

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],
Pompano Beach, Florida,
United States of America

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] 1922 in Cloppenburg (in Oldenburg), Germany. She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1884 in Werlte, Germany and died on 21st May 1943 in the concentration camp at Sobibor;

[REDACTED] was born on [REDACTED] 1894 in Arolsen (Waldeck), Germany and also died on 21st May 1943 in the concentration camp at Sobibor. The Appellant has two sisters, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED]. Her third sister, [REDACTED] [REDACTED], born on [REDACTED] 1928 in Quakenbrück, did not survive the Holocaust and died with her parents in Sobibor on 21st May 1943.

The Appellant, who suffers from Parkinson's Disease, is represented by her husband [REDACTED].

2. The Respondent is [REDACTED].
3. The Appellant's representative submitted a claim dated 21st March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that an insurance company, which could not be named, issued an insurance policy.
4. The ICHEIC submitted the claims to the Member Companies and to the German companies.
5. In a letter dated 22nd February 2001 [REDACTED] informed the Appellant that it had checked its central register on the basis of the following data: "*Mr [REDACTED], born [REDACTED], 1884 in Kassel, Mrs [REDACTED], née [REDACTED], born [REDACTED], 1984 in Arolsen/Waldeck*" without finding an entry for her mother [REDACTED]. For her father [REDACTED] there was probably an entry, however, the entry contained another date of birth. [REDACTED] also described the meaning of this match and further research it was going to perform. It continued, "*to be sure that this entry belongs to your relative, please check the above mentioned date of birth and inform us accordingly*". The date of birth given on the claim form, which was forwarded to [REDACTED], was "[REDACTED]84" and was obviously misunderstood there.
6. The Appellant's representative responded in a letter dated 1st August 2001, to which a copy of a "*Mitteilung des Niederländischen Roten Kreuzes über die endgültige Verschleppung der Familie [REDACTED] aus Cloppenburg vom 8. Dezember 1950*" (Notification of the Dutch Red Cross dated 8th December 1950 about the final deportation of the [REDACTED] family from Cloppenburg) was attached. In this copy the date of birth of [REDACTED] was given with "*[REDACTED] 1884*".
7. In a letter dated 14th May 2001 [REDACTED] informed the Appellant's representative that "due to the rectification of the date of birth of Mr [REDACTED] we now know that the entry in the register was made for your relative". [REDACTED] also gave information about further research it was going to do.
8. In a decision letter dated [REDACTED] 2002 [REDACTED] provided details about the results of its further research and offered the Appellant a total of € 516 as a lump sum payment.
9. In a final decision letter dated 12th September 2003 [REDACTED] extended the above named offer referring to an additional Agreement signed on 16th October 2002 by the ICHEIC, the German Foundation Remembrance, Responsibility and Future" and the [REDACTED] to a lump sum payment of US\$ 4,000.00.
10. The Appellant submitted an appeal to the Appeals Office dated 9th October 2003, in which the reasons for the appeal were set out.
11. The Appeals Office mailed a copy to the Respondent on 29th October 2003.

12. [REDACTED] responded in a letter dated 7th November 2003 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 our decision on it*”. [REDACTED] submitted all documentary evidence it had in this case. The Appeals Office mailed a copy to the Appellant’s representative.
13. The Appellant’s representative replied in a letter dated 18th November 2003, which the Appeals Panel forwarded to the Respondent.
14. On 9th December 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.
15. In a letter dated 15th December 2003 the Appellant’s representative submitted further information and a copy of a publication called “*Dokumente und Materialien zur Geschichte und Kultur des Oldenburger Münsterlandes – Als gute Untertanen und Bürger ... geduldet, verfolgt, vertrieben, ermordet*” (Documents and material about the history and culture of the Oldenburg Munsterland – as good subjects and citizens ... tolerated, persecuted, deported, killed). This documentation contains an entry showing taxes paid by [REDACTED] in 1920.
16. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
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, the Appeal Guidelines.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

18. The Appellant’s representative has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) No insurance company was identified in the claim form.
 - b) In section six the policyholder is identified as [REDACTED], the Appellant’s father, who was born on [REDACTED] 1884 in Werlte, Germany. His profession is given as a horse and cattle dealer. He died on 21st May 1943 in Sobibor, Poland.
 - c) In section seven the insured person is identified as [REDACTED].
 - d) In section eight the Appellant’s representative writes, “*I assume beneficiary would have been wife, [REDACTED] née [REDACTED]*”, who was born on [REDACTED] 1894 in Arolsen/Waldeck. [REDACTED], [REDACTED] and the Appellant are identified as living heirs.
 - e) In section ten the Appellant’s husband, [REDACTED], is identified as her representative.

- f) In section eleven concerning 'further information' the Appellant's husband writes, *"I speak here for my wife and her sisters [REDACTED] and [REDACTED]. [REDACTED]. [REDACTED] and [REDACTED] had 4 daughters [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. In Dec. 1938 [REDACTED] and [REDACTED] went to England on a 'Kindertransport'. In May 1939, [REDACTED], [REDACTED], [REDACTED] and [REDACTED] boarded the 'SS. St. Louis' to go to Cuba. They were returned to Europe in June 1939. The daughters were in 1939 17, 14, 12 and 10 years of age. My wife, [REDACTED] was the oldest. She was able to leave Holland for England on a Kindertransport in July 1939. [REDACTED], the youngest, stayed with her parents – eventually to be sent to Westerbork after May 1940 – and then finally to Sobibor in May 1943 where she too was gassed. The father, [REDACTED], was a successful businessman and quite well off. My wife and her sisters were too young to know of the father's business affairs. But, because he was wealthy, they think he probably had insurance policies on his life. Of exact information there is nothing. While in Havana harbour in May 1939, their 'lift' (furniture and trunks) were unloaded and left behind when the St. Louis returned to Europe. So if there were any papers relating to ins. policies, they were lost. I don't know how you can trace the policy or policies, if any, with no information from the 3 sisters"*.
19. There is much written correspondence from the Appellant's husband on the claim file and appeal file. In these letters he gives an account of the [REDACTED] family history. He asserts that [REDACTED] was a wealthy man, and refers to a list of Jews paying income tax in Cloppenburg in 1920, which shows [REDACTED] paying a large amount.
20. In a letter received by the Appeals Office on 23rd December 2003 the Appellant's representative submits the above-mentioned document (paragraph 15), which is from a book published in 1988 about Jewish communities in the Oldenburg province.
21. The Appellant's representative asserts that his wife's father was wealthy and *"probably applied for and paid a premium for a life ins. policy of RM 100,000 if not more."* He does not accept the settlement being offered by [REDACTED] of US\$ 4000 based on the average insured sum of RM 841. Furthermore, he is of the opinion that the Respondent has precise information about the insured amount and how much was paid to the Nazi regime.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

22. In the first decision letter issued on [REDACTED] 2003 the Respondent writes, *"the starting point for our research was the entry for Mr [REDACTED] in our central register...the entry only contains – apart from the personal data of the applicant – the application number [REDACTED]. Furthermore, we know from the remark 'Uebertr. A' (transferation to A) that a life insurance contract with the numbers [REDACTED] was concluded, because only contracts were transferred from Portfolio L to portfolio A. On account of the fact that no file exists we have no information whatsoever on the possible terms of the contract. In addition, the inforce register of 1941 and the reserve register do not contain an entry. For this reason, we have informed you that we have no evidence of a contract concluded with us. ...We regret, we have to inform you that there is no proof of an unsettled contract concluded by Mr [REDACTED] with us. Apart from this, we know that if a policy had existed the insurance benefit was duly settled...In your particular case we only know for sure that a contract had been concluded with us due to the remark 'Uebertrag A' for the number [REDACTED]. As we have nothing else to help us reconstruct the terms and the fate of the policy it is possible that the benefits were not paid to the beneficiary but seized by authorities of the Nazi regime...We know that in your particular case we have*

paid the insurance benefit. However, we are not sure whether it was paid to the beneficiary". In light of this information [REDACTED] offered a fund benefit on humanitarian grounds of € 516.

23. In the final decision letter issued on 12th September 2003 the Respondent increases the offer to US\$ 4000 pursuant to the minimum payment of \$4000.

THE ISSUES FOR DETERMINATION

24. Since the existence of a policy and the entitlement of the Appellant to the proceeds of this policy as (one out of three) heirs of her parents are not in question, the main issue for determination in this case is whether the sum of US\$ 4,000 offered by [REDACTED] is correctly calculated according to the Valuation Guidelines (Annex D). This will be set out below in the paragraph "*Valuation*".
25. A further issue is whether the Appellant is the only entitled person.
26. Where it appears to the Panel that a third person may be entitled to part of the proceeds of an insurance policy claimed in the appeal, the decision shall reflect any such entitlement and the Panel may order the payment of the appropriate amount to any such third person out of the sum awarded by the Panel (section 19.2 Appeals Guidelines).
27. Pursuant to the Succession Guidelines (Annex C) the Panel must apply in matters concerning the right of the Claimant to succeed to or inherit the benefits of an insurance policy (the "Proceeds") from the person who was entitled to the Proceeds at the insured event (the "Deceased Person") the Succession Guidelines as set out in this Annex of the Agreement. The Appellant "assumes" that beneficiary of the life insurance policy was the policyholder's and insured's ([REDACTED] [REDACTED]) wife ([REDACTED]). It is highly likely that the three surviving daughters of [REDACTED] and [REDACTED] are legal heirs, and so entitled to the proceeds. As the Appellant's parents and her sister [REDACTED] died in 1943 the three surviving sisters [REDACTED], [REDACTED] and [REDACTED] are the persons entitled. If there is issue and no spouse (category A1-A3 of the Succession Guidelines) all proceeds are distributed to issue as provided in Paragraph 2(i) of the Succession Guidelines. Where the proceeds or part of the Proceeds are to be divided in accordance with this Paragraph 2(i), those proceeds shall be divided into as many equal shares as there are (a) living members of the nearest generation of issue then living; and (b) deceased members of that generation who leave issue then living. As there is no indication that the Appellant's sister [REDACTED], who died at the age of 15, had issue Paragraph 2 (i) (a) must be applied. This means that the three surviving sisters have to share the proceeds in equal shares.

VALUATION

28. Under the Tripartite Agreement (see para. 14 above) the valuation of policies has to be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. 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.

29. In cases, where, as is the case here, policies existed but the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that an offer must be made and 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).
30. 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 gives RM 2,523.00. This amount following the currency changes prescribed by law in 1948, has to be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30. That is the value to the end of 1969. In order to update this value by end 1969 to the value by end 2000, pursuant to Step 2 number 3 of Schedule 2 the 1969 value has to be multiplied by 8. Eight times DM 253.30 is DM 2,018.40
31. For offers made from January 2001 the value has to 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 been 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. 11/12 of 4.75 %), which leads to the amount of DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,331.02505615 for 2003, which gives € 1.191,83 on the basis of an exchange rate of DM 1.95583 = € 1.00
32. Notwithstanding 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 (per policy), if he is himself a survivor of the Holocaust, as the Appellant is in this case.
33. The Appeals Panel concludes that for the reasons set out above the offer made by the Respondent (US\$ 4,000) is correct.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal is dismissed.
2. The decision made by [REDACTED] is changed in that way that the offered US\$ 4,000.00 have to be shared by the Appellant and her two sisters, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED], in equal shares.

Dated this 14th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member