

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

Fax:

++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBERS: [REDACTED], [REDACTED]

CLAIM NUMBERS: [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 is [REDACTED], born on [REDACTED] 1956 in Melbourne (Australia).

He is the great-grandson of [REDACTED] and [REDACTED], née [REDACTED], very wealthy owners of manufactures and real estate. [REDACTED], chairman of the successful “*Erste Böhmisches Glasindustrie A.G.*”, was born [REDACTED] 1869 Sieniawa (at that time Austria-Hungary, now Poland) and died 23rd May 1940 in Melbourne, Victoria (Australia). [REDACTED] was born [REDACTED] 1882 in Prague (Austria-Hungary, now Czech Republic) and died 23rd February 1975 in Melbourne.

[REDACTED] and [REDACTED] had three children, [REDACTED] ([REDACTED]) [REDACTED] (formerly [REDACTED]), née [REDACTED], [REDACTED], née [REDACTED], and [REDACTED], and grandchildren. The Appellant, together with other persons whose names he has given, is one of the heirs of his great-grandparents.

The National Socialist Regime took the [REDACTED] family’s assets and real estate away. The family members had to flee from Austria to escape from persecution by the National Socialist Regime.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted four claim forms dated 20th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that an insurance company he could not name issued policies of life insurance to policyholders he could not name. However, as insured persons he named [REDACTED], [REDACTED], [REDACTED], née [REDACTED], and [REDACTED], né [REDACTED].
4. The ICHEIC processed the claims as follows:

Claims which are the subjects of the appeal

- a) Claim number [REDACTED]

This claim is based on a claim form naming [REDACTED] as the insured person. [REDACTED] declined the claim because it had not found any match in its archives and records for a policy taken out by or insuring the life of [REDACTED] [for more details see paragraph 6 a)].

- b) Claim number [REDACTED]

This claim is based on a claim form naming [REDACTED] as the insured person. [REDACTED] declined the claim after it had found a match for policy No. [REDACTED] which, however, had been the subject of a compensation procedure [for more details see paragraph 6 b)].

Related Claims which are not subjects of the appeal

- c) Claim number [REDACTED]

This claim is based on a claim form naming [REDACTED], née [REDACTED], as the insured person. [REDACTED] made an offer of US\$ 3,000.00 for a policy taken out by [REDACTED] insuring the life of Dr. [REDACTED]. On 5th April 2005 the Appellant accepted the offer.

d) Claim number [REDACTED]

This claim is based on a claim form naming [REDACTED], née [REDACTED], as the insured person. [REDACTED] made an offer of US\$ 3,000.00 for a policy taken out by [REDACTED] insuring the life of [REDACTED]. On 5th April 2005 the Appellant also accepted this offer.

5. The ICHEIC submitted the claims to the MOU Companies and to the German companies [MOU is the acronym for Memorandum of Understanding signed by those companies which have submitted to ICHEIC jurisdiction].
6. [REDACTED] issued the following final decision letters:

a) Claim number [REDACTED]

In its final decision letter dated 8th December 2004 [REDACTED] states: *“Based on the information that you have provided in the claims-form we have – in accordance with the ‘Agreement’ and the rules therein – intensively searched all relevant archives and records for information on this specific life insurance policy – also in Austria. Unfortunately, our investigation in our internal records did not produce any findings which is due to the lack of precise details in your claims-form, e.g. regarding the policy number. The only search criterion available to us were the names of family members mentioned by you, mainly those of your granduncle and grandaunt. Also our research in still available lists containing the names of former policy holders and other persons involved in contracts did not produce any findings even under consideration of all names and dates of birth mentioned in the claims-form and possible spelling or transmission errors or deviating pronunciations”*. The Respondent adds that it also searched external archives in Germany and Austria. In the Austrian Hauptstaatsarchiv it found out that *“the “Devisenfahndungsamt” [the “foreign currency investigation department”] had – within the scope of a house search in your great grandmother’s premises in the year 1938 – had found and confiscated two [REDACTED] policies. These, however, were the policies taken out by your great-grandfather in the favour of his two sons-in-law; we will comment on these policies under claims with the numbers [REDACTED] and [REDACTED] [see above sub para 4 (c) and (d)]. Based on the information provided by you in the claims-form and after our intensive research in all relevant internal and external archives, the existence of a life insurance policy taken out by your granduncle, Mr [REDACTED], [“[REDACTED]”, appears to be a misquote in the English version of the letter] with [REDACTED] could not have been established, even under the ‘Relaxed Standards of Proof’ of the ‘Agreement’. According to the Foundation Law and the “Agreement” a claim has to be denied, if there is no sufficient and adequate evidence of a contractual relationship with the insurance company named in the inquiry. We are confident that you will understand our decision not to submit an offer under the given circumstances”*.

b) Claim number [REDACTED]

In its final decision letter dated 8th December 2004 [REDACTED] states: *“We may now inform you that we have verified – in accordance with the “Agreement” and the rules therein – what general information relating to the contractual relationship are available in internal and external archives after the war-related loss of nearly all original records relating to policies and whether the policy on which you are now claiming was the subject matter of a previous decision by a compensation authority in Germany or abroad; in this connection, information about compensation payments realised are of special importance, because, as per the rules of the ‘Agreement’, a policy is not eligible for additional compensation, if that specific policy was covered by*

a prior decision of a German or a corresponding Austria restitution or compensation authority. Based on this, we have been able to find out with respect to your great-grandfather's policy, with the help of the property list drawn up by him in 1938 of which we are sending enclosed a copy, that this policy was a life insurance policy, which, as per your great-grandfather's explanations, had a nominal surrender value of 38,240.00 Reich Marks in the year 1938. In addition, your great-grandfather states that the policy was 'without any value presently', as the surrender value had been 'totally absorbed' by a policy loan raised by him. Our inspection of the comprehensive records kept with Hauptstaatsarchiv Wien (Vienna Central State Archives) relating to a proceeding initiated against your great-grandfather for the confiscation of property reveal further that in the year 1939, [REDACTED] had subsequently paid out the surrender value of 4,753.32 Reich marks remaining after the deduction less the loan liabilities to an account of Oberfinanzpräsident Wien (Vienna Head Finance Officer) after a confiscation that had meanwhile been made. After inspection of the records also kept with the Vienna Central State Archives of the "Fonds zur Abgeltung von Vermögensverlusten politisch Verfolgter" in Vienna (Fund for the Compensation of Property Losses suffered by Politically Persecuted) we could also find out that – as you might possibly not have been informed of by your relatives – your great-grandmother Mrs [REDACTED], as early as prior to the year 1960 (precise dated of claim can longer be established), had filed a claim for compensation with the Fund for the Compensation of Property Losses suffered by Politically Persecuted, i.a. relating to the surrender value of the [REDACTED] policy taken out by your grandfather and confiscated by the Vienna Head Finance Officer In the year 1939. The records submitted by the Vienna Central State Archives show further that under file No. [REDACTED]/[REDACTED] and with a decision dd 8th October 1964 the Fund awarded a compensation of 13,299.04 Austrian Shillings to your great-grandmother; this compensation did not only cover the surrender value in question but also further property assets confiscated. ...”.

7. The Appellant submitted separate appeals dated 18th March 2005 to the Appeals Office in which the reasons for the appeals were set out.
8. The Appeals Office received the appeal forms 7th April 2005 and mailed copies to the Respondent.
9. [REDACTED] responded in letters dated 20th April 2005 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 [REDACTED]'s previous decision on it*”.
10. On 13th May 2005 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
12. 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

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

Claim number [REDACTED]

- a) In section three he states that he does not know the name of the issuing company and adds: *“However [REDACTED] is listed on the Czech Republic’s official website ‘Czech Republic: List of Confiscated Property’ which is found under you links page for website – www.icheic.org”*.
- b) In section four he lists documents he submits in order to substantiate his claim.
- c) In section five he cannot give any information about the policyholder.
- d) In section six the insured is indicated as [REDACTED].
- e) In section eight the Appellant cannot name a beneficiary.
- f) In section nine he states that he did not apply for compensation because he *“was not aware of any procedure that would avail me of the ability to claim”*.
- g) In section eleven he states: *“With respect to my lack of information to most questions of this form I unfortunately do not possess correspondence that makes specific mention to an insurance policy taken out by my great grandmother [REDACTED] or by a policyholder. Anyone that might have helped me with this matter is now deceased and to my knowledge there is no one alive who can help me with question 9.1 also. In my opinion it is highly likely that my great-grandmother [REDACTED] had a life insurance policy somewhere within Czechoslovakia, Austria or Central Europe as she was married to a very successful industrialist who had substantial interests through Europe. [REDACTED] and her family namely: her daughter [REDACTED] and her grandchildren – [REDACTED] and [REDACTED], escaped from Europe in 1939 leaving everything behind and possibly insurance policies”*.

Claim number [REDACTED]

- a) This claim file contains the same information as the above described but names the Appellant’s great-grandfather as policyholder or insured.
- b) In section eleven the Appellant states: *“In my opinion it is highly likely that my great-grandfather [REDACTED] had a life insurance policy somewhere within Czechoslovakia, Austria / Central Europe, as he was a very successful industrialist of the highest rank with substantial interests throughout the continent. My great-grandfather [REDACTED] owned 83.38% of the ‘First Bohemian Glassworks Ltd’ in Olovi (Bleistadt) Czechoslovakia of which we heirs have 41,692 shares in our possession of the 50,000 issued shares of the company. The company was the second largest plate glass manufacturing enterprise in Czechoslovakia and possibly Europe. The company still exists and is still operating in Olovi in the Czech Republic”*.

14. The Appellant submitted copies of identification documents and documents to prove his succession rights. Further a “HISTORY [REDACTED] (deceased) *AND HIS HEIRS*”, a family tree, and documents showing the wealth of the family (e.g. a note dated 7th June 1938 listing all items that were confiscated from [REDACTED]) were attached. This list mentions two confiscated life insurance policies with “[REDACTED]”, one for Dr. [REDACTED] and the other one for [REDACTED] [see above para. 4 (c) and (d)].
15. The Appellant sets out the reasons for his appeals as follows: “*The Czech Government website ... specifically refers to the existence of a valid insurance policy for [REDACTED] [respectively “for [REDACTED]”]. [REDACTED] insurance company has failed to search the Czech archives as part of its research*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] declined both claims for the reasons given in its decision letters dated 8th December 2004 (see paragraph 6).

[REDACTED] responded to the appeals in its letters dated 20th April 2005 as follows:

a) Claim number [REDACTED]

[REDACTED] pointed out that its registers are limited continuing: “...*All investigations in the still available lists with names of former policy holders and persons involved in insurance contracts did not lead to any findings, which could refer to a contractual relationship whatsoever between Mrs [REDACTED] and [REDACTED]*”. [REDACTED] further stated that it had found records of compensation proceedings but that no policy of [REDACTED] was mentioned in these documents. [REDACTED] reiterated that it had found two policies taken out by [REDACTED] for his sons-in-law and that these policies are the subjects of other claims [see paragraphs 4 (c) and (d)]. It added: “*We have to decline the claimant’s allegation not to have initiated all relevant investigations, as we have been in contact with all institutions which could be in possession of possible records. ... Moreover, it is known to ICHEIC that we have integrated into our internal database the comprehensive findings of the investigations procured in Czechoslovakia by Facts and Files [a company which had checked the archives for ICHEIC] upon the request of ICHEIC and all other documents from Czech archives made available to us by ICHEIC. Thus, these are always part of our investigations. However, a reference whatsoever relating to a contractual relationship between Mrs [REDACTED] and [REDACTED] could not be established in the documents from the Czech archives, either*”. With regard to the Appellant’s remarks about the name list on the internet the company, by adding relevant documents, states that it has analysed the list and that the names on the list do indicate the confiscation of property but are no reference to a life insurance policy taken out by Mrs [REDACTED].

b) Claim number [REDACTED]

[REDACTED] reiterated that it had not found any records in its own archives and refers to its final decision letter. The external investigations produced information that the Appellant’s grandmother [REDACTED] had claimed compensation: “*In a partial decision dd 8th October 1964 the claimant, Mrs [REDACTED], was awarded a compensation of 13,299.04 Austrian shillings to compensate the (part) payment of ‘Reichsfluchtsteuer’ of 37,997.27 Reich marks – which also included the surrender value of 4,753.32 Reich marks confiscated in 1939 from the policy at issue. As the [REDACTED] policy [REDACTED] and the resulting value was the subject-matter of a*

previous decision by a restitution or compensation authority, the rules of the "Agreement" of 16th October 2002 do not allow us to submit an offer to Mr [REDACTED] relating to this policy". [REDACTED] stated that it undertook all investigations relevant to the matter. With regard to the internet list the Appellant mentioned in a letter [REDACTED] stated that this list contains "the names of those families from the former Protectorate Bohemia and Moravia whose property had been confiscated by the 'Gestapo'" but that there is "no reference as to a contractual relationship of Mr [REDACTED] with [REDACTED]".

17. [REDACTED] provided, among others, copies of the following documents:

- a) An asset declaration dated 11th July 1938. This document lists a life insurance policy number [REDACTED] with [REDACTED].
- b) An additional paper dated 27th April 1938. With regard to the policy number [REDACTED] it states that due to loans on the policy it is without any value.
- c) A partial decision dated 8th October 1964 rendered by the Fund for the Compensation of Property Losses suffered by Politically Persecuted that awards [REDACTED] 13,299.04 Austrian Shilling.
- d) A report dated 30th September 1964 giving the details of Ms [REDACTED]' claim. On the second page there is a handwritten note that lists RM 4,753.32 for the repurchase of an insurance policy with [REDACTED] as part of RM 37,997.27 for which Mrs [REDACTED] received compensation.
- e) A page dated 8th October 1963 that lists the assets of Ms [REDACTED] and gives additional information on what was confiscated. Among those assets an insurance policy number [REDACTED] issued by [REDACTED] is mentioned.
- f) A partial ruling dated 8th February 1964 from the Finance Department Vienna to the "*Fonds zur Abgeltung von Vermögensverlusten politisch Verfolgter*" that states what payments were made to the blocked account and by whom. [REDACTED] made a payment of RM 4,753.32.
- g) A five-page document dated 25th August 1966 which summarizes the compensation matter GZ 9131. This document also mentions "*the value of insurance policies*" which "*has already been settled*".

THE ISSUES FOR DETERMINATION

18. It is 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] and to consolidate appeal numbers [REDACTED] and [REDACTED]. The claims are "*related claims*" and the appeals are "*related appeals*" submitted by the same Claimant/Appellant but relating to different policies, one an alleged life insurance policy of the Appellant's great-grandfather and the other an alleged life insurance policy of the Appellant's great-grandmother.

19. Claim number [REDACTED]

The main issue for determination of this claim is whether the Appellant has met the 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. There is no doubt that the Appellant’s great-grandfather had several policies with [REDACTED], that the Appellant and his relatives as heirs of their ancestors could be entitled to the proceeds of these policies and that all family members living at that time were Holocaust victims.
22. However, as far as a policy taken out by or insuring the life of [REDACTED] is concerned, it is concluded that the Appellant did not meet his burden of proof that [REDACTED] issued such a policy. His evidence lacks the requisite authenticity and particularity and there is no corroborative evidence to support the Appellant’s statement that [REDACTED] issued such life insurance policy. The paucity of information the Appellant was able to provide, coupled with the absence of research matches (which must be taken into account even if the Respondent’s databases are limited), lead to the conclusion that the Appellant has not met the reduced burden of proof. In addition, the documentation submitted by the Respondent does not indicate that there had been more than the three policies taken out with [REDACTED] which had been reconstructed from the archive material. The asset declaration dated 11th July 1938 [see paragraph 18a)], the additional paper dated 27th April 1938 [see paragraph 18b)], and the page dated 8th October 1963 that lists the assets of [REDACTED] [see paragraph 18e)] only list life insurance policy number [REDACTED] with [REDACTED] (which is the subject of claim number [REDACTED]), and the further two policies the “*Devisenfahndungsamt*” [the “*foreign currency investigation department*”] had confiscated which were taken out not for [REDACTED] but for [REDACTED]’ son-in-law [REDACTED] and Dr. [REDACTED] (the subjects of claim numbers [REDACTED] and [REDACTED]). The fact, lastly, that [REDACTED] applied for compensation in the 1960’s without claiming the proceeds of any other life insurance policy for her lead to the conclusion that the Appellant has not met the reduced burden of proof under the provisions of the Agreement.
23. Claim number [REDACTED]

Since there is no doubt that [REDACTED] issued policy number [REDACTED] and the Appellant and his co-heirs as heirs could be entitled to the proceeds of this policy the main

issue for determination of this appeal is whether the company has established a valid defence. According to Section 17.3 of the Appeal Guidelines the Appellant is not entitled to payment from 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.

24. The Respondent proved that the policy number [REDACTED] was the subject of a compensation procedure by providing compensation and restitution authority archive evidence in the form of the documents listed above in paragraph 18. Especially the report dated 30th September 1964 giving the details of Ms [REDACTED]' claim (which has on its second page a handwritten note that lists RM 4,753.32 for the repurchase of an insurance policy with [REDACTED] as part of RM 37,997.27 for which Ms [REDACTED] received compensation) proves that this policy was compensated.
25. That the compensation proceeding was not a "German" restitution proceeding is irrelevant here. According to an Agreement between the International Commission on Holocaust Era Insurance Claims and the General Settlement Fund of the Republic of Austria dated 8th December 2003, the [REDACTED] branch of Vienna (a German insurance company with subsidiaries in Austria) comes exclusively under the Agreement of 16th October 2002 between the ICHEC, the [REDACTED] and the Foundation "Remembrance, Responsibility and Future" (see Annex III of the Agreement between the ICHEIC and the Settlement Fund). Accordingly, the policy in question, undoubtedly was covered by a decision of the compensation authority in this broader sense, and the Panel, therefore, according to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies.
26. Finally, contrary to the Appellant's statements in his reasons for both his appeals (see paragraph 15), there is no indication that [REDACTED] did not carry out the necessary and possible research. The company has convincingly explained in its letters dated 20th April 2005 (see paragraph 16) what efforts it has made and why the mentioning of the name in the Czech Government website is no proof of the existence of a further insurance policy.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 18th day of July 2005

[REDACTED]