

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 NUMBERS: [REDACTED]
[REDACTED]

BETWEEN

[REDACTED]

APPELLANTS

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 Appellants, married since 1951, are [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1918 in Minsk (Russia, now Belarus); [REDACTED] was born on [REDACTED] 1916 in Vilno (Poland, now Vilnius, Lithuania).

[REDACTED] is the son of [REDACTED] ([REDACTED]) and [REDACTED], born 1891 in Minsk. [REDACTED] had a brother, [REDACTED], who was born on [REDACTED] 1889 in Novogrudok (Russia, now Belarus) and was executed in 1942 in the ghetto of Novogrudok.

[REDACTED] is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1881 in Vilno and was executed in 1942 in the ghetto of Vilno; [REDACTED] was born on [REDACTED] 1885 and was also executed in 1942 in the ghetto of Vilno.

2. The Respondent is [REDACTED] ([REDACTED]).
3. [REDACTED] completed two claim forms and [REDACTED] completed one claim form for different policies. [REDACTED] named as policyholders (1) her parents [REDACTED] and [REDACTED], and (2) her husband's uncle, [REDACTED]. [REDACTED] also named these individuals as the policyholders in his first claim form, but in the second claim form he names as the insured person his mother, [REDACTED]. The insurance companies were identified by the Appellants as [REDACTED] and [REDACTED]. As there were three insured persons mentioned on each claim form, and two insurance companies, the claims were divided by the International Commission on Holocaust Era Insurance Claims (ICHEIC) into six separate claim files; [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. [REDACTED] and [REDACTED] are replica claims. Claim [REDACTED] was referred to the humanitarian payment process as an unnamed company claim and claim [REDACTED] is identical to claim [REDACTED]. Therefore, only claims [REDACTED] and [REDACTED] are relevant to this appeal.
4. During the claims process ICHEIC sent claims [REDACTED] and [REDACTED] to [REDACTED]. Early in the claims process [REDACTED] had denied responsibilities because from the beginning its business was re-insurance only, not direct insurance.
5. [REDACTED], referencing provisional decision letters dated 25th January 2001 and 24th May 2002, denied the claims in its final decision letter dated 18th March 2003 on the basis of not finding contractual relationships with all the Appellants' relatives named as policyholders: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
6. An appeal, dated 12th April 2003, concerning [REDACTED]' denial of claim numbers [REDACTED] and [REDACTED] was submitted to the Appeals Office.
7. The appeal forms, which, due to the lack of necessary declarations, had to be rectified were subsequently sent to [REDACTED] on 16th August 2004.
8. [REDACTED] responded in two letters dated 6th September 2004 and requested the Appeals Panel to reject the appeal of both claims for reasons it had set out before (paragraph 5).
9. On 17th November 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.
11. 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 CLAIMS

12. In several claim forms the Appellants submitted duplicated information for claims relating to the proceeds of life and/or business insurance policies allegedly issued by [REDACTED] in 1932 and 1933. Each Appellant submitted European Insurance Policy Claim Forms to the New York Holocaust Claims Processing Office (HCPO) in 1998. The claims were later transferred to ICHEIC in 2000.
13. For Claim number [REDACTED] [REDACTED] claims policies issued to her parents, [REDACTED] and [REDACTED] and to [REDACTED]'s brother, [REDACTED]. For Claim number [REDACTED], [REDACTED] submitted two HCPO Claim forms for [REDACTED]'s parents, [REDACTED] and [REDACTED] and for his uncle, [REDACTED]. In one of the claims forms also his mother, [REDACTED], is mentioned as a policyholder.
14. It follows from the Claim forms, and other evidence submitted by the Appellants, that their relatives were wealthy business owners. [REDACTED]'s parents owned a textile store. Their wealth is reflected in her family's lost property during the war that she claimed in 2003 to the International Organisation for Migration. [REDACTED]'s parents owned two stores; a hat and drapery business and a jewellery store. Both Appellants made claims for their family's Swiss bank accounts.
15. [REDACTED] stated in his affidavit of 11th June 2004 *"Before World War II my father told me and my three brothers and mother that he, [REDACTED], purchased a long term Life Insurance Policy, issued by a German insurance Company, for the whole family from 1933." (...)* *"My uncle [REDACTED] came to visit us from Poland, city Novogradok, in 1939. During the lunchtime he told my father that he purchased life insurance policies issued by the German Insurance company for his family – himself, wife and two children."*
16. An affidavit dated 11th June 2004 was submitted by [REDACTED] (who was a family friend of the [REDACTED] family) which states: *"[the Nazis] took over all their money and the long term life insurance policies which were purchased in the year 1933 and issued by the German Insurance Company for the whole of the [REDACTED] family. Mr [REDACTED] told me several times in the Minsk Ghetto about all these facts, including the life insurance policies, taken from the house by the German Nazis."*

THE INVESTIGATION AND DECISION BY [REDACTED]

17. In the final decision letter dated 18th March 2003 [REDACTED], referring to claim numbers [REDACTED] and [REDACTED] and quoting its previous letters dated 25th January 2001 and 24th May 2002, writes:
"Concerning your uncle Mr [REDACTED], we have checked our central register once again on the basis of the following data:
 - *Mr [REDACTED], born on [REDACTED], 1889 in Novogradok, Poland.**Though, based on these new data we did not find an entry in our register for Mr [REDACTED]. As we already told you, we know for sure that the person concerned did not have a life insurance contract with us, if there is no entry in the central register. For this reason, we know that no life insurance contract under the name of your uncle existed with us.*
Therefore we cannot revise our decision dated January 25, 2001, not concerning Mrs [REDACTED], Mrs [REDACTED] and Mrs [REDACTED] either. This applies to our decision of May 24, 2002 concerning Mr [REDACTED] as well since no match could be found in our central register for this named person. We regret that we cannot provide you with a more favourable answer."

18. In a letter dated 6th September 2004 in response to the Appeals process regarding claim number [REDACTED], [REDACTED] writes: *“Concerning the Claimant’s mother, his uncle, his father-in-law and his mother-in-law we checked our central register on the basis of the data which the claimant provided us with. Unfortunately we did not find an entry for these persons....If there is no entry in the central register, we know for certain that the person concerned did not have a life insurance contract with us.”*
19. In a letter in response to the Appeals Process dated 6th September 2004 regarding claim number [REDACTED], [REDACTED] writes: *“Concerning the claimant’s father, her mother and her husband’s uncle we checked our central register on the basis of the data which the claimant provided us with. Unfortunately we did not find an entry for these persons.If there is no entry in the central register, we know for certain that the person concerned did no have a life insurance contract with us.”*

THE ISSUES FOR DETERMINATION

20. For the purpose of this appeal decision claims [REDACTED] and [REDACTED] are joined. The claims, filed by different claimants, relate to the same policies and have been decided upon together by [REDACTED]. As far as the other claims of the Appellants are concerned reference is made to paragraph 3 above.
21. The main issue for determination in this appeal is whether the Appellants have met their 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 Section 14 of the 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.
22. 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 to establish 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.
23. It is accepted that the Appellants’ families were wealthy businesspeople. It is plausible that such businesspeople would be familiar with issues of insurance for their lives as well as insuring their various business interests and personal property. The Appellants have clear recollections that insurance was discussed among family members when they were young. Indeed, [REDACTED] remembers his father telling his family about the insurance policies issued by a German insurance company to protect his family’s interests (paragraph 15) and [REDACTED] also recalls [REDACTED] telling him

about the family insurance policies with a German insurance company (paragraph 16). It is plausible, therefore, that insurance policies were issued to both Appellants' families. However, the burden of proof on the Appellants is to show that the Respondent [REDACTED] issued those policies. There has been no documentary evidence or clear anecdotal evidence that [REDACTED] issued the policies in question. Additionally, [REDACTED] have not found any evidence of a contractual relationship with the Appellants' family members on their databases; on the contrary: the absence of any reference to the allegedly insured persons in the still available central register indicates that there was no contractual relationship with [REDACTED]. These databases have been audited in compliance with ICHEIC standards. On review of the evidence as a whole, the claims must fail.

24. It is noted (see above paragraph 3) that [REDACTED]'s Claim number [REDACTED] was sent to the ICHEIC humanitarian payment process. Since, according to the ICHEIC standards, only one humanitarian payment of US\$1,000 is made per claimant the Panel has no possibility to recommend any further payment for [REDACTED]. However, it is recommended that Claim number [REDACTED] for [REDACTED] be referred to the Humanitarian payment process because it is plausible that his family members had purchased insurance policies, but the identity of the issuing insurance company is not known.

IT IS THEREFORE HELD AND DECIDED:

The appeals in Claim numbers [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) are dismissed.

Dated this 8th day of August 2005

[REDACTED]