

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]

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

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
CLAIM NUMBER: [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], née [REDACTED]. She is the daughter of [REDACTED], who filed the initial claim and who died on 23rd March 2003 in Spokane, Washington State (United States of America). [REDACTED] was named personal representative of [REDACTED] in her last will. A Certificate of Death dated 26th March 2003 and a document dated 1st April 2003 issued by the Superior Court of Washington, County of Spokane, were provided evidencing this appointment.

[REDACTED], née [REDACTED], who was born on [REDACTED] 1914 in Frankfurt am Main (Germany) was the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1886 in Sindolsheim (Germany). He was deported on 19th October 1941 probably to the ghetto of Łodz (Poland) and perished in the Holocaust. [REDACTED] was born on [REDACTED] 1891 in Gerolzhofen (Germany) and died on 12th November 1940 in Frankfurt am Main.

[REDACTED] was married to [REDACTED] ([REDACTED]) [REDACTED], born on [REDACTED] 1910. Further biographical details were not given in the claim and appeal forms. From the Certificate of Death it can be concluded, however, that [REDACTED] was “widowed” at the time of her death.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted several “*Holocaust Insurance Claim Forms*” issued by the Washington State Insurance Commissioner which were forwarded to the ICHEIC.
4. The ICHEIC processed these claims as follows:
 - a) Claim number [REDACTED]

In claim file number [REDACTED] - which is the subject of this appeal - there are many additional claim forms concerning other family members. They are numbered [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. According to the ICHEIC’s database, all of these claims are duplicates and were processed under one number [REDACTED]. The claim was processed as an “unnamed company” claim. It appears that, subsequently, the above listed claim procedure numbers were created and processed separately.
 - b) Claim number [REDACTED]

In claim number [REDACTED] [REDACTED] is identified as the insurance company that issued a life insurance policy to the Appellant’s father-in-law, [REDACTED], with [REDACTED] as the insured person and [REDACTED] as, possibly, the beneficiary. It was stated that only the decision relating to claim [REDACTED] is appealed, but both claims are covered in the final decision letter issued by [REDACTED] and are, therefore, difficult to separate.
 - c) Claim number [REDACTED]

In the Declaration of Consent to which the number [REDACTED] is attached, the policyholder is unknown, the insured person is given as [REDACTED] and the beneficiary is given as “possibly [REDACTED]”. In the claim form itself, [REDACTED], née [REDACTED], is identified as the insured person. It is stated that [REDACTED] was [REDACTED]’s aunt (her mother’s sister).
 - d) Claim number [REDACTED]

In the Declaration of Consent to which the number [REDACTED] is attached [REDACTED] is named as the policyholder, [REDACTED] is named as the insured person and [REDACTED] is named as the beneficiary. In the claim form itself [REDACTED], née [REDACTED], is identified as the insured person. The insurance could have been for a dowry, property, life or business.

- e) Claim number [REDACTED]
In the Declaration of Consent to which the number [REDACTED] is attached [REDACTED] is named as the policyholder and the insured person, but the beneficiary is unknown. In the claim form itself [REDACTED] is identified as the insured person. The insurance could have been for property, life or business. [REDACTED], a businessman, was [REDACTED]'s uncle.
 - f) Claim number [REDACTED]
In the Declaration of Consent to which the number [REDACTED] is attached, [REDACTED] is named as the policyholder, [REDACTED] as the insured person and [REDACTED] as the named beneficiary. In the claim form itself [REDACTED], [REDACTED] née [REDACTED], is named as the insured person. [REDACTED] was [REDACTED]'s mother-in-law.
 - g) Claim number [REDACTED]
In the Declaration of Consent to which the number [REDACTED] is attached [REDACTED] is named as the policyholder and the insured person, but the beneficiary is unknown. In the claim form itself [REDACTED] ([REDACTED]) [REDACTED], a businessman, is identified as the insured person. [REDACTED] was [REDACTED]'s uncle.
 - h) Claim number [REDACTED]
In the Declaration of Consent to which the number [REDACTED] is attached, [REDACTED] is named as the policyholder and the insured person, but the beneficiary is unknown. In the claim form itself, [REDACTED], a businessman, is identified as the insured person. [REDACTED] was [REDACTED]'s uncle.
 - i) Claim number [REDACTED]
In the Declaration of Consent to which the number [REDACTED] is attached, [REDACTED] ([REDACTED]) [REDACTED] is named as the policyholder and the insured person, but the beneficiary is unknown. In the claim form itself [REDACTED] is identified as the insured person. She owned a wholesale merchandise business. [REDACTED] was [REDACTED]'s aunt.
5. The ICHEIC submitted the claims (number [REDACTED] and [REDACTED]) to the Respondent. [REDACTED] stated in its decision letter dated 15th April 2003: “*We have now concluded our research for a life insurance contract for your father, Mr. [REDACTED] and your mother, Mrs. [REDACTED], your father-in-law Mr. [REDACTED] and your husband, Mr. [REDACTED]. We are pleased to inform you that we are able to offer a payment of \$ 8,000.00 in total for the life insurance contracts # [REDACTED] of your father and # [REDACTED] of your parents and another € 4,856.68 for the life insurance contract # [REDACTED] of your father-in-law under the terms of the German Foundation Remembrance, Responsibility and Future*”. As to policy number [REDACTED] (policy of [REDACTED]) [REDACTED], initially, declined the claim. However, later, an offer was made by the [REDACTED] (the [REDACTED]) for a payment from the humanitarian fund under the Agreement (see paragraphs 13 and 14).

6. The Appellant's daughter [REDACTED] submitted an appeal to the Appeals Office dated 24th July 2003, which was accompanied by an attachment setting out the reasons for the appeal. Attached were the documents already mentioned above (paragraph 1).
7. The Appeals Office received the appeal form on 28th August 2003 and forwarded a copy to the Respondent on 1st September 2003. The appeal had been sent (as requested at that time) to the International Business Reply Service of TNT in Schiphol, The Netherlands, and was forwarded from there to the Appeals Office in London.
8. [REDACTED] responded in a letter dated 28th September 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 previous decision on it*".
9. On 3rd October 2003 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.
11. On 9th December 2003 the Appeals Office received a facsimile from the Office of the Insurance Commissioner of Washington State who sent on behalf of [REDACTED] documents recently obtained from the "*Hessische Hauptstaatsarchiv*" (The Main State Archive of Hesse). The Appeals Office disclosed those documents to [REDACTED] on 10th December 2003.
12. On 16th February 2004 [REDACTED] informed the Appeals Office that it intends to revise its decision concerning application number [REDACTED] (policy of [REDACTED]).
13. On 29th April 2004 the Appeals Office received a letter from [REDACTED] dated 28th April 2004 in which [REDACTED] informed the Office that it had forwarded the claim concerning this policy to the [REDACTED] ([REDACTED]), the [REDACTED], for a payment from the humanitarian fund under the Agreement.
14. On 19th May 2004 [REDACTED] informed the Appeals Office that after having transferred the claim to [REDACTED] an offer of US\$ 4,000.00 had been made by the [REDACTED] for policy number [REDACTED] (policy of [REDACTED]). Attached was a copy of a letter dated 29th April 2004 from [REDACTED] giving details about [REDACTED]'s decision.
15. On 26th August 2004 the Office of the Insurance Commissioner of Washington State clarified that the offers [REDACTED] made had been accepted for policies number [REDACTED] (policy of [REDACTED]) and number [REDACTED] (policy of [REDACTED]). He pointed out that the decision is still under appeal as to policies numbered [REDACTED] (policy of [REDACTED]) and [REDACTED] (policy of [REDACTED]). This e-mail information by email was not addressed to the Appeals Office but to the ICHEIC which forwarded the information to the Appeals Office Manager on 6th September 2004.
16. On 10th February 2005 the Appeals Panel requested the Appellant, at the direction of the Arbitrator [REDACTED] to whom this appeal was assigned for decision (see paragraph 17 second subparagraph) to present information as to the identity of the heirs of the Appellant's late mother [REDACTED].
17. The Appellant responded in a letter dated 11th March 2005 (see paragraph 22).

18. 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.

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

19. The Appellant’s late mother has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form - a Holocaust Insurance Claim Form - concerning [REDACTED]’s father:

- a) The Appellant’s late mother stated that the insured person was [REDACTED], born [REDACTED] 1886 in Sindolsheim, Germany. She states that he owned a factory “(linens, clothing etc)”.
- b) Concerning the type of insurance, she writes: “*Life insurance, property insurance and business insurance*”.
- c) In answer to the question “*why do you believe coverage existed?*” she writes: “*Because I recall my parents discussing insurance coverage and the business was very successful*”.
- d) In answer to the question concerning “*basis for belief that a policy was not paid*” she writes: “*Because my father was deported on 10/19/41 to Lodz (Poland) and all his assets were looted. I never received any assets, nor did I hear from my father again. I did not receive any compensation*”.

20. The Appellant sets out the reasons for the appeal as follows: “*It appears from the size of the premium payment (copy enclosed) that the value of the policies may have been more (significantly) valuable than [REDACTED] is acknowledging in its offer*”.

21. Subsequent information was submitted to the Appeals Panel from the Office of the Insurance Commissioner in Washington, received by fax on 9th December 2003. It consisted of the following documents:

- a) A cover letter to the Appeals Office from the State of Washington Office of the Insurance Commissioner regarding the appeal. Attention is drawn to an enclosed letter dated 30th January 1958 from the policyholder’s daughter which, it is asserted, “*indicates a level of economic circumstances suggesting a high probability that the value of this insurance policy was well above the average of \$ 4000 reflected in the offer from [REDACTED]*”.
- b) A letter from the Main Archives of Hesse to the State of Washington Office of the Insurance Commissioner. This letter states: “*The documents found in the Hesse main state archives are as follows: from the NS period, two foreign currency documents from the period 1939-1941 (ref.: dept. [REDACTED] no. [REDACTED]/ [REDACTED] and [REDACTED]) and from the postwar period, five reparations files from the period*

1948-1974 (dept. [REDACTED] no. [REDACTED], [REDACTED] and [REDACTED]; dept. [REDACTED] no. [REDACTED] and [REDACTED]), two compensation files from the period 1958-1984 (dept. [REDACTED] nos. [REDACTED] and [REDACTED]) and a procedural file from the reparations division of the regional court, Frankfurt am Main from the period 1959-1966 (dept. [REDACTED] no. [REDACTED]). The files above do not contain any reference to any life assurance policy. The letter from the Dresdner Bank, Frankfurt am Main, of April 12th 1939, a copy of which you submitted, appears in the file dept. [REDACTED] no [REDACTED] above (p.3). When Herr [REDACTED] transferred the sum of RM 280.00 to [REDACTED] & [REDACTED] as is mentioned here, this was evidently not in payment of a life assurance premium, but interest arrears on a mortgage secured on the property of Frau [REDACTED] at Eckenheimer Landstrasse 41, Frankfurt am Main. This is evidence from a letter from Frau [REDACTED] to the currency office S in Frankfurt am Main of July 19th 1939, which also appears in that file (page 17), a copy of which is enclosed as Anne ". This letter continues by informing Mr [REDACTED] that Mrs [REDACTED] had sold this property in February 1939 and part of the purchase price involved assuming the existing mortgage of RM 15,589.87. The letter concludes by stating that in the application for compensation made by one of the [REDACTED]s' two daughters, claims for financial losses under a life insurance policy were made, but were not pursued.

- c) A copy of the above-mentioned Annex, which is a letter from [REDACTED] dated 19th July 1939 to the currency office applying for consent for the sum of RM 280 to be paid from a blocked account to [REDACTED] for the mortgage interest.
- d) A copy of the above-mentioned second Annex, which is a document from the Hesse trustee's office dated 24th June 1953 (an application for restoration of property). This application was initially handled by the JRSO as successor organisation and then by the State of Hesse.
- e) A copy of an application by one of the [REDACTED]s' daughters for compensation, claiming financial losses by way of losses under a life insurance policy dated 30th January. It states: "*The only thing I know about my father's standard of living is that we were very well off. We lived in an expensive six-room apartment at Arndtstrasse 2, and my father owned a motor vehicle. We also had a maid. My parents and I went on summer holidays every year, and we children often went on winter sports in Switzerland... My father had a life assurance policy*".

The State of Washington Office of the Insurance Commissioner also communicated with [REDACTED] regarding the issue of valuation by letter of 10th June 2003. [REDACTED] responded by fax of 25th June 2003 in which it repeats that the terms of policies [REDACTED] and [REDACTED] cannot be reconstructed and no possible approximate value of the policy can be inferred from the sum of RM 280.

- 22. In a letter dated 11th March 2005 the Appellant wrote in response to the letter dated 10th February 2005 which the Appeals Office had sent at the direction of the Arbitrator Abraham J. Gafni to whom this appeal was assigned for decision (paragraph 16): "*Please find enclosed a copy of my mother's will, naming myself ([REDACTED]) and my brother ([REDACTED]) as her heirs...*". Attached was a copy of a "*Last Will and Testament of [REDACTED]*" dated 12th March 2001. This reads: "*I, [REDACTED], a resident of Spokane, Washington, do make, publish and declare this to be my last Will and Testament, hereby revoking all former Wills and Codicils made by me. ... I am a single person. I have two (2) children born to me from a prior marriage, namely, [REDACTED] and [REDACTED]. The terms "my child" and "my children" as used in this Will shall mean and refer to [REDACTED] and [REDACTED] and any other child or children hereafter*

born or adopted by me [on the day of making this will the Testatrix was 86 years old and there is no indication that she adopted any children after 12th March 2001]”. In Article II and III of this will the Appellant’s mother she directed payment of expenses and taxes and specific Bequests and Devises, among others, to her children and grandchildren which do not refer to proceeds of life insurance. As to the residue she directed: “The residue of my estate shall be divided into equal shares so that there is one equal share for each surviving child of mine and one equal share for each deceased child of mine with descendants then surviving. [Her two children, the Appellant and her brother survived the Appellant’s mother] ...”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

23. [REDACTED] offered payments from the claims fund under the Agreement of US\$ 8,000.00 in total for the life insurance contracts numbered [REDACTED] and [REDACTED] and another € 4,856.68 for the life insurance contract number [REDACTED] for reasons set out in its decision letter dated 15th April 2003. [REDACTED] offered another US\$ 4,000.00 for policy number [REDACTED] from the humanitarian fund under the Agreement.
24. [REDACTED] made additional comments in a letter dated 28th September 2003 as follows: *“We found an entry in our central register for Mr [REDACTED] and Mrs [REDACTED] respectively bearing the application numbers [REDACTED] and [REDACTED]. Starting from a letter from the Dresdner Bank showing that premiums had been paid to the [REDACTED] & [REDACTED] we know that these contracts were actually taken out. Since we did not find any other reference as to these contracts we are not in a position to ascertain the technical data of the contracts. Therefore, according to the agreement the lump sum was offered to the claimant twice. As we already explained it to the claimant and the insurance commissioner Mr [REDACTED] it is not possible to determine the technical data in this case. Since we could not reconstruct the terms of the insurance policies [REDACTED] and [REDACTED] taken out by the claimant’s parents our offer was calculated according to section 7.1 for unknown values”.*

THE ISSUES FOR DETERMINATION

25. 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]. They were denied by the same decision letter and were initially appealed in one appeal form and later partly withdrawn. Although it was stated that only the decision relating to claim [REDACTED] is appealed, both claims are covered in the final decision letter dated 15th April 2003 and, therefore, are difficult to separate. This makes it appropriate to consolidate the two above mentioned claim numbers as, initially, claims for the proceeds of four policies processed under two different claim numbers were the subject of the appeal.
26. The next issue for determination is whether the appeal was filed, pursuant to section 4 (3) of the afore-mentioned Agreement (see paragraph 16) and its Annex E (the Appeal Guidelines), within 120 days as specified in the Appeal Guidelines. The decision was issued on 15th April 2003; the appeal arrived at the Appeals Office on 28th August 2003, i.e. 135 days after the decision was issued. However, a precise determination, as to when the Appeal arrived at the International Business Reply Service of TNT in Schiphol, The Netherlands,

cannot be made, because no notation of date of receipt was made there. Because of this the appeal must be regarded as timely filed within the period of 120 days.

27. As it has been clarified that the offers of [REDACTED] (and of [REDACTED] as the body managing the humanitarian fund under the Agreement) had been accepted for policies number [REDACTED] (policy of [REDACTED]) and number [REDACTED] (policy of [REDACTED]), the remaining issue for determination in this appeal is whether the [REDACTED]' valuation of policies numbered [REDACTED] (policy of [REDACTED]) and [REDACTED] (policy of [REDACTED]) is correct (see paragraphs 30 to 37).
28. In addition, the identity of the individuals entitled to receive the proceeds of any award must be determined. Where it appears that other persons may be entitled to part of the proceeds of an insurance policy claimed in the appeal, the decision shall reflect any such entitlement and it may indicate to whom the payment of the appropriate amount should be made (section 19.2 Appeals Guidelines).
29. 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 Annex C of the Agreement must be applied. Pursuant to Section 3 of the Succession Guidelines the Panel, Panel Members or Arbiters shall distribute the proceeds among the beneficiaries named in the will applying the Succession Guidelines to any question of succession to any person named in the will, "*if the person who was entitled to the Proceeds at the date when the policy matured left a written will that has been provided to the Panel, Panel Member and Arbitrator ...*". The heirs under [REDACTED]'s will are the Appellant and her brother [REDACTED]. Thus the proceeds must be divided between these two heirs in two equal shares.

VALUATION

30. Pursuant to Section 4 (3) of the Agreement, the subject of an appeal may be restricted to whether the valuation made by the insurance company is correct.
31. Under the Tripartite Agreement (see paragraph 16 above) the valuation of policies must be based solely on the Valuation Guidelines (Annex D of the 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.
32. 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).
33. 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 a conversion factor of RM 10 = DM 1, which results in an 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.

34. 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 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. 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 which is the equivalent of € 1.169,23 on the basis of an exchange rate of DM 1.95583 = € 1.00.
35. 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 a minimum payment of US\$ 4,000, if she is herself a survivor of the Holocaust, as the original Claimant [REDACTED] was in this case.
36. It is concluded that for the reasons set out above the offer made by the Respondent for the two policies under appeal is correct. It is understood that – from the Appellant’s point of view – there are reasons for dissatisfaction with the result of the valuation of the policies when calculated according to the Valuation Guidelines. However, the Appeals Panel and the Arbitrator are 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. It is, indeed, unlikely that the policyholders would have taken out insurance policies with only the average insured sum (see also known additional details of the insurance contracts as described above, paragraph 19). However, if the insured sum, nevertheless, remains unknown because the company is not in a position to ascertain the technical data of the contracts and, therefore, cannot reconstruct the terms of the insurance policies, the offer must be calculated according to Section 7.1 for unknown values and the Arbitrator is required to make a calculation on the basis of the average insured sum.
37. For the reasons set forth above it is concluded that the offer of 2 x US\$ 4,000.00 made by the Respondent in its decision letter dated 15th April 2003 is correct and the appropriate amount to be paid.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal is dismissed.
2. The decision made by [REDACTED] is amended to require that the offer of US\$ 8,000.00 reflecting two times US\$ 4,000.00 for the policies which are the subjects of this appeal (the policies number [REDACTED] of [REDACTED] and number [REDACTED] of [REDACTED]) be divided equally between the Appellant and her brother [REDACTED].

Dated this 26th day of July 2005

[REDACTED]