

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]

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], née [REDACTED], born on [REDACTED] 1932 in Ludwigshafen am Rhein (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. Her father was born on [REDACTED] 1896 in Beuthen (Germany) and died on 16th May 1957. Her mother was born on [REDACTED] 1905 in Ludwigshafen and died on 16th February 1994. The family fled to the United States to escape persecution by the National Socialist Regime.

The Appellant’s mother, [REDACTED], née [REDACTED], is the daughter of [REDACTED] and [REDACTED], née [REDACTED].

The Appellant is the great niece of [REDACTED], the brother of her grandmother [REDACTED], née [REDACTED], who was born on [REDACTED] 1883.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 10th January 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued a policy of insurance.
4. The ICHEIC submitted the claim to [REDACTED]. In its decision letter dated 7th August 2003 [REDACTED] states, *“however, these documents contain information concerning a contractual relationship with Mr [REDACTED]. Though, these documents contain a slightly differing date of birth we assume that the documents can be allocated to your great uncle. Thus, we know that your great uncle concluded a life insurance contract with the number [REDACTED] with the [REDACTED], which was later taken over by [REDACTED]... Fortunately, we were able to trace the remainder file for the life insurance number [REDACTED], commencing April 1, 1932 with a sum insured of RM 1.068, - and an insurance term of 36 years. As of February 1, 1939, no premium payment was made for this contract. In 1939 Mr [REDACTED] cancelled the contract and the surrender value in the amount of RM 140.05 was paid out to Mr [REDACTED] [REDACTED] in 1939. Since the file reveals that compensation proceedings took place we have contacted the German State Compensation and Restitution authorities... Mr [REDACTED]’s life insurance had indeed been compensated in the course of compensation proceedings by the compensation authority in Wiesbaden. Within the framework of the German State compensation procedure, Mrs [REDACTED], née [REDACTED], Mrs [REDACTED], née [REDACTED], [REDACTED] and Mr [REDACTED] received as a community of heirs of Mr [REDACTED] a compensation payment in the amount of DM 120.64 for the losses from this life insurance number [REDACTED] 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 Mr [REDACTED]’s life insurance as the policy was compensated in the course of compensation proceedings.”*
5. The Appellant submitted an appeal to the Appeals Office, which was not dated. It was received at the Appeals Office on 22nd January 2004. A statement setting out her reasons for the appeal accompanied her appeal form. The Appeals Office sent a copy of the appeal to [REDACTED] on 12th February 2004. The delay in processing the appeal was due to the difficulty in obtaining a copy of the final decision letter.
6. [REDACTED] responded in a letter dated 20th 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.”*
7. On 23rd March 2004 the Appeals Office informed both parties that the appeal will be decided 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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the Decision is made there.

THE CLAIM

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

- a) In section three the Appellant indicates that she does not know the name of the company that issued the insurance policy and writes, "*it may be [REDACTED] insurance.*"
- b) In section four regarding "*documents*" the Appellant writes, "*see enclosed family tree for [REDACTED]. He was my mother's uncle. She was born to [REDACTED] [REDACTED].*"
- c) No information is provided in section five about the insurance policy.
- d) In section six the policyholder is identified as [REDACTED], her great uncle, who was born on [REDACTED] 1883. [REDACTED], the Appellant's cousin, is identified as a living heir of the policyholder.
- e) In section seven [REDACTED] is identified as the insured person.
- f) The Appellant does not know the name of the beneficiary, but states that [REDACTED]'s wife was called [REDACTED], née [REDACTED].
- g) In section nine which asks whether the Appellant or anybody else has participated in any compensation or restitution procedure for this claim the Appellant ticks the boxes "yes" and "don't know" and writes, "*I did receive DM 5,000 in 1962 for education.*"
- h) In section eleven regarding "*further information*" the Appellant writes, "*I am attaching a family tree information and any papers I have that would help you. If you need more please let me know at once. My mother's mother was [REDACTED]. This is her brother*".

11. With her claim form the Appellant submitted much documentation relating to her immediate and extended family, amongst these documents were:

- a) A certificate awarding her father, [REDACTED], the "*Ehrenkreuz*" (cross of honour) in recognition of his service during the First World War;
- b) A "*Bescheid*" (ruling) dated 3rd January 1966 which states, "*the applicant – [REDACTED] – has a compensation for impaired education under §116 in the amount of: 10,000 DM*
Under a settlement dated 23.2.1962 an award has been made of:
5,000 DM
Remaining
5,000 DM compensation:"

In words: Five thousand DM.”;

- c) Detailed information on the [REDACTED] family including her family tree.
12. In the appeal form submitted by the Appellant, received by the Appeals Office on 22nd January 2004 she writes, “*I feel this amount was insufficient for his misfortune – this should have been settled for much more. My mother was taken advantage of at that time. Please see what you can do to right this wrong.*” She also submits a letter, previously submitted with her claim form, which describes her father’s military service during the First World War, his professional career, the family’s persecution by the Nazis and their attempts to leave Germany, and, finally, the family’s arrival in the USA.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. [REDACTED] provided the reasons for the decline of this claim in its letter dated 7th August 2003 (see paragraph 4). Further documents submitted by [REDACTED] with this letter are:

- a) Letter from [REDACTED] to the compensation authority of Wiesbaden, dated 17th September 1964, detailing policy [REDACTED] and calculating the compensation to be awarded. According to this document policy number [REDACTED] was taken out by [REDACTED], who was born on [REDACTED] 1883, on 1st April 1932 for an insured amount of RM 1,068. The date of maturity was to be 1st April 1968. According to this document, premiums were paid until 1st February 1939 and the surrender value, RM 140.05, was paid to [REDACTED] in 1939.
- b) “*Bescheid*” (ruling) from the compensation authority of Wiesbaden, dated 13th January 1965, which references policy number [REDACTED]. This ruling states, “*with [REDACTED], Burial Insurance Policy No. [REDACTED] for RM 1,068, commencing on 1.4.1932 and terminating on 1.4.1968. The tariff premium amounted to RM 4 a month. The premiums were paid until 1.2.1939. Following a cancellation notice from the policy-holder, the surrender value of RM 140.05 was paid out to him in 1939....*

2) Had there been no loss, there would have been due on the [REDACTED] burial insurance (§128, Section 1 BEG):

<i>Sum insured</i>	<i>RM 1068</i>	<i>DM 106.80</i>
<i>Compensation for holders of old savings</i>		<i>DM 44.60</i>
<i>Together with 4% interest from 1.1.1953-31.12.1963</i>		<i><u>DM 19.76</u></i>
		<i><u>DM 171.46</u></i>

The following must be charged against this Figure (§ 125, Section 2 BEG)

<i>Unpaid premiums</i>	<i>RM 304.00</i>	
<i>War Levy</i>	<i>RM 64.10</i>	
<i>Surrender Value</i>	<i><u>RM 140.05</u></i>	
	<i>RM 508.15 =</i>	<i>DM 50.82</i>
<i>Compensation</i>		<i><u>DM 120.64”</u></i>

14. In a letter dated 20th February 2004 [REDACTED] confirms the reasons for the decline of this claim and adds: “*According to Section 2 (1) (c) of the Agreement a claim concerning life insurance policies is eligible for compensation, if the policy in question was not covered by a decision of a German compensation or restitution authority. This does not apply to Mr*

[REDACTED]'s life insurance contract [REDACTED] which was covered by a decision of the compensation authority in Wiesbaden”.

15. With the above-mentioned letter [REDACTED] provides a copy of all previous communication and of those documents submitted with the decision letter.

THE ISSUES FOR DETERMINATION

16. The first issue for determination is whether the Appellant filed her appeal pursuant to section 4 (3) of the Agreement that provides: “*Any such appeal must be filed within 120 days of the receipt of the company’s decision*”.

The appeal is deemed to be filed within the 120 days time limit. The signed appeal form, which is not dated, was sent to a post box in the Netherlands where the dates of receipt of such appeal forms were not noted. 22nd January 2004 (the day when the appeal arrived at the Appeals Office) is the 169th day after the date of the issuing of the decision letter (which is 7th August 2003). However, as it is neither known when the decision letter arrived at the Appellant nor when the Appellant’s appeal arrived at the Dutch post box it must be assumed in favour of the Appellant that her appeal reached the Dutch post box within the timeline of 120 days, because a later arrival cannot be established in the absence of recording the dates of receipt (both the appealed decision letter and the appeal).

17. There is no doubt that the Appellant’s great-uncle, [REDACTED], had an insurance policy with [REDACTED] (subsequently taken over by [REDACTED] and finally by [REDACTED]) and that he was a Holocaust victim. It is plausible that the Appellant could be entitled to parts of the proceeds of the policy, but she is unlikely to be the sole heir of [REDACTED]. The ruling of the compensation authority of Wiesbaden, dated 13th January 1965, names four heirs of [REDACTED], including the Appellant’s mother. But as to the policy at issue, [REDACTED] has succeeded in establishing a valid defence in accordance with the Agreement. According to 17.3 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

18. [REDACTED] has proved that policy number [REDACTED] was the subject of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, amongst others, a Bescheid (ruling) dated 13th January 1965 which shows that the afore-mentioned policy was the subject of a decision under the BEG law. As a result the Appellant’s mother with three other heirs received a compensation payment for this policy totalling DM 120.61.
19. It is appreciated that from the Appellant’s view there might be reasons to criticize the result of the compensation procedure that took place in the 1960’s. 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 of Appeal Guidelines); therefore, the Appeals Panel has no authority to reconsider the fairness of the award.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed

Dated this 15th day of September 2004

For the Appeals Panel

[REDACTED]