

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 NUMBER: [REDACTED]

CLAIM NUMBER: [REDACTED]

BETWEEN

[REDACTED]

Represented by:

[REDACTED]

[REDACTED], P.C.

Attorneys at law

Chicago (IL), USA

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], née [REDACTED], born on [REDACTED] 1935 in Ebingen (Germany). She is the daughter of Dr. [REDACTED], a physician, and [REDACTED], née [REDACTED]. Dr. [REDACTED] was born on [REDACTED] 1897 in Strasbourg and died on 23rd November 1935 in Ebingen; [REDACTED] was born on [REDACTED] 1903 in Horb am Neckar (Germany) and died on 4th May 1974. The Appellant and her mother left Germany to escape persecution by the National Socialist Regime in 1939.

2. The Respondent is [REDACTED].
3. The Appellant's representatives submitted a claim dated 19th August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that the "[REDACTED]" ([REDACTED]) issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Member companies with the request to investigate and report their findings.
5. [REDACTED] informed the Appellant by letter dated 26th July 2001 that it had checked its central register and had found no entries for [REDACTED] but its register did contain an entry for Dr. [REDACTED]. [REDACTED] explained the meaning of such an entry and further research it had performed in the so-called 'in-force-register' and in the 'reserve-register'. Because this research had not led to any result it asked her to rest assured that despite this fact it would continue its research.
6. In a further letter to the Appellant's representatives, dated 26th September 2002, [REDACTED] informed the Appellant: *"1. numbers [REDACTED]: ... we found out that Mr [REDACTED] was insured within the collective insurance of "[REDACTED]" under the numbers [REDACTED]. However, we are unable to trace the contract files. Therefore, we have contacted the German State Compensation and Restitution authorities with the request to provide us with information about life insurance contracts. ... The documents of the compensation authority "Landesamt für Wiedergutmachung Stuttgart" ... reveal that Mr. [REDACTED] had concluded a life insurance number [REDACTED] with us, commencing on October 1, 1934 with a sum insured of RM 10.950,-. The sum insured became due on November 23, 1935, the day of death of Mr [REDACTED] and the amount of RM 10.950,- was paid out to the medical association on December 5, 1935. Furthermore, Mr [REDACTED] had concluded a life insurance number [REDACTED]with us, commencing on October 1, 1934 with a sum insured of RM 1.938,- which became due on November 23, 1935, the day of death of Mr [REDACTED], too. The sum insured in the amount of RM 1.938,- was paid out to the medical association on December 5, 1935. ... Regarding the second entry in our central register with the number [REDACTED] ... no file could be traced, either. ... In your particular case we suppose that a contract had been concluded with us, since there is a cross indicating Mr. [REDACTED]'s death on the entry of the central register. This means that we were informed of the death of Mr [REDACTED]. We assume that we paid the insurance benefit out to the beneficiary on the occasion of Mr [REDACTED]'s death. As we have nothing else to help us reconstruct the terms and the fate of the policies it is possible that the insurance benefit was not paid to the beneficiary but seized by authorities of the Nazi Regime".* [REDACTED] continued to explain the procedure in such cases and offered a lump sum payment of DM 1,009.20 (€ 516) saying *"In doing so, we wish to express that the mere possibility of a payment to a person or an institution other than the beneficiary is reason enough to pay a benefit"*.
7. [REDACTED] by letter dated 8th April 2003 informed the Appellant's representatives that - because of an additional agreement, which had been reached - the offer made in the letter dated 26th September 2002 would be increased and offered to pay a lump sum of US\$ 4,000.
8. Appellant had earlier signed a *"Release, Waiver and Agreement"* dated 5th December 2002, in which she confirmed *"acceptance of EURO 516 ... from [REDACTED] in full satisfaction of my Holocaust Era insurance claim on Policy No. [REDACTED]"*. By reason of the increased offer referenced in paragraph 7 above, on 16th May 2003, Appellant accepted and [REDACTED] paid out the additional amount of US\$ 3,445.40.

9. The Appellant submitted an appeal dated 2nd July 2003, which the Appeals Office received on 7th August 2003.
10. The Appeals Office forwarded a copy to the Respondent on 7th August 2003.
11. In a letter dated 2nd September 2003, which arrived in the Appeals Office on 18th September 2003, [REDACTED] responded and repeated the reasons for its decision as already set out in the Claims Procedure. Attached to this letter were five attachments of which one contained nine enclosures. The Appeals Office forwarded copies to the Appellant's representatives by letter dated 18th September 2003.
12. On 8th September 2003 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.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.
14. In a letter dated 19th September 2003 the representative of the Appellant sent on request of the Appeals Office a copy of a handwritten account for [REDACTED] and an Agreement between the [REDACTED] (on the one hand) and the [REDACTED] and [REDACTED] and the "[REDACTED]", the [REDACTED] (on the other). These documents were mentioned in the appeal form but not in the files the Appeal Office had received from the ICHEIC.
15. 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

16. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) The Appellant identifies the "[REDACTED]" as the insurance company that issued a life insurance policy. She states that the policy was purchased in Ebingen or Stuttgart or Mannheim, Germany.
 - b) In answer to question 5.7 regarding '*payments resulting from the policy*', the Appellant marked 'yes' and indicated that in 1935 her mother [REDACTED] received an unknown amount. She writes "*my mother did not work in Germany – we had a comfortable life we emigrated in Dec 1939*".
 - c) The Appellant identifies her father [REDACTED], born [REDACTED] 1897, as the policyholder. He was a self-employed physician.
 - d) She names her mother [REDACTED] née [REDACTED], born [REDACTED] 1903, as the insured person and named beneficiary.

- e) In answer to question 9 concerning ‘compensation’ the Appellant writes, “I did not know the facts”.
17. In the appeal form the Appellant’s representatives summarize the claims procedure by mentioning the letters dated 26th September 2002 and 8th April 2003 and continue: “On June 12, 2003, a letter was sent by [REDACTED] from [REDACTED] (copy attached) informing the claimant that additional amounts may be due, based upon additional information that has arisen. With the June 12, 2003 letter was sent: 1. Excerpts from the file of the Compensation Authorities (in German). 2. Copy of a handwritten account file for [REDACTED] (one page). 3. Insurance policy issued by [REDACTED] und [REDACTED] dated in Stuttgart on two dates (August 15 and August 16, 1935 and in Berlin on August 20, 1935 (in German). Based upon the June 12, 2003 letter and the three identified above additional documents, we are appealing the previous decision and believe additional amounts may be due above and beyond the U.S. \$ 4,000.00 that has already been paid to claimant”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. The following information is in the records of the Respondent:
- a) An [REDACTED]ZRG (central register) entry card for [REDACTED], the Claimant’s father, with a cross and his date of death on it - [REDACTED]states, “on the basis of the first entry (enclosure 1) we found that Mr [REDACTED] was insured within the collective insurance ‘[REDACTED]’ under the numbers [REDACTED] and [REDACTED] A. However, we were unable to trace the contract files”.
 - b) An [REDACTED] ZRG (central register) entry card for [REDACTED] with a cross and his date of death on it - [REDACTED] states, “regarding the second entry in our central register with the number [REDACTED] (enclosure 2) no file could be traced, either”.
 - c) A letter from [REDACTED] to the Compensation authorities dated 6th August 1956 referencing policy numbers [REDACTED].
19. [REDACTED] informed the Appellant in a letter dated 26th July 2001to that “ no entry exists in the register for Mrs [REDACTED]. For this reason, we know that no life insurance contract under this name existed with us”.
20. In the first decision letter sent 26th September 2002 [REDACTED]writes with regard to policy numbers [REDACTED] and [REDACTED] A, “compensation proceedings were conducted after the end of World War II by the State compensation authorities on behalf of the Federal Republic of Germany assumed the responsibility – incurred by the victims of the National Socialist Regime. The documents of the compensation authority ‘Landesamt für Wiedergutmachung Stuttgart’ (enclosure 3) reveal that Mr [REDACTED] had concluded a life insurance number of [REDACTED] with us, commencing on October 1, 1934 with a sum insured of RM 10.950,-. The sum insured became due on November 23, 1935, the day of death of Mr [REDACTED] and the amount of RM 10.950 was paid out to the medical association on December 5, 1935. Furthermore, Mr [REDACTED] had concluded a life insurance number [REDACTED] with us, commencing on October 1, 1934 with a sum insured of RM 1.938,- which became due on November 23, 1935, the day of

death of Mr [REDACTED], too. The sum insured in the amount of RM 1.938,- was paid out to the medical association on December 5, 1935. Within the framework of the German State compensation procedure, no compensation payment had been awarded to the heirs of Mr [REDACTED] since the obligations as stated in the policy had been fulfilled entirely and therefore, no loss had occurred to the claimants (enclosure 4). Our intent is - in accordance with the guidelines of the International Commission – to compensate life insurance claims that have remained unsettled to far. However, this does not apply to Mr [REDACTED]'s life insurance contracts number [REDACTED] and number [REDACTED] as all benefits were effected at maturity of the insurance contracts. Therefore the contractual obligations have been fulfilled entirely by our company.”

With regards to the third policy [REDACTED] no file could be traced and [REDACTED] states, “there is no proof of an unsettled contract concluded by Mr [REDACTED] with us”. [REDACTED] continues, “in your particular case we suppose that a contract had been concluded with us, since there is a cross indicating Mr [REDACTED]'s death on the entry of the central register. This means that we were informed of the death of Mr [REDACTED]. We assume that we paid the insurance benefit out to the beneficiary on the occasion of Mr [REDACTED]'s death. We know of no single case in which [REDACTED] did not pay the benefit upon notification of death, we assume it was proceeded accordingly in this case, too. As we have nothing else to help us reconstruct the terms and fate of the policies it is possible that the insurance benefit was not paid to the beneficiary but seized by authorities of the Nazi regime. In those cases where there is evidence that the insurance benefits were collected by former state institutions, the ICHEIC has established a separate fund. As agreed, the amount payable from the fund assets is determined on the basis of the German Federal Compensation Law... We know that in your particular case we have paid the insurance benefit. In this context we would like to refer to the past correspondence. However, we are not sure whether it was paid to the beneficiary. In light of these facts we have now decided to offer a benefit from the above-mentioned fund. In doing so, we wish to express that the mere possibility of a payment to a person or an institution other than the beneficiary is reason enough to pay a benefit”.

21. In a letter dated 2nd September 2003 [REDACTED] states, (a) “With regard to policy number [REDACTED] our offer was accepted by the claimant and the claimant's representative intention is not to contest this decision by the present appeal”, (b) “Policy numbers [REDACTED], [REDACTED] refer to a collective insurance that was managed by a consortium of '[REDACTED]und [REDACTED]', a predecessor of [REDACTED] and the ' '. However, these two policies were part of the post-war compensation proceedings. With notification of March 5, 1958 'Landesamt für Wiedergutmachung' rejected the demand for compensation since the policies became due with the death of the policyholder and were duly paid out on December 5, 1935. Therefore in accordance with section 2.4 of the ICHEIC Valuation Guidelines we denied this claim with letter of September 26, 2002”.
22. There are two documents, which relate to the compensation proceedings held in 1958:
 - a) A letter in German from [REDACTED] to the Landesamt für Wiedergutmachung, Stuttgart dated 6th August 1956.

This letter provides detailed information on the policies number [REDACTED] and [REDACTED] held by Dr. [REDACTED] and states that both policies were paid out following the death of Dr. [REDACTED] on 5th December 1935 to the medical association. An extract from the translated letter reads, “Dr. [REDACTED] was insured under the Württemberg medical group insurance scheme, under the numbers above. The policy costs were borne by [REDACTED], Berlin-Zehlendorf and our company on a 50:50 basis. The details in the replies to your questions below refer to 100% of the policy in each case.” [REDACTED] assumes that the medical association would have

passed this on to the beneficiary. According to this letter, information about this matter should be available from the “[REDACTED] Nordwürttemberg, Stuttgart-Degerloch, [REDACTED]”.

- b) A copy of the decision by the Landesamt für Wiedergutmachung, Stuttgart, dated 6th March 1958

In this decision the application made by Mr [REDACTED]’s widow, [REDACTED], for compensation for “*loss of financial betterment, an more particularly for losses under life assurance policies taken out with [REDACTED] under the Württemberg medical group scheme nos [REDACTED]*” was dismissed.

23. In its decision letter dated 8th April 2003 the Respondent informs the Appellant’s representative: “*In our letter of September 26, 2002 we submitted an offer of € 516,- for the insurance policy of the father of your client, Mr. [REDACTED], which had been accepted by your client, Mrs. [REDACTED], on December 5, 2002. This has been based on the assumption that the insurance benefit had been duly paid out by us. However, it is possible that the insurance benefit had not been paid out to the beneficiary but to government authorities. Therefore, we offered a payment on a voluntary basis. The offer was calculated on the basis of the then average sum insured as we were unable to reconstruct the terms of the insurance contract of your client’s father. In the meantime, an additional agreement has been reached. The ICHEIC, the German Foundation “Remembrance, Responsibility and Future” and the [REDACTED] signed an agreement on 16.10.2002, raising the sums offered. ... The amount of the lump sum is fixed in the aforementioned agreement. For each policy, which was not paid out or possibly confiscated a lump sum of \$ 4,000.00 will be offered. We are pleased to inform you that we can offer your client a total of \$ 4,000.00 within the framework of the German Foundation “Remembrance, Responsibility and Future”. The amount of € 516 (which corresponds to \$ 554.60 at the official exchange rate on the date of the payment) already remitted to your client is to be deducted from this payment. Therefore the increased offer amounts to \$ 3,445.40*”.

THE ISSUES FOR DETERMINATION

24. There is no doubt that the Appellant’s father had several insurance policies with [REDACTED] and “[REDACTED].”, that the Appellant as heir of her parents could be entitled to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement.

25. As far as policies [REDACTED] and [REDACTED] are concerned, however, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. 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.

26. When reading the Appeal Form one might have the mistaken impression that [REDACTED] is also a party to the appeal. The group insurance of the “[REDACTED]” was, in fact, originally a joint venture of [REDACTED] and [REDACTED]’s predecessor but was later transferred to [REDACTED], which alone managed the original joint venture.

The letter from [REDACTED] dated 12th June 2003 reads: “... *In accordance with the Agreement we found out that Mr. [REDACTED] was insured within the collective insurance of “[REDACTED]” and therefore included in the insurance of this association with the “[REDACTED]und [REDACTED]”, a predecessor of “[REDACTED]”, and “[REDACTED] (“[REDACTED]”), which was a predecessor company of [REDACTED]. This contract was a syndicate agreement between “[REDACTED]” and “[REDACTED]” and was lead managed by “[REDACTED]”. In the 1990’s these syndicate agreements were completely ceded to “[REDACTED]”. Therefore, all claims concerning these policies taken over entirely by “[REDACTED]” must be made on “[REDACTED]”. Hence, no more claims may be made for this policy on [REDACTED]. “[REDACTED]” has informed us that a decision letter relating to the above mentioned contract concluded with Mr. [REDACTED] was already sent to you on September 26, 2002*”. As the above statement correctly reflects, therefore, [REDACTED] is the only company liable for these insurance contracts as it assumed responsibility for these “*syndicate agreements*” in the 1990’s.

27. The Respondent proved that the two policies with the numbers [REDACTED] and [REDACTED] were the subjects of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, inter alia, a copy of the decision by the “*Landesamt für Wiedergutmachung*” (the compensation authority), Stuttgart, dated 6th March 1958, which records that the aforementioned policies were the subject of compensation proceedings under BEG law. The dismissal of the application made by Mr [REDACTED]’s widow, [REDACTED], for compensation for “*loss of financial betterment, and more particularly for losses under life assurance policies taken out with [REDACTED] under the Württemberg medical group scheme nos [REDACTED]*” constituted such a decision of a German restitution or compensation authority. As the two policies were covered by a decision of the compensation authority, the Panel, according to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies.
28. As far as policy number [REDACTED] is concerned the Panel need not decide whether the Appellant, after receiving the full sum of US\$ 4,000 and signing the respective waivers, retains the right to appeal the decision letter because the amount offered by [REDACTED], as is reflected in the following valuation, was correctly calculated.

VALUATION

29. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X.
30. In cases, in which, as here, the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (section 7.1 of the Valuation Guidelines).
31. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 is RM 2,523.00.

This amount then, following the currency changes prescribed by law in 1948, must be converted from RM into DM by using the converting factor RM 10 = DM 1, which results in DM 253.30. That is the value to the end of 1969. To update the values for the end of the year 1969 to the end of the year 2000, pursuant to Step 2 No. 3 of Schedule 2 the 1969 value then must be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.

32. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex, additions must be made to the value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which had consulted with the Foundation and the [REDACTED] as the other parties of the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 6/12 of 4.75 %), which results in DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,286.8151579 for 2003, leaving a final total of € 1.169,23 on the basis of an exchange rate of DM 1.95583 = € 1.00.
33. Nevertheless, and irrespective of the above calculation, pursuant to section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company at least a minimum payment of US\$ 4,000, if he is himself a survivor of the Holocaust, as the Appellant is in this case.
34. The Appeals Panel concludes, therefore, that for the reasons set out above the offer made by the Respondent is correct.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 16th day of April 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member