

## **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

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

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### **PRIVILEGED AND CONFIDENTIAL**

**APPEAL NUMBER:** [REDACTED]

**CLAIM NUMBER:** [REDACTED]

### **BETWEEN**

[REDACTED]

**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] 1919 in Luxembourg (Grand Duchy of Luxembourg). She is the daughter-in-law of [REDACTED] and [REDACTED], née [REDACTED]. Her husband, [REDACTED], son of

[REDACTED] and [REDACTED], was born on [REDACTED] 1914 in Völklingen/Saar (Germany) and died on 15<sup>th</sup> August 1990 in the Principality of Monaco. [REDACTED], a self employed merchant, was born on [REDACTED] 1884 in Neumagen (Germany) and died on 23<sup>rd</sup> May 1938 in Mainz (Germany); [REDACTED] was born on [REDACTED] 1885 in Sölktern, district of Birkenfeld (Germany) and died in Völklingen/Saar on 8<sup>th</sup> December 1948. In addition to [REDACTED], [REDACTED] and [REDACTED] also had a daughter, [REDACTED], who died on 3<sup>rd</sup> July 1935 in Völklingen/Saar. The Appellant and her late husband [REDACTED] had two children, [REDACTED] and [REDACTED].

[REDACTED] was forced to flee from Germany in 1935 to escape persecution by the National Socialist Regime and lived until he died in Ettelbrück (Grand Duchy of Luxembourg).

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim dated 28<sup>th</sup> July 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued policies of life insurance.
4. The ICHEIC submitted the claim to the Respondent. In a first letter dated 20<sup>th</sup> February 2001 [REDACTED] informed the Appellant that it had checked its central register on the basis of the following data: *“Mr [REDACTED], born December 23<sup>rd</sup>, 1884 in Neumagen, Mrs [REDACTED], née [REDACTED], born June 23<sup>rd</sup>, 1885 in Sölktern”* and that there were entries for Mrs. [REDACTED] and Mr. [REDACTED], *“which means that your parents in law applied for a life insurance”*. [REDACTED] continued that the central records did not indicate whether a policy was actually issued and as a result it had initiated a search for a corresponding policy file in its file archives.
5. In the following letter dated 24<sup>th</sup> July 2001 [REDACTED] informed the Appellant that the result of its further research disclosed, that [REDACTED] had taken out two life insurance policies (numbers [REDACTED] and [REDACTED]) that were subject of a restitution decision taken by the *“Wiedergutmachungsbehörde in Köln”* (compensation authority in Cologne); for [REDACTED] there were further entries in the central register (numbers [REDACTED] and [REDACTED]), to be investigated.
6. In a letter dated 2<sup>nd</sup> July 2002 [REDACTED] summarised the results of its investigations as follows: *“All that is known is that three policies were taken out with us, numbers [REDACTED], [REDACTED] and [REDACTED]. ... Policy [REDACTED] was compensated for, as we have already informed you”*. [REDACTED] made an offer to pay DM 2,018.40 and explained this as follows: *“Under the agreement made, payments out of the fund are governed by the Federal Compensation Law. If no calculations are possible under this law, because no policy details now exist, only that the benefits were seized by the state, we have agreed with the International Commission to pay a flat rate DM 1,009.20 per policy. As your father in law had three policies, and compensation has already been paid for one of them, two lump sums will be paid, giving a total of DM 2,018.40”*.
7. In a second letter dated 18<sup>th</sup> June 2003, addressed to the Appellant’s son [REDACTED], [REDACTED] increased its offer and wrote: *“... Our letter of 02.07.2002 offered your mother a payment of € 1,032.00 for two insurance policies of your father in law, Herr [REDACTED]. She did not accept this. In the meantime, another agreement was concluded. ICHEIC, the foundation “Remembrance, responsibility and future” and the [REDACTED] agreed to increase payments offered on 16.10.2002. ... According to these calculations, Herr [REDACTED]’s policies [REDACTED] and [REDACTED] are valued at € 1,178.27 each, giving a value for Herr [REDACTED]’s two policies together of € 2,356.54. ... The*

*payment we are offering you is higher, however. Under the agreement the minimum amount to be offered for all policies unpaid or possibly confiscated by government bodies is \$ 4,000.00. As the values estimated for Herr [REDACTED] are below the minimum threshold at € 1,178.27 each, we have pleasure in offering your mother \$ 4,000.00 for each policy, or \$ 8,000 in all”.*

8. The Appellant submitted an appeal to the Appeals Office dated 22<sup>nd</sup> July 2003, in which she set out the reasons for the appeal. This appeal was sent to a PO Box in Schiphol (The Netherlands), arrived there at an indeterminate time and was forwarded to the Appeals Office, where it arrived on 13<sup>th</sup> November 2003.
9. The appeal form received from the Appellant was an incorrect appeal form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva, Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeal Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
10. The Appeals Office requested the Appellant by letter dated 13<sup>th</sup> November 2003 to sign an amended appeal form.
11. On 27<sup>th</sup> November 2003 the Appeals Office received the new Appeal Form, which is dated 24<sup>th</sup> November 2003 and mailed a copy to the Respondent.
12. [REDACTED] responded in a letter dated 19<sup>th</sup> December 2003 in which it pointed out *“according to the dates of signing and receipt of the Appeal Form, the claimant did not appeal within the 120-day-period. Therefore, we consider the appeal as inadmissible”*. Furthermore [REDACTED] considered the appeal as unfounded 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 copies of all documents in relation to this appeal.
13. On 26<sup>th</sup> January 2004 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.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
15. In a letter dated 27<sup>th</sup> January 2004 the Appellant responded to [REDACTED]’s statement that the appeal was not timely filed stating: *“In this last letter, [REDACTED] says that the delay of 120 days for my appeal was past. I think [REDACTED] has regarded the date of your sending (November 13, 2003) and not mine (June 18, 2003) !”*.
16. 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

17. The Appellant has submitted the following information in relation to the claim for the proceeds of life insurance policies in her claim form:
- a) Her deceased husband spoke to her of [REDACTED] and the policy in question was purchased in Völklingen, in Germany
  - b) In section five she asserts that the currency of the policy was DM (RM – Reichsmark are meant) and that the policy was a “*life insurance policy*”. In question 5.10 the Appellant writes that the payments stopped because [REDACTED] had to leave Germany in 1935.
  - c) In section six the policyholder is identified as [REDACTED], the Appellant’s father-in-law, who was born on [REDACTED] 1884 in Neumagen, Germany. [REDACTED] died on 23<sup>rd</sup> March 1938 in Mainz.
  - d) In section seven the insured person is identified as [REDACTED].
  - e) In section eight the beneficiary is identified as [REDACTED] née [REDACTED], the wife of [REDACTED], who was born on [REDACTED] 1885 in Sötern, Germany. She died on 8<sup>th</sup> December 1948. The Claimant is identified as a living heir.
  - f) In section nine concerning compensation, the Appellant answers “yes” to whether compensation has been received for this claim and writes, “[REDACTED], my deceased husband and son of [REDACTED] received DM 4000 as compensation for the store”.
  - g) In section eleven regarding “*further information*” the Appellant writes, “*to complete the questionnaire, I would like to add that my husband, [REDACTED], son of [REDACTED], merchant of Völklingen, Saarland, told me of a number of life assurance policies, including ‘[REDACTED]’. Unfortunately I am unable to provide any details, as my husband died in 1990 and he himself had no idea what happened to those policies ...*”.
18. In her reasons for appeal she writes: “*Further to your proposal for settling the two contracts of [REDACTED] at \$ 4,000 per contract, I hereby set out my rejection of this offer. Indeed, the \$ 4,000’s offered in 2003 would represent a sum of \$ 110.43 in 1933-dollar terms, which would have been paid at 5 % per year. Conversely, a deposit of \$ 4,000 in 1933 would represent in real terms a sum of \$ 121,708.24 when paid at 5 % per year. The two life insurances of [REDACTED] no. [REDACTED] and [REDACTED]. Even if the amount of the deposit remains unknown, it is enough to inform me of the minimum amount for taking out such a contract at the time. You could also base it on the average deposit of these contracts, of which you ([REDACTED]) are in possession, to work out the value of the sums owing*”.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. In its letter dated 2<sup>nd</sup> July 2002 [REDACTED] writes, “*We have completed our search of external archives for life assurance policies with numbers [REDACTED] and [REDACTED] of your father in law, Herr [REDACTED]. We would now like to inform you finally of the results of our search. Our search was based on an entry for Herr [REDACTED] in our central records (Annex 1). As an entry was made as soon as an application was made to take out a life assurance policy, this entry does not tell us whether a policy actually came about. As you can see, the entry says nothing as to the cover applied for, and more particularly the sum insured, amount of premiums or the proposed term of the policy. It served merely to find the file concerned in our numbered archives, and therefore contains only the applicant’s personal details and application numbers... All that is known is that three policies were taken out with us, numbers [REDACTED], [REDACTED] and [REDACTED]. We gathered this from the cross in our central records. This cross means that we were informed of Herr [REDACTED]’s death. We assume the benefits under the policy were paid, as we do not know of any case in which [REDACTED] did not pay the sum insured on being informed of a death. Policy [REDACTED] was compensated for, as we have already informed you. As we do not know anything more as to what the other policies contained, or what happened to them, it may be that payments under the policies were not made to the beneficiaries, but were seized by organs of the National Socialist regime. ICHEIC has set up a separate fund for cases in which insurance benefits were demonstrably seized by government institutions at the time. Under the agreement made, payments out of the fund are governed by Federal compensation law. If no calculations are possible under this law, because no policy details now exist, only that the benefits were seized by the state, we have agreed with the International Commission to pay a flat rate DM 1009.20 per policy...The lump sum is based on the average insured sum in Germany at the time of RM 841.00...We know that we paid the benefits under the policy in your case; we would also refer to the correspondence to date on this matter. What we are not sure of is whether they were paid to the beneficiaries”.*
20. In the decision letter of 18<sup>th</sup> June 2003 [REDACTED] increased the offer to a lump sum payment of US\$ 8,000 (2 x US\$ 4,000) for policy numbers [REDACTED] and [REDACTED].
21. [REDACTED] provided copies of the following documents:
- a) Copies of register cards showing entries for [REDACTED] and [REDACTED] that show the numbers [REDACTED], [REDACTED] and [REDACTED] (for [REDACTED]) and [REDACTED] (for [REDACTED]).
  - b) A copy of a “*Verzeichnis über das Vermögen von Juden nach dem Stand vom 27. April 1938*” (Statement of Jewish Assets as at 27<sup>th</sup> April 1938) completed by [REDACTED], the wife of [REDACTED]. At Section IV (b), which states, “*as yet unmatured claims under life, lump sum or annuity insurance, to be calculated at 2/3 of premiums paid, lump sum or redemption value*” there is an entry which reads “[REDACTED] u. [REDACTED], Stuttgart, [REDACTED], [REDACTED]”.
  - c) A copy of a letter dated 29<sup>th</sup> October 1965 from [REDACTED] to the “*Landesentschädigungsamt des Saarlandes*” (the State Compensation Office of the Saarland) concerning insurance number [REDACTED] informing the Compensation Office that the proceeds of this insurance policy (RM 1,295.00) were paid to the [REDACTED]’s post cheque account Berlin [REDACTED] on 3<sup>rd</sup> December 1941.

- d) A copy of a letter dated 17<sup>th</sup> March 1966 from [REDACTED] to the “Landesentschädigungsamt des Saarlandes” (the State Compensation Office of the Saarland) concerning insurance number [REDACTED] informing the Compensation Office that the proceeds of this insurance policy (RM 489.00) were paid to the [REDACTED]’s post cheque account Saarbruecken [REDACTED] on 22<sup>nd</sup> February 1944.
- e) A copy of a letter dated 26<sup>th</sup> February 1957 from [REDACTED], a legal assistant (“Rechtsbeistand”) admitted to the Blieskastel registry court and representing [REDACTED], to the compensation authority in Cologne asking for immediate assistance of 6,000 DM.
- f) A copy of a ruling (“Bescheid”) of the “Landesentschädigungsamt des Saarlandes” (the State Compensation Office of the Saarland) dated 14<sup>th</sup> December 1965 awarding compensation for the loss of the proceeds of life insurance policy number [REDACTED].
- g) A copy of a ruling of the “Landesentschädigungsamt des Saarlandes” (the State Compensation Office of the Saarland) dated 29<sup>th</sup> March 1966 awarding compensation for the loss of the proceeds of life insurance policy number [REDACTED].
- h) Copies of further documents connected to the above [f] and g] mentioned compensation procedures. Documentation connected to the other two policies (numbers [REDACTED] and [REDACTED]), however, was not found.

## THE ISSUES FOR DETERMINATION

- 22. The first issue for determination in this appeal is whether the Appellant filed her appeal in time, i.e. within 120 days of the receipt of the company’s decision (section 4 (3) of the Agreement dated 16<sup>th</sup> October 2002). The Appeals Office received the initial imperfect Appeal Form on 13<sup>th</sup> November 2003, which although outside the specified time limit of 120 days, was signed on 22<sup>nd</sup> July 2003. This form, however, was sent to the International Reply Service of TNT in Schiphol, The Netherlands, where procedures for determining the date of receipt are insufficient. The appeal, therefore, is deemed to have been filed in a timely fashion.
- 23. There is no doubt that the Appellant’s parents-in-law had several insurance policies with [REDACTED], that the Appellant could be entitled to the proceeds of these policies, as the surviving spouse of [REDACTED], who was the heir of [REDACTED], and that the members of the [REDACTED] family were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, with regard to policy numbers [REDACTED] and [REDACTED], 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 the 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 (1) (c) of the Agreement.
- 24. The Respondent has proved that policy numbers [REDACTED] and [REDACTED] were the subjects of a compensation proceeding and provided compensation and restitution authority archive evidence in the form of, inter alia, a “Bescheid” (ruling) dated 14<sup>th</sup> December 1965 and a “Bescheid” (ruling) dated 29<sup>th</sup> March 1966, which shows that the

afore-mentioned policies were the subjects of decisions of compensation proceedings under BEG law. Accordingly, the two policies in question were, undoubtedly, covered by a decision of the compensation authority. The Panel, therefore, pursuant to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies.

25. As far as policy numbers [REDACTED] and [REDACTED] are concerned the Respondent has made an offer of US\$ 4000 as to each policy and, therefore, a further issue for determination is whether the offer made has been correctly calculated according to the Valuation Guidelines (Annex D). This will be considered below in the section dealing with “Valuation”.
26. A subsequent issue is whether the Appellant is the (only) person entitled to receive these proceeds.
27. 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).
28. Pursuant to the Succession Guidelines (Annex C of the Agreement) the Panel shall apply the Succession Guidelines in matters concerning the right of the Claimant to succeed 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 Appellant assumes that the beneficiary of the life insurance was the policyholder’s and insured person’s ([REDACTED]) wife ([REDACTED]). The person entitled to the Proceeds ([REDACTED]) had no husband when the insured event occurred, because the insured event was her husband’s death (in 1938). Her son [REDACTED] was her sole heir upon her death in 1948. The Succession Guidelines provide that 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. Those proceeds are to 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. There was only one member of the nearest generation of issue then living, namely [REDACTED], who died on 15<sup>th</sup> August 1990; his sister [REDACTED] had died on 3<sup>rd</sup> July 1935, before the insured event in 1938, without leaving issue. According to the Succession Guidelines, therefore, [REDACTED] would have been the sole heir entitled to the proceeds of his father’s life insurance policies.

The persons now entitled to the benefit of the insurance are [REDACTED]’s heirs. Pursuant to the above-mentioned Succession Guidelines the succession follows category “S + A1 – A3” (spouse and issue) which are to be distributed as follows: “\$ 50,000 and half of the residue of the Proceeds to spouse, balance to any issue as provided in Paragraph 2(i)”. As is indicated in the section dealing with Valuation the proceeds payable under the Agreement are US\$ 8,000 and, thus, less than US\$ 50,000, the initial amount to which a surviving spouse is entitled prior to distribution to issue generally. Accordingly, the Claimant would be the only heir entitled to the amount awarded.

## **VALUATION**

29. Under the Tripartite Agreement (see paragraph 16 above) the valuation of policies must 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.

30. In cases where, as here, policies existed but their amount 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).
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 the amount of DM 252.30. That is the value to the end of 1969. To update this value at the end of 1969 to its value at the end of 2000, pursuant to Step 2 number 3 of Schedule 2, the 1969 value must be multiplied by 8. Eight times DM 252.30 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 end of 2000 for the subsequent years. These interest rates have been agreed upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC issued following consultations with the Foundation and the [REDACTED] as the other parties to 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. 8/12 of 4.75 %), which results in DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,304.4991172 for 2003, which is the equivalent of € 1.178,27 on the basis of an exchange rate of DM 1.95583 = € 1.00.
33. 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 a minimum payment of US\$ 4,000 (per policy), if she is herself a survivor of the Holocaust, as the Appellant is in this case.
34. The Appeals Panel is aware that – from the Appellant’s point of view – there are reasons for criticizing the results of the valuation of the policies when calculated according to the Valuation Guidelines. However, as already explained above (paragraph 29), the Appeals Panel is bound by the Agreement and its Annexes, including, among others, the Valuation Guidelines, which were negotiated and agreed upon by the three Parties and which must be considered when making a decision on a claim or an appeal. The Panel may not ignore the calculation pursuant to those Guidelines and adopt a calculation as suggested by the Appellant.
35. For the reasons set forth above the Appeals Panel concludes that the offer made by the Respondent (2 x US\$ 4,000) is correct and that the Respondent – despite of the dismissal of the appeal – must pay the sum offered in its decision letter dated 18<sup>th</sup> June 2003.



Appellant:[REDACTED]

Appeal No.:[REDACTED]

Claim No.: [REDACTED]

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

The appeal is dismissed.

Dated this 15<sup>th</sup> day of June 2004

The Appeals Panel

\_\_\_\_\_  
Timothy J. Sullivan  
Chairman

\_\_\_\_\_  
Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member