTED] dated 24th October 1968 (this date is difficult to read), and 23rd July 1982. The first letter refers to life insurance policy number [REDACTED] and states “*in the light of a memorandum which the successor company in law informed me that only premiums of Kc. 5933 were paid on this policy for the period 01.03.1938 to 01.03.1939.*” The second letter identifies the applicants as ‘[REDACTED] née [REDACTED], [REDACTED] and [REDACTED]’ and states, “*your letter above enclosed a photocopy of the notice from the compensation office here of 24.10.1968, concerning amongst other things the loss of a claim under the life assurance policy of [REDACTED] not yet due, pol. No. [REDACTED], taken out with [REDACTED], Prague office...as the veritable amount in this case is only RM 395.58 and hence below the trivial amount of RM 500.00 (cf. § 8 para. 2 section 5 FG), we must await the formal decision in joint proceedings on the loss of the business assets of [REDACTED], Aussig, [REDACTED], by the compensation office of the district council, [REDACTED] Starnberg*”.
 - b) A full ruling from the City of Aachen compensation office dated 21st March 1988. In this ruling specific reference is made to policy numbers [REDACTED] and [REDACTED], which are the subject of this appeal. An extract from the English translation is as follows:

“Under § 31 of the ‘Feststellungsgesetz (FG), the compensation office of the City of Aachen is responsible for establishing the uniform losses under the enacting regulations on local jurisdiction of compensation offices as currently enacted. The beneficiaries under the application (II nos. 1 to 4) have applied as the heirs to the directly injured party for compensation for expulsion as follows:

- 1) *Business assets – [REDACTED], Aussig, [REDACTED]
Wholesale dealer in iron, petrol and building materials, chemical products and the like*
- 2) *Pecuniary private law Claims under six life assurance policies with*
 - a) *[REDACTED] Prague – Policy no. [REDACTED]*
 - b) *[REDACTED], Prague, policy no. [REDACTED]*
 - c) *‘[REDACTED]’ insurance, policy no. [REDACTED]*
 - d) *[REDACTED], Prague
– policy nos. [REDACTED] and [REDACTED]*

The Starnberg compensation office has already ruled on claim 1) in uniform proceedings under its ruling of 02.03.1983.

We refer to the grounds for this ruling. This full ruling settles the losses in 2)...”

The Valuation under BeWG (“Bewertungsgesetz” – Valuation Law) and FG (“Feststellungsgesetz” – Assessment Law) references the [REDACTED] policies as follows:

<i>“5) With [REDACTED], Prague, no. [REDACTED]</i>			
<i>Premiums paid:</i>	<i>Kc</i>	<i>109,874.00</i>	
<i>Less Loan:</i>	<i>Kc</i>	<i><u>59,520.00</u></i>	
<i>Determined as in 1</i>			
<i>Kc. 50,354.00 = RM</i>	<i>5,035.40</i>	<i>3:2</i>	<i>RM 3,356.93</i>
<i>6) With [REDACTED]t, Prague, no. [REDACTED]</i>			
<i>Premiums paid:</i>	<i>Kc.</i>	<i>39,125.00</i>	
<i>Less Loan</i>	<i>Kc.</i>	<i><u>23,814.00</u></i>	
	<i>Kc.</i>	<i>15,311.00</i>	
<i>Determined as in 1</i>			
<i>Kc. 15,311 = RM</i>	<i>1,531.10</i>	<i>3 x 2 = 2</i>	<i><u>RM 1,020.73</u></i>
		<i>Total</i>	<i>RM 4,377.66</i>
		<i>Carried over total p. 1</i>	<i>RM 7,741.91</i>
		<i>Total value of losses</i>	<i><u><u>RM 12,199.57”</u></u></i>

THE ISSUES FOR DETERMINATION

15. 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 life insurance policy number [REDACTED] and life insurance policy number [REDACTED].

16. There is no doubt that the Appellant’s father-in-law, [REDACTED], had insurance policies with [REDACTED]. However, pursuant to section 17.2.2 and in accordance with the Agreement, to succeed in an appeal the Appellant must establish that it is plausible that she is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1) (d) of the Agreement and pursuant to the Succession Guidelines (Annex C).
17. The Panel concludes that the Appellant is not entitled to the proceeds of the policies. The decision made by the Compensation authority of the City of Aachen on 21st March 1988 is addressed to the Appellant, but names four beneficiaries: [REDACTED], [REDACTED] née [REDACTED], [REDACTED] and [REDACTED]. It is established in the decision that [REDACTED] and [REDACTED] were the children of [REDACTED], and [REDACTED] and [REDACTED] were his grandchildren.
18. Moreover, even if the Appellant had been entitled, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to section 7.3 of the Appeal Guidelines the Appellant is not entitled to payment from the 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.
19. The Respondent proved that policies, numbers [REDACTED] and [REDACTED], were the subjects of a compensation proceeding (admitted by the Appellant), by providing compensation and restitution authority archive evidence in the form of a ‘Bescheid’ (ruling) dated 21st March 1988, which shows that the afore-mentioned policies were the subject of a compensation proceeding pursuant to §§ 17 (3), 20 FG (Feststellungsgesetz). As a result the beneficiaries, [REDACTED], [REDACTED] née [REDACTED], [REDACTED] and [REDACTED] were awarded RM 4377.66 for policies [REDACTED] and [REDACTED].
20. The Panel notes the Appellant’s remarks that the amount of compensation was inadequate. However, with regard to claims which are considered to have been covered by a decision rendered by a German restitution or compensation authority the Panel lacks jurisdiction (Section 2.2.2 Appeal Guidelines); therefore, the Panel lacks the authority to reconsider the fairness of the award so entered.

Appellant: [REDACTED] [REDACTED], [REDACTED]	Appeal No.: [REDACTED]	Claims Nos.:
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THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed

Dated this 18th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member