

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

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] (formerly [REDACTED]), born on [REDACTED] 1943 in Quedlinburg (Germany). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. The Appellant has given little information about his closest family. His father was born in 1905 and died in 1985; his mother was born in 1913 and died in 1978. From a letter dated 14th January 1999 issued by the International Tracing Service of the International Committee of the Red Cross it appears that the Appellant has a sister, [REDACTED], who was born on [REDACTED]1942 in Berlin (Germany).

In 1947/1948 the Appellant immigrated to the USA where he later served in the army and now lives as a retired Lieutenant Colonel.

The Appellant states that he is a nephew of [REDACTED], born on [REDACTED] 1902 in Klein-Öls, Silesia (at that time Germany, now Olesnica, Poland) and [REDACTED], born on [REDACTED] 1904 in Klein-Öls.

[REDACTED] was a leading member of the military opposition against Hitler. In the wake of the unsuccessful attempt on Hitler's life on 20th July 1944, [REDACTED] was arrested, on 8th August 1944 sentenced to death by the “*Volksgerichtshof*” (a National Socialist special court) and executed the same day in Berlin-Plötzensee.

[REDACTED] was the last German owner of the [REDACTED] family estate in Klein Öls. Although he became a member of the National Socialist party in the early 1930's he supported the work of those, who helped Jewish families to hide and to flee. He personally helped a Jewish family by hiding them in his castle. Because of these actions, the German National Socialist Regime punished him and sent his wife and him to a concentration camp. He died in 2002.

2. The Respondent is [REDACTED] as successor of “[REDACTED]”.
3. The Appellant, without giving details about his entitlement as a successor, submitted two claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued policies of life insurances to [REDACTED], and that another company or companies he could not name issued life and non-life insurance policies to his uncle [REDACTED].
4. The ICHEIC submitted the claims to the German companies.
5. In its decision letter dated 3rd February 2004 [REDACTED] writes, “*we have found a name card for [REDACTED], relating to a life insurance with ‘[REDACTED], Hamburg’ (an insurance company which was taken over by our predecessor [REDACTED] in 1936), that your uncle [REDACTED] applied and that did not come into effect. For your uncle [REDACTED] or for yourself, Mr. [REDACTED], we have not found any documents in our company archives. According to the Agreement the following state of facts has been disclosed: The remark ‘[REDACTED]’ on the name card proves that the life insurance policy for [REDACTED] did not come into effect. ‘[REDACTED]’ is not a policy number but an application number concerning a refusal (‘Abl.’ = ‘Ablehnung’) of a conclusion of a life insurance because of a health hazard of the person to be insured. Further on it follows from the name card that our predecessor company ‘[REDACTED]’ made enquiries at reinsurance companies (‘[REDACTED]’, ‘[REDACTED]’ and ‘[REDACTED]’) to conclude a life insurance for [REDACTED]. But these enquiries did not cause other results, because of the high health hazard of the policyholder. Consequently the application on a life insurance was declined. Hence, according to the Agreement no claim may be made under a policy that did not come into effect”.*
6. Earlier, [REDACTED] had issued a decision letter dated 15th August 2002 that reads: “*...the starting point for our research was the entry for Mr [REDACTED] in our central register (enclosure 1). As an entry was made each time an application for life insurance was filed we do not know whether a contract was actually concluded or not. The entry does not contain details on the applied insurance coverage, in particular the sum insured, the amount of premium or the projected insurance term. Its sole purpose is to find the corresponding file in our archive, which is arranged in numerical order. The entry therefore only contains – apart from the personal data of the applicant – the application number.*
1. A Abl [REDACTED]

The entry gives us the information, that the application for an insurance contract with the number A [REDACTED] was denied ('Abl = Ablehnung, which means rejection of the application).

2. Retrocession '[REDACTED].'

The entry bears the remark 'Retrocession'. The term 'Retrocession' stands for reinsurance (Rückversicherung, cf. the abbreviation 'RV' on the entry). We therefore know that other insurance companies issued the contracts for your uncle in August 1926, June 1934 and in September 1948. [REDACTED] was not a party to the contracts. Unfortunately, we cannot determine which company issued the contracts. Therefore, we regret to inform you that there is no proof of a contract concluded by your uncle with us".

This decision was not appealed by the Appellant but was used for the Appellant's correspondence with [REDACTED] which eventually led to [REDACTED]'s decision letter quoted sub 4).

7. The Appellant submitted an appeal to the Appeals Office dated 1st March 2003, which was accompanied by an attachment setting out the reasons for the appeal. The subject of this appeal is only the decision made by [REDACTED].
8. The Appeals Office received the appeal form on 1[REDACTED]2004 and mailed a copy to the Respondent on 23rd March 2004.
9. [REDACTED] commented further in a letter dated 28th April 2004, in which it informed the Appeals Panel that it had retrieved a judgement from the "Oberlandesgericht München" regarding compensation in a BEG proceeding initiated by [REDACTED] and denied by the court. [REDACTED] also explained the limits of what could be determined from the name card it had in its archives (for details see paragraph 18) and concluded: "Concerning the above mentioned name card the inquiry of [REDACTED] is therefore not eligible for compensation in the ICHEIC process because no insurance came into effect and no premiums have been paid".
10. Independent of the appeals process, the competent ICHEIC body has awarded the Appellant a humanitarian payment of US\$ 1,000. The Panel has no information as to whether this payment was for the claimed proceeds of policies issued to [REDACTED], to [REDACTED] or to both.
11. On 30th April 2004 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. 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

14. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in his claim forms:

Claim form submitted in July 2000

- a) In section three the Appellant indicates that he does not know the name of the insurance company that issued the policy and writes, “*please check all German insurance companies 1930 – 1944*”. He asserts that the policy was purchased in Berlin or Breslau, Germany.
- b) In section four regarding “*documents*” he writes, “*enclosed (a book) [REDACTED] [REDACTED] The Power of Solitude my life in the German Resistance*”.
- c) In section five regarding the policy details he indicates that the policy was “*life insurance*” and “*other*”. He writes that the currency of the policy was Deutsch Mark and the date of issue was between 1930’s and 1944. In answer to question 5.7, which asks “*are you aware of any payments resulting out of the insurance policy?*” he ticks “*no*”. With regard to the type of payment he writes, “*Nazis confiscated Klein Öls*”. He asserts that all premiums were paid from 1880 to 1944 [referring apparently to property insurance for the estate in Klein-Öls owned by [REDACTED]] and states that the premium payments were stopped when [REDACTED] was killed on 8th August 1944.
- d) In section six the policyholder [here reference apparently is made to a life insurance policy] is identified as [REDACTED] who was born in Klein Öls on [REDACTED] 1905 and executed on 8th August 1944 in the prison of Berlin-Plötzensee. [REDACTED]’s profession is given as “*lawyer*”.
- e) The insured person is identified as [REDACTED].
- f) The named beneficiary is identified as Family [REDACTED] or [REDACTED], the Appellant.
- g) In section eleven regarding further information the Appellant writes, “*[REDACTED] [REDACTED]. The following people were involved: Count [REDACTED] Jan 1, 1902 – Sachsenhausen KZ 1944-1945. Count [REDACTED] Nov 13, 1904 killed by Nazis on Aug 8, 1944 at Plötzensee prison, Berlin, Germany. [REDACTED] [REDACTED] [REDACTED] was involved with his cousin count Stauffenburg in the bomb plot at Wolfclair to kill Hitler and arrest high ranking SS and Nazi Party member...*”.

Claim form submitted in October 2002 [after the [REDACTED] letter dated 15th August 2002 quoted sub 5)]

- a) In section three he identifies [REDACTED] as the insurance company that issued the policy. He asserts that the policy was purchased in Klein Olds, Silesia, Germany.
- b) In section four concerning “*documents*” the Appellant writes: “*Letter from Ms. [REDACTED] dated 15th August 2002 [the letter quoted sub 5)]. Payment stubs for [REDACTED][REDACTED]. [REDACTED]. DOB [REDACTED] 2002 (1902 is meant). Klein Öls Germany. August 1926, June 1934, Sept 1938*”.
- c) In section five he identifies the policy as a life insurance policy and states that the dates of issue were: Aug 1926, June 1934 and Sept 1938. In answer to question 5.8 regarding “*mode of payment*”, he writes, “*yearly?*”. He asserts that all premiums were paid to the best of his knowledge.

- d) In section six he identifies the policyholder as [REDACTED], his uncle, who was born on [REDACTED] 1902, a self-employed landowner.
- e) The insured person is identified as [REDACTED].
- f) The beneficiary is identified as the Appellant.
- g) In section eleven regarding “*further information*” the Appellant writes: “[REDACTED] was born at Klein Olds, Silesia, Germany on [REDACTED], 1902. He was a count and landowner. His estate was 4000 acres. His brother [REDACTED] Nov 13, 1904 and was hung by the Nazis on August 8 1944. [REDACTED] was hung Plotzee prison, Berlin, Germany. [REDACTED] was a holocaust victim according to the I C Holocaust Era Insurance claims:
 - suffered damage to their mental or physical health
 - suffered loss or damages to their property”.
 (Klein Öls Castle and Farm were confiscated by the Nazis Aug 1944).
 [REDACTED][REDACTED] suffered because he was an anti-Nazi German. His great grand mother was Jewish. [REDACTED] [REDACTED] was arrested and imprisoned at Sachsenhausen concentration camp 1944-45. The KZ was North of Berlin. Russian troops liberated Sachsenhausen in Spring 1945”.
15. In a statement dated 1st March 2004, which was sent with the appeal form, the Appellant writes, “My uncle [REDACTED] (German Civil Servant) was hung by the Nazis in the plot to kill A. Hitler on 20 July 1944. [REDACTED] was hung at Plötzensee Prison Berlin on August 8, 1944. His brother [REDACTED] (Landowner/ Farmer) was imprisoned at Sachsenhausen KZ August 1944 until April 1945. I came to USA in 1947. [REDACTED] born August 11, 1943 in Quedlinburg Germany is 100% disabled and unemployed. I have received one \$607.00 check for victims of the Holocaust. I am member of the World Jewish Congress and Simon Wiesenthal Museum. According to [REDACTED], spokesman for the Insurance Information Network of California there is only so much of ‘wobble room’ (ICHEIC). The extent that ICHEIC decides to allow changes and exceptions is up to the organization. It can be done on the individual circumstances. Misrepresentation would be if an agent or insurer that they had coverage. My uncles were told that they had a [REDACTED], Hamburg. [REDACTED] AG in 1936 took over [REDACTED] due to Jewish owners and stockholders. I request in accordance with article 8.6 the BAFin direct the Panel Member or Arbiter to find for [REDACTED] and fix compensation to the claimant in accordance with Valuation Guidelines. In addition, claimant request interest paid on the award”.
16. The Appellant sent a further letter dated 3rd May 2004 with many other documents. In this letter he reasserts that his uncle [REDACTED] was told that he had a life insurance policy with [REDACTED]. The accompanying documents make no reference to the existence of a life insurance policy, but refer to [REDACTED] and the resistance to the National Socialist regime.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

17. [REDACTED] denied the claim in its decision letter issued on 3rd February 2004 for reasons already quoted (see paragraph 5).

18. [REDACTED] commented further in its letter dated 28th April 2004: *“The name card we have found in our archive states that [REDACTED] has made an application for life insurance with [REDACTED], a predecessor company of [REDACTED]. This application was dismissed for health reasons, as shown by the hand-written remarks and the remark ‘J. Abl – [REDACTED]’ (Abl. stands for ‘Ablehnung’ which means refusal or rejection) on the name card. Please find attached a similar name card to exemplify this refusal number. Additionally there are several enquiry numbers belonging to several reinsurance companies among them [REDACTED], [REDACTED] and [REDACTED] but no hint that one of the reinsurance companies took over responsibility for a life insurance. No policy number on a name card signifies that no insurance came into effect. Concerning the above mentioned name card the inquiry of [REDACTED] is therefore not eligible for compensation in the ICHEIC process because no insurance came into effect and no premiums have been paid. Additionally we would like to point out that it is questionable whether [REDACTED] should be defined as a Holocaust victim. We received a judgement from the ‘Oberlandesgericht München’ dated April 25th 1961 which asserts that [REDACTED] is excluded from any compensation according to the BEG. The court hold (see page 19) that [REDACTED] was more than a nominal member of the NSDAP according to § 6 Abs. 1 Ziff. 1 BEG because he joined the NSDAP and the SA in 1932 and adopted the position of ‘Sturmführer’”.*

THE ISSUES FOR DETERMINATION

19. The main issue for determination in this appeal is whether the Appellant has met his burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
- 17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;
 - 17.2.2 that the claimant 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); and
 - 17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
20. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “plausible” rather than “probable”. 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 of this case that a policy was issued by the company.
21. The Appeals Panel concludes that the Appellant (who also was not specific with regard to his entitlement in succession of his uncles) has not met his burden of proof that [REDACTED] issued a life insurance policy to [REDACTED] or [REDACTED]. His evidence lacks the requisite authenticity and particularity; there is no corroborative evidence (such as letters or statements from third parties, previous attempts to obtain

information or to collect proceeds) to support the Appellant's assertions to the existence of insurance.

22. In the claim form filled in July 2000 the Appellant claims the proceeds of life and non-life insurance policies (“[REDACTED] insured castle Klein Öls Kauern (?) ... life insurance”). The following details partly relate to non-life insurance [most likely to a property insurance for the estate owned by [REDACTED][REDACTED]]: period of premium payment - “from 1880 to 1944”, partly to life-insurance: date of issue - “1930's to 1944”. As far as name of company is concerned he says – “please check all German insurance companies 1930 – 1944”; as reason for stopping payment he says - “[REDACTED] killed 8/8/44”. Further details given in this form are the currency (“Deutsch Mark” – Reichsmark must be meant), the place of issue (“Berlin or Breslau”) and names and personal details of policyholder, insured person and beneficiary. The statements are somewhat inconsistent as far as property and life insurance are concerned and it is not entirely clear who is meant by “policyholder” and “insured person”. Initially “[REDACTED]” was named; later “[REDACTED]” was deleted and “[REDACTED]” inserted. The beneficiary's name is given as “[REDACTED] family” or “[REDACTED]” [no explanation for this individualisation is given] and again “[REDACTED]” was also named but later deleted. As the Appellant was born in 1943 he could have no personal knowledge of any of the details about the life of [REDACTED], who died in 1944. It is not plausible that [REDACTED] took out a life insurance policy in the 1930's and named the not yet born Appellant as beneficiary. It is equally not plausible that the Appellant learned anything about the insurance policy(ies) from [REDACTED], because the Appellant was only a five years old when he left for the United States and he gives no details about later contacts with his uncle regarding an insurance policy.
23. His later claim form filled in October 2002 appears to be based on the letter dated 15th August 2002 written by [REDACTED] (see paragraph 6), because this letter is mentioned in section 4 in answer to the question “Can you provide us with copies of any document and/or statement and/or other information substantiating your claim?”. While additional biographical details are given about [REDACTED], this claim form does not contain any specific information about the alleged policy(ies) beyond that which [REDACTED] had found in its records and archives. Finally, in this claim form, the Appellant explicitly names [REDACTED] - and not [REDACTED] – as the company that issued the life insurance policies.
24. Also the information provided by [REDACTED] and [REDACTED], which is corroborated by documentary evidence, does not give any indication that [REDACTED] (or [REDACTED]) issued any insurance policies to [REDACTED] or [REDACTED]. Rather it proves the contrary. As this appeal is from [REDACTED]'s decision alone, only the question “Did [REDACTED] issue insurance policies to [REDACTED] or [REDACTED]?” is relevant; the information provided by [REDACTED] is only of importance to the extent it confirms or contradicts [REDACTED]'s information. Evaluating the information [REDACTED] retrieved, there is no doubt that [REDACTED] applied for a life insurance policy with “[REDACTED]”. However, this application did not lead to an insurance contract but was declined for health reasons, as is shown by the hand-written remark “J. Abl. – [REDACTED]” (“Abl.” Stands, according to additional evidence presented by [REDACTED] from an entirely different case, for “Ablehnung” which means refusal or rejection). The Appeals Panel is convinced that [REDACTED] read and interpreted the content of its index card properly. As reflected in other cases, it was not unusual that, when rejecting an application for a life insurance contract, the company which declined to insure made inquiry to determine whether another re-insurance company was willing to re-insure. There is no indication that any re-insurance company agreed to reinsure a contract with [REDACTED].

25. The rejection by [REDACTED] is supported by the documentation [REDACTED] had in its central register which shows that [REDACTED] also had applications for life insurance contracts from [REDACTED] which were rejected. As in [REDACTED]'s case, [REDACTED] asserted that there had been re-insurance companies willing to re-insure at least three life insurance contracts taken out by [REDACTED] with insurance companies different from [REDACTED] (and [REDACTED]) in August 1926, June 1934 and September 1938. The Appeals Panel concludes that [REDACTED] also interpreted its index cards properly, at least as far as the contract taken out in September 1938 is concerned. A re-insurance company marked as “[REDACTED]” (which cannot be identified, by either [REDACTED] or the Panel) agreed to re-insure a life insurance contract in 1938. This can be seen from the remark “*angen. Sept.38*” (“*angenommen im September 1938*”) which means accepted in September 1938. Therefore, the only plausible finding that can be made is that it was neither [REDACTED] nor [REDACTED] that issued life insurance contracts to [REDACTED].
26. Notwithstanding these findings, there are serious doubts as to whether any insurance policies that may have been taken out by [REDACTED] remained unsettled. [REDACTED] did submit a claim under BEG procedures, as the decision of the Oberlandesgericht München (provincial high court and court of appeal Munich) dated 25th April 1961 shows (see paragraph 18). This decision does not appear to deal with confiscated insurance policies. The subject of this decision seems to be (as far as loss of property is concerned) the loss of parts of his library and of his art collection. If insurance policies had also been confiscated, it is highly likely that there would have been a BEG procedure concerning such policies.
27. As far as [REDACTED] is concerned, nothing could be retrieved by any German insurance company that indicates that he had life insurance.
28. Considering the details set out above the Panel concludes that [REDACTED] denied the claims in accordance with the rules of the Agreement and the Appeal Guidelines.

Appellant: [REDACTED] No.: [REDACTED]	Appeal No.: [REDACTED]	Claim
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THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 20th day of October 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member