

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

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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

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### **PRIVILEGED AND CONFIDENTIAL**

**APPEAL NUMBERS:** [REDACTED]

[REDACTED]

**CLAIM NUMBERS:** [REDACTED]

[REDACTED]

### **BETWEEN**

[REDACTED]

Represented by  
Rechtsanwalt [REDACTED],  
Leipzig, Germany

### **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] 1914 in Gautzsch (Germany). She is the widow of [REDACTED], who was born on [REDACTED] 1905 in Zduńska Wola (Poland) and died on 14<sup>th</sup> September 1998 in Sidney (Australia). They immigrated in 1938 to escape persecution by the National Socialist Regime.

2. The Respondent is [REDACTED].
3. The Appellant's representative submitted two claims dated 24<sup>th</sup> July/1<sup>st</sup> September 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that "[REDACTED]" issued policies of life insurance.
4. The ICHEIC processed these claims, which referred to policy numbers [REDACTED] and [REDACTED], as two claims and assigned claim numbers [REDACTED] and [REDACTED].
5. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its respective decision letters dated 25<sup>th</sup> August 2003, which are addressed to the Appellant's representative "*In your client's case we have been able to find out that, as early as in May 1957 and/or March 1958, respectively, Mr. [REDACTED] himself, with the help of his lawyer, Dr. [REDACTED], in Mannheim, had filed a claim for compensation with Regierungspräsident in Hildesheim ... within the scope of the BEG (German Compensation Law) with regard to the a/m policy. On 2<sup>nd</sup> January 1962 the Regierungspräsident in Hildesheim ... - based on an information given by Mr. [REDACTED]'s authorised person – turned to [REDACTED] asking for information on life insurance policy No. [REDACTED] (policy No. [REDACTED] respectively). The relevant information was given on 30<sup>th</sup> January 1962. ... On 3<sup>rd</sup> April 1962 the Regierungspräsident in Hildesheim ... decided on the claim for compensation under file no. [REDACTED] in view of "Schaden im wirtschaftlichen Fortkommen" (loss of economic advancement) amounting to DEM 498.78 (DEM 892.60 respectively). ... As Article 2, section 1 of the "Agreement" dd 16<sup>th</sup> October 2002 stipulates that an insurance policy is only eligible for compensation if it has not been subject-matter of a prior decision by a restitution office, your client is not eligible for compensation. We are confident that you and Mrs. [REDACTED] will understand our decision not to submit an offer for a compensation payment under the given circumstances*".
6. The Appellant's representative submitted appeals to the Appeals Office dated 28<sup>th</sup> August 2003, in which the reasons for the appeal were set out.
7. The Appeals Office received these appeals on 9<sup>th</sup> October 2003 and mailed copies to the Respondent on 23<sup>rd</sup> October 2003.
8. [REDACTED] responded in letters dated 31<sup>st</sup> October 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 [REDACTED]'s previous decision on it*".
9. On 2<sup>nd</sup> 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.
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 16<sup>th</sup> 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

12. The Appellant's representative has in the claim forms submitted the following information.

- a) She identifies the insurance company, which issued the policies as "[REDACTED]" and states that the policies were purchased in Leipzig, Germany.
- b) In section 5 she identifies the policies as life insurance policies and gives the policy numbers [REDACTED] and [REDACTED]. The sums insured by the policies were FGM 5.000,00 and FGM 10,000. The policies were issued on 1<sup>st</sup> October 1928 and 1<sup>st</sup> May 1931 and were due to mature on 1<sup>st</sup> October 1953 and on 1<sup>st</sup> May 1951.
- c) The Appellant identifies her husband [REDACTED] (formerly [REDACTED]) born on [REDACTED] 1905 in Zduńska Wola, Poland as the policyholder in section 6 and as the insured person in section 7. [REDACTED] died on 14<sup>th</sup> September 1998 in Sydney, Australia.
- d) The named beneficiary of the policy is unknown.
- e) In response to question 9.1 "*Have you or anybody else participated in any compensation/restitution procedure for this claim ?*" she states that she does not know.
- f) She names lawyer [REDACTED] as her representative in section 10.

13. In the appeals forms the Appellant's representative Rechtsanwalt [REDACTED], without contesting that the policies were covered by the BEG proceedings, outlines the grounds for appeal and writes "*The exclusion of claims in all cases in which BEG proceedings have been previously conducted is improper and illegal. If, as is maintained by you, it should be correct, that such payments are not provided for within the agreement, this is only further confirmation that within the framework of the negotiations with the German insurance companies the interests of those persecuted by the Nazis was not represented. It is a generally recognised fact, which has been verified by historians, that all German insurance companies participated in the pauperisation of the Jewish people during the Hitler dictatorship. The interest of the German insurance companies was to make the largest possible profit from the persecution, expulsion and murder of Jewish people. For this the German insurance companies up to now have not made any payments at any time. Rather, for decades they have made further proceeds and interest from the enormous profits of the dead and the survivors. The fact that the German state as the legal successor to the German Reich has compensated parts of the confiscated assets, for which the Hitler state is to be blamed, does not free the German insurance companies from their obligations. The remarkably minor payments under the BEG proceedings were financed by the German taxpayer. It is neither proper nor legally comprehensible why these payments should*

*release the German insurance companies from the duty of handing over the vast financial profits made from the Jewish persecution. The decision therefore cannot continue to apply. Should the view not be altered, it is to be assumed that with regards to these claims the possibility of taking legal action by those affected is not exhausted. If these claims are not to be collected by the ruling with the German insurance companies, then those affected will have to pursue the matter by taking legal action”.*

**THE INVESTIGATION AND DECISION BY THE RESPONDENT**

- 14. The Respondent summarises the result of his research in its decision letters dated 25<sup>th</sup> August 2003 as quoted above (paragraph 5).
- 15. The decision letters include among others copies of a document issued by the compensation authority specifying the policies claimed, which is a ruling of the Regierungspräsident of Hildesheim dated 3<sup>rd</sup> April 1962 that reads:

*“The applicant had to surrender his life assurance policies with [REDACTED] on the grounds of persecution, and through losing his rights, suffered losses other than under social security for the purposes of § 127 BEG. As the insurer’s files on the applicant were lost in the war, the insurers have reconstructed the policy terms from the technical register at their disposal. [REDACTED]’s estimated losses of 30.01.1962 are as follows:*

- A. Policy no: [REDACTED]  
Start date: 01.10.1928  
End date: 01.10.1953  
Sum insured: FGM 5,000.00

1. Benefits under the policy	RM 5,000.00 = DM 1,375.00
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Less

Premiums unpaid up to time of currency reform	RM 2,401.90 = DM 240.19
From the currency reform	DM 869.70
Redemption value	RM 308.30 = DM 30.83
Loan	RM 150.00 = <u>DM 15.00</u> <u>DM 1,155.72</u>
<b>Balance</b>	<b>DM 219.28</b>

2. Long-standing savers’ compensation	DM 215.00
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Plus

4% interest for the period from 01.01.1953 – 30.06.1960, as long-standing savers’ compensation would have been paid in June 1960	<u>DM 64.50</u>
<b>Total</b>	<b><u>DM 498.75</u></b>

B. Policy no: [REDACTED]

Start date: 01.05.1931

End date: 01.05.1951

Sum insured: FGM 10,000.00

1. *Benefits under policy* RM 10,000.00 =  
DM 2,250.00

Less

*Premiums unpaid up to time of currency reform* RM 5,940.50 = DM 594.05

*From the currency reform* DM 1,166.90

*Redemption value* RM 674.50 = DM 67.45

*Loan* RM 150.00 = DM 10.00 DM 1,838.40

*Balance* DM 411.60

2. *Long-standing savers' compensation* DM 370.00

Plus

*4% interest for the period from*

*01.01.1953 – 30.06.1960,*

*as long-standing savers' compensation*

*would have been paid in June 1960*

DM 111.00

Total DM 892.60

*Summary of policy losses:*

A. *Policy number [REDACTED] = DM 498.78*

B. *Policy number [REDACTED] = DM 892.60*

*Total = DM 1,3912.38*

*This is the final settlement of the claims made in the present compensation proceedings”.*

16. In a previous letter dated 5<sup>th</sup> July 1960 to attorney Dr. [REDACTED] the Respondent refers to policy numbers “[REDACTED] – [REDACTED], born 25.04.1905 in Zduńska Wola, Poland, formerly resident of Leipzig, [REDACTED], emigrated November 1938”. The Respondent states that the letter is in response to a letter dated 3<sup>rd</sup> June 1960 from Dr. [REDACTED] and writes: “Before going any further, we would like to point out that many of our files and documents were lost in the war. In the present case, we were able to trace both Herr [REDACTED]’s policies referred to above. Our records show that they were paid up for RM 599.00 and RM 1,178.00 and would have matured in October 1953 and May 1951 respectively. From our redemption register, we find that the policies were charged with loans, probably RM 150.00 and RM 100.00, and that those loans ceased to be paid, giving the paid up sums insured as shown above. Unfortunately we cannot say anything else as to when the policies first started or what the original sums insured were. We would need information for any reconstruction required. The policies expired by being redeemed on 26.01.1939. On that date, we paid RM 982.80 as redemption to [REDACTED], Leipzig branch, for crediting to the account of Herr [REDACTED], Leipzig [REDACTED], [REDACTED].”

The settlement was as follows:

[REDACTED]

Redemption	RM 308.50	
Less postage	<u>RM 0.20</u>	RM 308.30

[REDACTED]

Redemption		<u>RM 674.50</u>
	Total	RM 982.80

We have therefore duly met our contractual obligations; there are no further claims against us of any kind”.

17. In a letter dated 30<sup>th</sup> January 1962 to the Compensation Authority in Hildesheim, the Respondent referred to compensation matter [REDACTED] and gave details about policy number [REDACTED]. The Respondent states that the letter is in response to a letter from the compensation authority dated 2<sup>nd</sup> January 1962. The Respondent reiterates the information contained in the letter described above and gives the policy start date and original sum insured by reconstruction, as “our files were lost in the war”. The date of issue of the policy is deemed to be 1<sup>st</sup> October 1928 and the sum insured is FGM 5,000.00. Concerning compensation the Respondent gives the following information:

“Compensation according to § 128 Paragraphs 1 and 2 BEG

	<u>RM</u>	<u>DM</u>
a) Benefits under the policy (Dividends are balanced with the premiums, as far as the tariff allows)	5000	1375
b) Less	<u>RM</u>	<u>DM</u>
Premiums unpaid (including tax) up to the currency reform	2401.90	240.19
from the currency reform		869.70
Redemption value (rest)	308.30	30.83
Loan	150	15
Redistribution for loss of interest during the war		<u>1155.72</u>
Final amount: = a) – b) = DM	219.28	= = = <u>219.28</u> =

Long-term savers’ compensation would amount to DM 215 plus 4% interest per year from 1.1.1953. According to our guidelines it would have been paid in June 1960”.

**THE ISSUES FOR DETERMINATION**

18. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate appeal number [REDACTED] (regarding claim number [REDACTED]) and appeal number [REDACTED] (regarding claim number [REDACTED]). The claims were denied by identical decision

letters and are appealed with identical arguments. They are “*related appeals*” submitted by the same claimant but relating to different policies, namely two different life insurance policies issued by the same company. Another more recent unnamed claim, filed on 18<sup>th</sup> September 2003 in the maiden name Gertrud [REDACTED] of the Appellant, is not subject of this decision.

19. There is no doubt that the Appellant’s husband had insurance policies with [REDACTED], that the Appellant as heir of her husband could be entitled to the proceeds of these policies and that she and her husband were Holocaust victims. Therefore, the claims of the Appellant in general are within the scope of the Agreement. But, as to the two policies at issue, 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 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.*

20. The Respondent proved that the two policies, numbers [REDACTED] and [REDACTED] were the subjects of a compensation proceeding by providing compensation and restitution authority archive evidence in the form of, among others a “*Bescheid*” (ruling) dated 3<sup>rd</sup> April 1962, which shows that the afore-mentioned policies were the subject of a decision of a compensation proceeding under BEG law. As a result the Appellant’s husband received a compensation payment totalling DM 1,391.38. Accordingly, the two policies in question undoubtedly were covered by a decision of the compensation authority, which is not contested by the Appellant. The Panel, therefore, according to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies.
21. The Appeals Panel moreover, according to 2.2.1 Appeal Guidelines, has no power to challenge the validity of the Guidelines which the Appellant does when calling the exclusion of claims in all cases in which BEG proceedings have been previously conducted as “*improper and illegal*” and presenting arguments to that effect (see above no.13). The Appeals Panel may not consider the aforementioned reasons for appeal, because it is bound by the Agreement and its Annexes. The Appellant similarly became bound when he signed the Appeal Form.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 4<sup>th</sup> day of May 2004

The Appeals Panel

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Timothy J. Sullivan

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Rainer Faupel

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Abraham J. Gafni

Chairman

Panel Member

Panel Member