

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], [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 [REDACTED] was born on [REDACTED] 1918 in Prague, Czechoslovakia. He is the son of [REDACTED] (formerly [REDACTED]) and [REDACTED] (formerly [REDACTED], née [REDACTED]). [REDACTED] was born on [REDACTED] 1889 in Prague (then Austria-Hungary) and died on 17th October 1941 in London. [REDACTED] was born on [REDACTED] 1888 in Prague. The Appellant’s brother, [REDACTED], was born on [REDACTED] 1920 in Ceska Kamenice, Czechoslovakia.

The Appellant and his family were incarcerated in concentration camps, before immigrating to London where [REDACTED] was a co-member of the Czechoslovakian exile government.

2. The Appellant's representative is Dr. [REDACTED].
3. The Respondent is [REDACTED] ([REDACTED]) as the legal successor of [REDACTED] and [REDACTED].
4. The Appellant submitted a claim form dated 13th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming an insurance policy issued to his father [REDACTED] by [REDACTED] ([REDACTED]) in Prague. He enclosed a declaration of war damages with the claim form listing policies issued by [REDACTED], [REDACTED] ([REDACTED]), [REDACTED] and [REDACTED] ([REDACTED]).
5. The ICHEIC processed the claim form under 11 different claim numbers including:
 - a) Claim numbers [REDACTED] and [REDACTED] relating to policy numbers [REDACTED] and [REDACTED] issued by [REDACTED] ([REDACTED]).
 - b) Claim number [REDACTED] relating to policy number [REDACTED] issued to [REDACTED] by [REDACTED].

These claims are the subject of the appeal.

6. The following are related claims and are not the subject of this appeal:
 - a) Claim numbers [REDACTED], [REDACTED] and [REDACTED]

These claims relate to policy numbers [REDACTED]/ [REDACTED], [REDACTED]/ [REDACTED] and [REDACTED] issued to [REDACTED] by [REDACTED].
 - b) Claim number [REDACTED]

This claim relates to policy number [REDACTED] issued to [REDACTED] by [REDACTED], a former subsidiary of [REDACTED].
 - c) Claim number [REDACTED]

This claim relates to policy number [REDACTED] issued to [REDACTED] by [REDACTED], a former subsidiary of [REDACTED].

[REDACTED] made a combined offer of US \$113,068.58 for the policies listed in 6 a), b) and c) which the Appellant accepted.
 - d) Claim numbers [REDACTED] & [REDACTED]

These claims relate to policy numbers [REDACTED] and [REDACTED] issued to [REDACTED] by [REDACTED]. [REDACTED] has declined responsibility stating that it only has a minority shareholding in [REDACTED].

e) Claim number [REDACTED]

This claim relates to policy number [REDACTED] issued to [REDACTED] by [REDACTED]. [REDACTED] made an offer of US \$99,306.92 which the Appellant accepted.

7. The ICHEIC submitted claim numbers [REDACTED] and [REDACTED] to the Respondent. [REDACTED] declined the claims on 24th August 2004 because it could find no record of a contract between [REDACTED] and the Appellant or his father. Although the Appellant submitted documents indicating that his father held insurance with [REDACTED], [REDACTED] declined payment stating that the policy was for accident insurance but that his father died of natural causes.
8. The Appellant's representative submitted an Appeal Form dated 3rd February 2005 appealing the [REDACTED]'s decision. He enclosed an asset statement obtained from the Czech Ministry of Finance as evidence, which referred, among other things, to policy numbers [REDACTED] and [REDACTED] issued by [REDACTED] and [REDACTED].
9. [REDACTED] responded to the appeal in a letter dated 28th February 2005 requesting that the Appeals Panel reject the appeal and confirm its decision.
10. On 7th March 2005 the Appellant's representative wrote directly to [REDACTED] stating that policy number [REDACTED] was a life insurance policy that included accidental events. He enclosed a copy of a premium receipt dated 4th September 1939, and a copy of the portfolio cover for policy number [REDACTED].
11. [REDACTED] forwarded this correspondence to the Appeals Office and responded to the Appellant in a letter dated 15th March 2005. It confirmed that policy numbers [REDACTED] and [REDACTED] were accident insurance policies.
12. On 22nd March 2005 the Appeals Office informed both parties that the appeal will be decided on a "*documents only*" basis unless it received a request for an oral hearing from either party within 14 days of the date after receipt of this letter.
13. On 5th April 2005 the Appeals Office received a letter from the Appellant's representative requesting an oral hearing.
14. The oral hearing was held on 26th July 2005 via telephone conference. The participants in the hearing were [REDACTED], the Appellant, his representative Dr [REDACTED] and Ms. [REDACTED] on behalf of [REDACTED].
15. At the request of the Arbitrator, the Appeals Office sent a letter to the Appellant requesting further information on 9th September 2005.
16. The Appellant submitted a letter and accompanying documentation in response on 13th September 2005.
17. 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 of 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

18. The Appellant submitted an ICHEIC claim form dated 13th March 2000 claiming policy number [REDACTED]/[REDACTED] issued to his father [REDACTED] by [REDACTED]. He enclosed with the claim form the following documents:
- a) A declaration of war damages referring to the following policies issued to [REDACTED]:
 - Life insurance policy numbers [REDACTED]/[REDACTED] and [REDACTED]/[REDACTED], and policy number [REDACTED] issued by [REDACTED] in Prague;
 - Property insurance policy numbers [REDACTED] and [REDACTED] issued by Moldavia Prague;
 - Life insurance policy number [REDACTED] issued by [REDACTED] in Prague;
 - Life insurance policy number [REDACTED] issued by [REDACTED] in Prague.
 - b) Correspondence between [REDACTED] and [REDACTED] regarding the extension of his accident policy no. [REDACTED] for his upcoming trip to the USA, Africa and Asia.
 - c) A letter from [REDACTED] to [REDACTED] advising them of an accident he suffered on 19th November 1930.
 - d) A letter dated 10th September 1930 from [REDACTED] to [REDACTED], together with a premium payment slip and copy of policy number [REDACTED].
 - e) Premium payment slips for policy no. [REDACTED].
19. The ICHEIC processed the claim form and submitted claim numbers [REDACTED] and [REDACTED], which relate to 18 b) through e) above to [REDACTED].
20. The Appellant appealed [REDACTED]' decision to decline the claims on 3rd February 2005. His representative stated: *"As the decision stated that in the archives of the insurance are no records concerning the policy holder Mr. [REDACTED], we did [ourselves] some kind of research in the archive of the Czech Ministry of Finance [...]. Enclosed please find [a] statement of the assets (as of January 1st, 1945) where [it] is stated among others also Policies nr. [REDACTED] and [REDACTED] which amounts to K 30/m, ie 30.000, - Czechoslovak Crowns and K 10/nm ue 10.000,- Czechoslovak Crowns [...]. As an subsidiary evidence we finally submit the portfolio which originally covered the documents of insurance policy of [REDACTED] and which are inscribed "[REDACTED]–[REDACTED] Zivotni". It means that there had to be [a] life insurance of Mr. [REDACTED] issued by [REDACTED]."*

Copies of the asset statement and the portfolio cover were enclosed. The photocopy of the portfolio cover also included copies of premium receipts for the benefit of [REDACTED] on the reverse.

21. In a letter dated 7th March 2005 the Appellant's representative stated: "*The policy Nr. [REDACTED] was a life ins. policy which included all accidental events. To bring [as] evidence I enclose e.g. the copy of the receipt of the payment of 2025,- Crowns as of 4th September 1939 where on its second side was in 1939 the book-keeper of Mr. [REDACTED] remarked that it was the payment on the policy Nr. [REDACTED] with two remarks in Czech: 'uraz, umrti', in English: 'hurt, death'. [...] This receipt is in my opinion the sufficient evidence that Mr. [REDACTED] had the life insurance with your company. Unfortunately, the insurance contract is lost because the whole property of Mr. [REDACTED] was confiscated by the Nazis. [...]*

As...subsidiary evidence I have already submitted the copy of the portfolio (with the collected receipts) which originally covered the documents of insurance policy of [REDACTED] and which is inscribed '[REDACTED]- [REDACTED] Zivotni'. 'Zivotni' in Czech means 'Live'. It means that the policy Nr. [REDACTED] had to be a life insurance of Mr. [REDACTED] issued by [REDACTED]."

A copy of the postal receipt with the handwritten note 'injury, death' was enclosed.

22. The Appellant's representative also submitted four photographs of the portfolio cover and premium receipts described above.
23. During the oral hearing the Appellant's representative reiterated that policies numbers [REDACTED] and [REDACTED] issued by [REDACTED] were accident policies that covered death. He stated that the photographs referred to in paragraph 22 were evidence of the life insurance element.
24. Further, he argued that [REDACTED] became responsible for policy number [REDACTED] issued by [REDACTED] in acquiring the [REDACTED] portfolio through [REDACTED].
25. He accepted that [REDACTED] had acquired responsibility for the life insurance portfolio of [REDACTED] and that policy number [REDACTED] was not part of this appeal.
26. In response to the request for further information sent by the Appeals Office on 9th September 2005, Mr. [REDACTED] submitted a letter dated 13th September 2005 stating: "*The agreement [between [REDACTED] in Liberec and [REDACTED] in Vienna] covered territory of the German Empire, Protectorate Bohemia and Moravia and Slovakia. The parties of that agreement changed their business names to: '[REDACTED]' and [REDACTED]'. Nevertheless, both companies were integral parts of Concern of [REDACTED]. And therefore no transfers of policies are decisive for the purpose of the claim of the [REDACTED]s. The division of insurance policies was done according to rules established by the Nazi administration and therefore it is null and void. [...] In my opinion, the most important fact in this case is that the Nazis confiscated the value of the ins. Policies and that the confiscation was done after the so called Munich Treaty, i.e. the beginning of the Holocaust Era."*

Mr [REDACTED] submitted extracts from Chaloupecky J & Marvan M "The Development of the Insurance System in the Czech Lands" in *History of Insurance*, and Tomas Jelinek "Insurance in the Nazi Occupied Czech Lands" as supporting evidence.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

27. [REDACTED] declined claim numbers [REDACTED] and [REDACTED] in a letter dated 24th August 2004 stating: *“The International Commission has forwarded your inquiry concerning a life insurance contract concluded prior to 1945 to us because [REDACTED] has been taken over by [REDACTED]. [...] we have checked the register and archive of [REDACTED] on the basis of the following data:*

- ***Mr [REDACTED], born [REDACTED], 1918 in Prag***
- ***Mr [REDACTED], born on [REDACTED], 1889 in Prag***
- ***Mr [REDACTED], born [REDACTED]. 1920 in Ceska Kamenice***

[...] We regret, no entry exists in the register for Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED]. Regrettably, the register is no longer complete after more than 60 years. Moreover, we also searched the archive documents of [REDACTED] which are still in existence. Unfortunately, these documents contain no information concerning a contractual relationship with the above mentioned people, too. Therefore, we have no evidence of a life insurance contract concluded between your client’s relatives, himself and [REDACTED].

Though you provided us with documents referring to an accident insurance policy with [REDACTED], we regret to inform you that we can not offer a payment for this policy. This is due to the fact that the insured event, meaning an accident, never occurred. On the contrary, your client’s father died of an illness.”

28. In its response to the appeal dated 28th February 2005 [REDACTED] states: *“In our letter dated August 24, 2004 we declined the claim as we could not find entries for Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED] in the registers and archives of [REDACTED]. From the documents attached to Mr [REDACTED]’s claim we know that Mr [REDACTED] had an accident policy [REDACTED] with [REDACTED]. From the claim we also know that Mr [REDACTED] died of an illness and not of an accident. Thus, we did not offer payment. [...] As regards the ‘[REDACTED]’ we only took over the Sudeten German part of this company. However, Prag, where the policy was issued, did not belong to this area.”*

29. On 15th March 2005 [REDACTED] sent a letter to the Appellant stating: *“From the documents attached to your claim which were translated by ICHEIC we know that the policies [REDACTED] and [REDACTED] in question were accident and not life insurance policies. [...] The headings of the documents only mention the word ‘accident policy’ and not ‘life insurance policy’. Furthermore, the words ‘hurt’ and ‘death’ which are written in hand-writing on one of the receipts can also refer to the accident policies. [...] Such policies can either cover accidents which might only result in an injury or in the worst case in death of the insured person. The word ‘death’ does not imply that a life insurance contract has existed. In addition, the receipts you sent us for [REDACTED] insurance contracts do not explicitly refer to a life insurance contract. [...] from the claim we know that Mr [REDACTED] died of an illness and not through an accident. Thus, there was no obligation for [REDACTED] to pay out the insured amount to the heirs of Mr [REDACTED].”*

30. At the oral hearing on 26th July 2005 [REDACTED] reiterated that [REDACTED] policy numbers [REDACTED] and [REDACTED] were not eligible for payment because they related to accident insurance only, and Mr [REDACTED] died of natural causes. [REDACTED] reiterated also that it was not responsible for [REDACTED] insurance contracts issued in Czechoslovakia outside the Sudetenland.

THE ISSUES FOR DETERMINATION

31. There is no doubt that the Appellant's father, [REDACTED], held insurance policies with [REDACTED] and [REDACTED] prior to World War II. The documentation on file provides ample evidence of these contractual relationships. The Appellant submitted correspondence written on [REDACTED] letterhead, premium receipts and photographs of the portfolio cover for policy number [REDACTED]. Further, [REDACTED]'s declaration of war damages constitutes evidence that he held a life insurance policy number [REDACTED] with [REDACTED].
32. Moreover, there is no doubt that the Appellant's father was a Holocaust victim and that the Appellant as his son would be entitled to the proceeds of the insurance policies. Therefore, this appeal falls in general within the scope of the Tripartite Agreement.
33. The sole issue for determination in this appeal is whether [REDACTED] has established a valid defence in respect to claim numbers [REDACTED], [REDACTED] and [REDACTED]. These claims are dealt with in turn.

Claim numbers [REDACTED] and [REDACTED]

34. [REDACTED] declined payment for [REDACTED] policy numbers [REDACTED] and [REDACTED] on the basis that these were policies of accident insurance only. It maintained that as [REDACTED] died of natural causes in London in 1941, the insured event did not occur and, therefore, the policies were not eligible for payment.
35. However, the Appellant has argued during the course of this appeal that these policies also incorporated a life insurance element. His representative, Dr [REDACTED], submitted photographs of a portfolio cover and premium payment slips for policy number [REDACTED] on which the notes were written "[REDACTED] [REDACTED] Zivotni" and "*uraz, umrti*". As these translate to mean "[REDACTED] [REDACTED] live" and "*injury, death*", Dr [REDACTED] contended that it was plausible that these policies included a life insurance element as well as accident insurance.
36. On balance, however, it is the Panel Member's opinion that these policies covered accident insurance only. The Appellant submitted evidence indicating explicitly that policy number [REDACTED] provided accident insurance. There are letters on file from [REDACTED] to [REDACTED] requesting an extension of his policy for an upcoming trip abroad, and regarding an accident he suffered on 12th November 1930.
37. The Respondent's submission that the handwritten notes "*live*" and "*injury, death*" can refer also to accident insurance is accepted. Accident insurance policies often cover accidents causing both injury and, in the worst case, death. In this case, [REDACTED] died of natural causes in 1941. The insured event, therefore, never occurred under the terms of the insurance contract. Thus, the policies are not eligible for payment.

Claim number [REDACTED]

38. [REDACTED] declined the claim for insurance policy [REDACTED] on the basis that it only acquired responsibility for [REDACTED] policies issued in the Sudetenland. As this policy was issued in Prague, in the former Protectorate of Bohemia and Moravia, it argued that it was not responsible for the claim.
39. The Appellant challenged this finding, asserting that [REDACTED] had acquired responsibility for [REDACTED] policies issued in Bohemia through its acquisition of [REDACTED] through [REDACTED]. His representative submitted an extract from the

text *History of Insurance* by Josef Chaloupecky and Miroslav Marvan, which discussed the operations of [REDACTED] in Czechoslovakia in 1938. This stated that [REDACTED] (“[REDACTED]”) in Liberec made an agreement with [REDACTED] in Vienna (“[REDACTED]”), by which [REDACTED] was to take all the life business and [REDACTED] was to take all the natural hazard business, including accident insurance and legal liability, of the [REDACTED] insurance company in the German empire, Bohemia Moravia and Slovakia, with effect from 1938.

40. However, although this is evidence that the division of [REDACTED] business was on the basis of business type not territory in 1938, it is not actual proof that [REDACTED] acquired the life portfolio of [REDACTED] in Bohemia. The ICHEIC’s audit procedures corroborate the Respondent’s assertion that [REDACTED] only acquired responsibility for [REDACTED] policies issued in the Sudetenland in 1940. In the absence of evidence to the contrary, the appeal must also fail on this ground.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 16th day of December 2005

[REDACTED]