

## **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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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**

### **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 was born on [REDACTED] 1921 in Selau (now Bolau) near Weißenfels (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1885 in Selau and died on 8<sup>th</sup> April 1957 in Backnang (Germany).
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 25<sup>th</sup> February 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that a company which she could not name and which was “*probably based in Switzerland*” issued a policy of life insurance.
4. The ICHEIC processed the claim under the following claim numbers:
  - a) Claim number [REDACTED]

This claim is the subject of the appeal. An entry on the ICHEIC database shows that for this claim a humanitarian payment was made.
  - b) Claim number [REDACTED]

According to a note dated 5<sup>th</sup> November 2004 in the ICHEIC database, this claim number was set up to accommodate a decline by AXA [see also paragraph 15 a)].
5. The ICHEIC submitted the claims to the MOU Companies and to the German companies [MOU is the acronym for Memorandum of Understanding signed by those companies which have submitted to ICHEIC jurisdiction].
6. In its decision letter dated 20<sup>th</sup> October 2004 [REDACTED] stated: “... *we do have an entry in our central register for Mr [REDACTED] (see attachment 1). This means that Mr [REDACTED] did submit an application for a life assurance policy with us. Using the reference number [REDACTED] quoted in the register we were able to locate an index card, containing further information regarding the insurance policy, in our archive files. The index card tells us that your father took out a life assurance policy with us in 1930, with an insurance sum of Sfr. 5,000.00. This insurance sum was converted to RM 4,050.00 in 1938 (see attachment 2). In order to find out more about the insurance policy we looked through two further registers from that period, both of which remained intact. One of these is a register dating from the end of 1941. ... This register includes an entry bearing your father’s name and also lists the insurance sum as RM 4,050.00. This means that the insurance policy was still effective in 1941. We also looked in the so-called provisions register. This register contains a list of life assurance policies for which we have been unable to make a payout. This would have been the case if for example we had been unable to make contact with the beneficiaries, or if some other reason it had proved impossible to make a payout. In addition to maintaining this register we are legally required to make a provision to ensure that we are able to make a subsequent payout where possible. We were however unable to find any entry under the number quoted in the central register. If the policy balance had not been paid out by 1950 then the policy number would have necessarily appeared in the provisions register. This means that the balance of this policy was paid out to your father by 1950 at the latest. Please understand that we are therefore unable to fulfil your wish for a settlement*”.
7. The Appellant submitted an appeal to the Appeals Office dated 21<sup>st</sup> November 2004, which was accompanied by attachments setting out the reasons for the appeal and a biographical summary of [REDACTED]’s life (see also paragraphs 16 and 17).

8. The Appeals Office received the appeal form on 26<sup>th</sup> November 2004 and mailed a copy to the Respondent.
9. [REDACTED] responded in a letter dated 6<sup>th</sup> December 2004 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*” (for more details see paragraph 19).
10. On 5<sup>th</sup> January 2005 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.
11. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
12. 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.

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 6<sup>th</sup> 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**

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:
  - a) In section one, in response to the question whether the policyholder and/or insured and/or beneficiary was a victim of the Holocaust, the Appellant ticks the box “yes” and underlines the details “*suffered loss or deprivation of financial or other assets*” (here the Appellant adds: “*uncompensated expropriation*”) and “*suffered any other loss or damage of their property*”.
  - b) In section three, regarding the company that issued the policy, the Appellant states that she does not know the name of the company or the place where the insurance policy was purchased. She adds: “*Probably based in Switzerland*”.
  - c) In section four, the Appellant states that she is unable to provide copies of any document or statement or other information to substantiate her claim. She adds: “*My father, [REDACTED], who was an opponent of National Socialism, often used to say that he had a life insurance policy in Switzerland, which he could well have taken out before 1935. During the Nazi dictatorship, it was not possible to pay out the policy to Germany. Documents about this were kept in a safe in Selau (former GDR), which was plundered by the Communists after he had fled for political reasons in 1953*”.
  - d) In section five, the Appellant identifies the policy as one of life insurance. She is unable to provide further details. She is not aware of payments resulting from the policy.

- e) In section six, the Appellant identifies her father, [REDACTED], as the policyholder. She states that she is his only child and that she does not know of any other living heirs.
  - f) In section seven, regarding the insured person, the Appellant writes: “*See section 6*”.
  - g) In section eight, the Appellant does not provide any details about the beneficiary of the policy.
  - h) In section nine, the Appellant states that no one has participated in any compensation/restitution procedures for this claim. Explaining why not, she writes: “*Not enough documentary evidence*”.
  - i) In section eleven, regarding “*further information*”, the Appellant writes: “*1. Letter of 6.11.2000 to the [REDACTED]; 2. Letter of 11.6.1998 to the Swiss association of insurance companies; 3. Sham contract of 24.2.1938 (without signatures) and decision by a court of 30.04.1938 which shows how the Nazi opponent [REDACTED] was treated*”.
14. The claim file contains copies of the documents listed by the Appellant in section eleven. These are:
- a) A letter dated 6<sup>th</sup> November 2000 from the Appellant to the [REDACTED] (“[REDACTED]”, [REDACTED]). She states that she got the address of the [REDACTED] from [REDACTED] life insurance company. She requests its help with her claim. She gives the name of her father’s wife ([REDACTED] née [REDACTED], who is also deceased) and provides details of her father’s address.
  - b) A letter dated 11<sup>th</sup> June 1998 from the Appellant to the Swiss association of insurance companies. She states that she got its address from the Swiss bank ombudsman. The rest of the letter is as a) above.
  - c) A “*first copy*” (“*erste Ausfertigung*”) of a contract dated 24<sup>th</sup> February 1938 in which [REDACTED] sells a piece of land in Selau to the German Reich for the sum of RM 8,100. It is stamped and signed by a military official. The printed name “[REDACTED]” is without a signature but it is preceded by the abbreviation “gez.”, which indicates that it was signed in an original version. Hand-written notes on the contract (which obviously the Appellant made) state: “*There are no signatures! ... This is a ‘sham contract’. Money was never paid out. Mr [REDACTED] did not co-operate in drawing up this contract*”. The court ruling, based on the session of 30<sup>th</sup> April 1938, states that the military administration’s application to buy the piece of land is approved. Hand-written notes (which again obviously the Appellant made) state that [REDACTED] was put under pressure and that he never received any money.
15. The claim file also contains copies of the following documents:
- a) A letter dated “*10.09.2003*” (9<sup>th</sup> October 2003?) from [REDACTED] to ICHEIC enclosing a copy of its decision letter. This letter also refers to claim number [REDACTED] although it appears that this [REDACTED] denial was subsequently allocated to claim number [REDACTED]. The decision letter dated 9<sup>th</sup> October 2003 states that [REDACTED] found a name card and financial record card relating to “[REDACTED]” in its archives. It states that these cards document the existence and progression of a policy with the number [REDACTED] taken out by the Appellant’s father for the benefit of the Appellant. It adds: “*The insurance contract began on 01.03.1933 and the agreed expiry date was 01.03.1943. The insured sum was RM 1,000.00; the annual premium RM 98.70. The entries on the financial record card*

under the heading “conclusion” also indicate that the insurance policy concluded as agreed with the payment of the insured sum of RM 1,000.00 on 01.03.1943. ... According to the “Agreement” between ICHEIC, the Foundation and the [REDACTED], any claim that has previously been settled between a claimant and an insurance company cannot be the subject of an additional compensation payment. We hope that, under these circumstances, you can understand our decision not to make an offer of compensation”. This letter concludes by providing details about the possibility of appealing. Enclosed with this decision letter were copies (hard to read) of the name card and financial record card mentioned above.

- b) Several internal emails between the ICHEIC claims team staff regarding the Holocaust victim status of the Appellant’s father. An email note dated 12<sup>th</sup> February 2003 states: “10.22.02 as per telephone information by Mrs [REDACTED], her father was “constantly harassed by members of the Nazi regime”. He was not at any time imprisoned, nor did he lose a job, nor were any of his belongings taken away at any time. He had a friend who was Jewish and whom he helped many times”. An email note dated 17<sup>th</sup> February 2003 states: “Given that she [i.e. the Appellant] has contacted the Swiss Insurance Association and [REDACTED] before the ICHEIC process started and that her father’s contract about selling his property is [“not” added here by hand] signed by him and the fact that you indeed could not get money out of Switzerland during the war she should be given the benefit of doubt and her claim processed”.
16. The Appellant sets out the reasons for her appeal as follows: “In its decision dated 20.10.2004 the [REDACTED] life assurance company explained that my father had taken out a life assurance policy with the [REDACTED] in 1930 (with a term of 20 years). It claimed that the policy held by my father was paid out to him at the latest by the end of 1950. I would like to inform you that it was **not possible to make a payout** in 1949, 1950 or before because my father and his family were living in the former communist GDR at that time (Selau near Weissenfels/ Saxony-Anhalt). **Payments from West Germany to the GDR were not possible. Thus my father’s policy must still exist today.** My father, who went through so much before 1945 as an opponent of the National Socialist regime (he helped his Jewish friend from Husum), had also taken out a life assurance policy in Switzerland. This policy has also never been paid up. All research into this has been futile. The National Socialists took a part of his land in 1935 for use as a military site, and no compensation has been paid for this. After 1945 my father became a target of the inhumane Communism in the GDR. They tried with all their might to ruin his exemplary rural business (and they eventually achieved this. He did not want to tolerate all of the hurdles that they placed in his way (such as blockades on the track to his yard, intimidation into making false statements, the confiscation of machinery essential to the business) and he could not pay the impossible debts imposed on him so he was suddenly forced to flee to Western Germany in 1953, risking life and limb in the process. In this way he managed to avoid spending many years in prison. He was forced to leave all of his possessions and documents in Eastern Germany. Following much bitterness and serious illness (jaundice) he passed away in 1956. Research into life assurance policies was not possible back then, due to the lack of documents. **No payouts on any life assurance policies have been made to this day”.**
17. The Appellant enclosed with her appeal form a copy of a document written by her father with the title “Betrifft Sowjetzone, [REDACTED] und Familie” (“Re: Soviet Zone, [REDACTED] and family”). In this document the Appellant’s father describes how he took over his father’s rural business after he, the Appellant’s father, had survived World War I as a soldier. Despite inflation he managed to get through the 1920’s. Right from the beginning he was against the National Socialist regime and, therefore, was held in constant critical regard. This went so far that he was close to loosing his farm. The real reason for that was that he supported a Jew whom he knew since his youth. As the sole farmer in the area the Appellant’s father’s car was taken away. He refused to constantly hand in goods and he was

due to be detained on 8<sup>th</sup> January 1945. After the American forces liberated Saxony-Anhalt he was given back land that had been taken away, but the Russian occupying power took it away from him again. He continues describing his (liberal) political way in the German Democratic Republic (GDR), his opposition to the communist regime, what he had to suffer during this time, the fate of farmers in general having a farm which was “too big” in the GDR and what, finally, made him flee, leaving everything behind, to the Federal Republic of Germany in 1953.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. [REDACTED] declined the claim for the reasons set out in its decision letter dated 20<sup>th</sup> October 2004 (see paragraph 6).
19. In a letter dated 6<sup>th</sup> December 2004 which was written in response to the appeal, [REDACTED] stated: *“We know that Mr [REDACTED] had taken out a life insurance policy [REDACTED] with us, commencing 1930 with a sum insured of Sfr.- 5,000.- and an insurance term of 20 years. In 1938 the sum insured was converted into RM 4,050.-. The policy also appears with this sum insured in our register of 1941. Thus, the contract still existed in 1941. There is no indication from the entries of the card that the contract suffered due to restrictions of the Nazi regime. The policyholder neither re-bought the policy, nor it was confiscated. Furthermore, the claimant amended the section of the claim form where the claimant is asked whether the person he is looking for was persecuted with the statement ‘Nazi opponent’. Also the documents concerning the sale of real estate of Mr [REDACTED] during the Nazi regime do not indicate that Mr [REDACTED] suffered from persecution of the Nazi regime under the ICHEIC definition. In fact, the claimant herself argues that the policy was not paid due to restrictions in the Soviet Zone of Germany after the War. However, the ICHEIC proceedings do not cover cases of state restrictions after 1945. According to Section 2 (1) (b) of the agreement between the ICHEIC, the German Foundation and the [REDACTED] a claim concerning a life insurance policy is eligible for compensation if the insurance policy was inter alia not paid or not fully paid as required by the insurance contract or was confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14. As these requirements are not given, the claim is not eligible to be processed under the ICHEIC procedure”.* [REDACTED] corrected previous statements concerning the policy in the following paragraph of its letter: *“Furthermore, after further research we would like to amend our statement concerning the possible fate of the policy after 1945. On July 27, 1948 the authorities of the western zone of occupation decided that all obligations of insurance companies expired if the policyholder had his place of residence in the Soviet Zone. This might explain the stamp “Storno Stapel” [cancellation pile] on the insurance card. It was not until 1955 when a law regulating claims concerning life insurance contracts came into existence. On the basis of this law companies paid out the sums insured with money given from the German State, because the German State as the legal Successor to the German Reich assumed the responsibility for the losses. However, claims under this procedure could only be filed if the policyholder had his place of residence in the Federal Republic of Germany or in a State whose existence was acknowledged by the German State. This was not the case concerning the GDR. With the unification treaty this law was suspended. Thus, by now, there exists no legal obligation to pay out any insurance benefits. However, the [REDACTED] recommended to pay out insurance claims on the basis of an ex-gratia payment if the claimant was either the policyholder or the beneficiary and if he could hand in the original policy. As in this case the claimant is the heiress of the policyholder she does not qualify for an ex-gratia payment under this procedure as well”.*

## THE ISSUES FOR DETERMINATION

20. The Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> October 2002 covers, according to its introductory language, “*the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice*”. Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and or Appellant are a Holocaust victim in the sense of Section 14 of the Agreement.
21. For purposes of the Agreement, “*Holocaust victim*” means “*anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property...*”.
22. From the Appellant’s statements and from parts of the documentation she provided it is acknowledged that her father endured mistreatment both in National Socialist Germany and, subsequently, in Communist East Germany. However, it is concluded that he cannot be regarded as a Holocaust victim as defined in the Agreement (see paragraphs 20 and 21).
- a) The Appellant’s statement in her appeal form that “*During the Nazi dictatorship, it was not possible to pay out the policy to Germany*” [see paragraph 13c)] turned out to be not the cause for not receiving the proceeds of the life insurance policy during the Holocaust era. On the one hand, as [REDACTED]’s research revealed, the policy did not mature before May 1945, and, on the other hand, there would not have been any problem in this case, as the policy already had been (compulsory) converted by a general German law which affected all policies issued in Germany in a foreign currency. If the policy had matured before May 1945, it would have been paid out in Reichsmark. In addition, the fact that a policy issued in a foreign currency might have caused problems when maturing (which was not the case here) was generally not a result of National Socialist injustice, but rather a problem every holder of a policy issued in a foreign currency would have had to face in Germany of those times. In such situation possible currency problems are the result of the war, not of specific National Socialist injustice.
- b) The so-called “*Sham contract of 24.2.1938 (without signatures) and decision by a court of 30.04.1938 which shows how the Nazi opponent [REDACTED] was treated*” [see paragraph 13 I)] do not prove that the Appellant’s father was a Holocaust victim as defined in the Agreement. The contract dated 24<sup>th</sup> February 1938 [see paragraph 14 c)] appears to be a regular contract which is made if in the public interest land is needed for public projects. In such cases the public administration either negotiates a consensual solution leading to a contract by which the land is sold to the entity dealing with the project for which the land is needed (as it happened in this case) or the land is expropriated and compensated through administrative channels. As long as the expropriation is no arbitrary act and as long as compensation is granted for such expropriation this is a normal procedure. In addition, there is no indication that this contract was not concluded and the Appellant’s father did not sign the original contract. The signatures are not, contrary to the Appellant’s handwritten statements on the copy of the contract [see paragraph 14 c)], “missing”. The copy provided by the Appellant is

a copy of the contract (“*Vertragsausfertigung*”) which is sealed and signed by the recording person (“*Oberzahlmeister Gustav Lindenberg*”). Even if the Appellant’s statement were true that the purchase price was never paid, this would not affect the validity of the contract but only justify a claim for payment. The court ruling of the “*Anerbengericht*” (a court in Germany of that time dealing with decisions which had to be made when a farm was inherited), based on the session of 30<sup>th</sup> April 1938 and stating that the military administration’s application to buy the piece of land is approved [see paragraph 14c)] was a procedure to avoid that farms which were declared “*Erbhof*” (a family farm that is passed down through the generations) were divided up in the course of time because it was inherited too many times or, as here, because parts of the farm were sold. The Appellant’s remarks on this document apparently are based on misunderstandings. The sentence “*Dem Veräußerer wird die Verpflichtung auferlegt, dem Kreisbauernführer auf Erfordern die Verwendung des Kaufpreises nachzuweisen*” (“*Upon request, the seller is obliged to demonstrate to the regional farmers’ leader how the sale price has been used*”) does not indicate that the contract was made under duress, as the Appellant states by underlining “*Verpflichtung auferlegt*” adding “*Zwang, Druck*”. This is based on the second sentence of § 37 (2) of the Reichserbhofgesetz (“*Das Anerbengericht kann die Veräußerung oder Belastung genehmigen, wenn ein wichtiger Grund vorliegt. Die Genehmigung kann auch unter einer Auflage erteilt werden*”, “*The court may approve that a family farm is sold or mortgaged, if there is an important reason. The approval can also be issued in connection with a condition*”).

- c) In fact, as [REDACTED], after changing its previous explanations from the records, correctly pointed out in its letter dated 6<sup>th</sup> December 2004, the Appellant herself argues that the policy was not paid due to restrictions in the Soviet Zone of Germany after the War and later in the GDR. The ICHEIC proceedings do not cover cases of state restrictions after 1945. They do also not cover circumstances of non-payment resulting from Germany’s division after the war and legislation passed in view of that background.
23. Pursuant to Section 2 (1) (b) of the Agreement a claim concerning a life insurance policy is eligible for compensation if the insurance policy was (among other reasons) not paid or not fully paid as required by the insurance contract or was confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14. Therefore, the Appellant is not entitled to compensation under the Agreement.



**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 23<sup>rd</sup> day of May 2005

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[REDACTED]