

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]

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 [REDACTED] was born on [REDACTED] 1950 in Koeln, Germany. She is the granddaughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1885 (or 1883) Blaszków, Poland and died in October 1967 in Brooklyn, New York. [REDACTED] was born on [REDACTED] 1887 in Rzeszów, Poland and died in February 1962 in Brooklyn.

2. The Respondent is the [REDACTED] (“[REDACTED]”), the [REDACTED] (“[REDACTED]”).
3. The Appellant submitted a claim form dated 15th November 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming insurance policies issued to her grandfather [REDACTED].
4. The ICHEIC processed the claim under claim number [REDACTED] and submitted the claim to [REDACTED] (“[REDACTED]”), among other companies.
5. On 21st July 1997, prior to her submission of the claim to the ICHEIC, [REDACTED] informed the Appellant that it had found an entry for her grandfather in its central card register. This indicated that [REDACTED] had applied for insurance with [REDACTED].
6. However, [REDACTED] informed the Appellant on 2nd April 1998 that it had been unable to find any further documentation regarding contracts of insurance with her grandfather. It confirmed this position on 19th March 2003.
7. The claim was then referred to the [REDACTED], which wrote to the Appellant on 21st December 2004 offering her US \$9000 for three policies of unknown value. It stated that it was willing to assume that the entry in [REDACTED]’s central card register had resulted in three contracts of insurance, although no further evidence had been found
8. The ICHEIC notified the Appellant that a humanitarian payment of US \$1,000.00 would be paid for this claim on 31st March 2001.
9. The Appellant appealed the [REDACTED]’s decision of 21st December 2004 by submitting an Appeal Form dated 20th February 2005 to the Appeals Office.
10. The [REDACTED] responded to the appeal on 7th March 2005 stating that its offer was made in accordance with the Valuation Guidelines (Annex D to the Agreement).
11. On 8th April 2005 the Appeals Office informed both parties that the appeal would be decided on a “*documents only*” basis unless it received notification from either party requesting an oral hearing within 14 days of the receipt of the letter.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
13. The Appellant wrote to the Appeals Office on 18th April 2005 advising that she was awaiting documents from the Duesseldorf District Administration regarding her grandfather’s assets. These would be forwarded to the Appeals Office once they were received.
14. On 19th June 2005, the Appellant wrote again to the Appeals Office enclosing a letter from her grandfather’s lawyer dated 29th March 1958 which referred to an insurance policy with [REDACTED] for the value of RM 25,000.00.
15. The Appeals Office disclosed this evidence to [REDACTED] and the [REDACTED] on 27th June 2005. The [REDACTED] responded on 7th July 2005 stating that [REDACTED] had requested further documentation from the Frankfurt compensation authorities. It requested an extension of the appeal until these documents were received.
16. The Appeals Office wrote to the [REDACTED] and [REDACTED] on 10th November 2005 requesting any further submissions.

17. [REDACTED] replied on 17th November 2005 stating that it had found documentation indicating that only one policy was in force during the Holocaust era and eligible for payment. It advised that the offer should have been valued at Euro 2,624.29; however, as an offer of US \$9,000.00 had already been made, this offer would stand.
18. The [REDACTED] responded to the Appeals Office on 23rd November 2005, confirming [REDACTED]'s decision of 17th November 2005.
19. The Appellant submitted further submissions and evidence on 6th December 2005.
20. 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 of 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

21. The Appellant submitted a claim form to the ICHEIC dated 15th November 2001 claiming insurance policies issued to her grandfather [REDACTED]. She named her grandfather as the policyholder and the insured person, and her grandmother as the beneficiary. She indicated her cousin, [REDACTED], as another living heir.

The Appellant stated that the policies were of life insurance (and possibly commercial and house insurance) and that they were issued in either Koeln or Frankfurt am Main.

She stated that her grandparents had received compensation pursuant to the BEG, although probably not for insurance.

At section 11 she stated: *"My grandfather, [REDACTED], owned an undergarment factory in Cologne, Germany...He was a very wealthy, cautious and far-sighted man. He certainly had life insurance for himself and his wife, [REDACTED]. He may have also taken out endowment insurance or study insurance for his children. [...] I inquired at [REDACTED]. They found something but maintain that they have no policy.*

The Appellant attached copies of the correspondence from [REDACTED] with her claim form.

22. On 20th February 2005, the Appellant submitted an appeal stating: *"As a result of my application/inquiry regarding the life insurance of my grandfather, [REDACTED], [REDACTED] found the following data.*

<i>Name of insured</i>	<i>Name of policyholder</i>	<i>Insurance Co.</i>	<i>Insured Amount</i>
		<i>Policy No.</i>	
<i>Unknown</i>	<i>[REDACTED]</i>	<i>[REDACTED]</i>	<i>Unknown</i>
		<i>Policy No. [REDACTED]</i>	
<i>Unknown</i>	<i>[REDACTED]</i>	<i>[REDACTED]</i>	<i>Unknown</i>

		Policy No. [REDACTED]	
Unknown	[REDACTED]	[REDACTED]	Unknown
		Policy No. [REDACTED]	

[REDACTED] cannot find any policies corresponding to the policy numbers. [REDACTED] therefore is offering me a compensation of US\$ 3,000 for each policy, i.e. a total of US\$ 9,000, as compensation. This is the minimum amount for this type of compensation. I am filing an administrative appeal against the amount of this compensation. The compensation amount should be substantially higher, or it should be possible to locate the policies. Reasoning: It can be assumed that my grandfather, who was an exceedingly wealthy man, selected the highest possible insurance amount for himself, his wife, and his children. He was a very forward-looking, cautious man [...]. Therefore, the compensation should be substantially higher, because one can certainly assume that, given my grandfather's high standard of living, he had a very high level of life insurance...".

23. On 19th June 2005, the Appellant forwarded a letter to the Appeals Office dated 29th March 1958 from her grandfather's legal adviser, Mr Emil Levy to the Koeln restitution authorities. This letter referred to the "loss of insurance protection from the [REDACTED] insurance company in Koeln amounting to 25,000.00 Reichsmarks." She also attached a decision of the compensation authority dated 24th June 1959 which referred to claims for loss of freedom and property, although not for insurance.
24. On 6th December 2005, the Appellant forwarded further correspondence to the Appeals Office regarding her investigations into [REDACTED]'s business holdings and insurance. This included two letters to Emil Levy dated 31st May and 26th June 1957, from the Chamber of Commerce and Industry and the Koeln-Altstadt Tax Office. Both letters stated that they held no information on the company [REDACTED] & Co K.G. as all files had been destroyed during the war.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

25. Prior to the commencement of the ICHEIC claims process, [REDACTED] informed the Appellant on 21st July 1997 that it had found an entry for her grandfather in its central card register. This indicated that [REDACTED] had applied for insurance with [REDACTED], although it was not evidence that a contract had been issued.

A copy of the name card entry for [REDACTED] was enclosed with this letter.

26. [REDACTED] sent further letters to the Appellant on 2nd April 1998 and 19th March 2003 informing her that it had been unable to find further evidence of a contract with her grandfather in any internal or any external archive.
27. [REDACTED] then referred the claim to the [REDACTED]. On 21st December 2004, the [REDACTED] wrote to the Appellant offering her a payment of US \$9,000.00 for three policies of unknown value. It stated although the contract files could not be found, it was willing to assume that three policies with the numbers [REDACTED], [REDACTED] and [REDACTED] had probably been issued based on the name card evidence.
28. [REDACTED] confirmed its offer in its response to the appeal dated 7th March 2005 stating:

"...because actually no proof regarding the existence of a policy exists at all, we had based our offer on a number of assumptions all applied 'in favour' of the claimant:

- *In our letter dated 21st December 2004, we had pointed out that ‘although an entry was found in the central register of [REDACTED] [...] such an entry only proves that an application for an insurance contract with the company was once filed [...]. Nevertheless, it was assumed in favour of the claimant ‘[...] that many of these applications resulted in the conclusion of a contract.’*
- *Although it is proven by ‘the reserve register of [REDACTED]’ that – in case a policy was issued at all – such a policy was paid out prior to 1941, we have assumed in favour of the claimant that the proceeds were paid out into a blocked account ‘which the beneficiary could not dispose of or only in a restricted way by order of the Nazi Regime.’*
- *Since no information regarding the alleged policy exists at all, we have based our calculation in accordance with Section 7.1 of the ‘Valuation Guidelines’...on the agreed ‘average life insurance policy sums insured for Germany which is RM 841.00. Since it was assumed in favour of the former Jewish residents in Germany that they were wealthier than their average fellow German citizens, Section 7.1 of Annex D stipulates that the average amount of a (German) policy ‘[...] shall be based on a multiple of three times (3x) the average value...’*
- *According to Section 2.1 and 2.2 of Annex D this...amount in Reichsmark, ie 2,523.00 was further multiplied and brought to today’s value of Euro 1,266.14 for the month of December 2004. However, instead of offering the calculated amount of Euro 1,266.14 for each of the three policies, the compensation offer was based – in favour of the claimant – on the agreed minimum payment of US \$3,000.00 for each policy, ie US \$9,000.00 in total, in accordance with Section 2.3 of the ‘Valuation Guidelines’.*”

29. [REDACTED] wrote to the Appeals Office on 17th November 2005 in response to the Appellant’s letter of 19th June 2005. It stated that although it had not received a response from the Frankfurt compensation authorities, it had been able to locate the file for policy [REDACTED] and stated:

“The documents reveal that the policy [REDACTED] was actually concluded on April 1, 1929 with a sum insured of 20,000.00 RM and an insurance term of 20 years. On January 1, 1933, the policy was converted into a paid-up policy with a sum insured of 3,435 RM. On January 15, 1935 the policy was cancelled and the surrender value was paid out to Mr [REDACTED]. ...

Furthermore, the file reveals that the policy [REDACTED] was transferred to the policy [REDACTED] and therefore ceased to exist. For this reason no payment can be offered for this policy as well.

With regard to the policy application number [REDACTED] we know from the remaining file [REDACTED] that this policy actually came into existence in 1930 with a sum insured of 5,000 RM and an insurance term of 20 years.

Unfortunately, no further details could be reconstructed. However, we know from our research in the register of 1941 and the reserve register...that the insurance benefits were duly settled. We are not sure whether they were paid to the beneficiary. It is also possible that insurance benefits were not paid to the beneficiary but seized by authorities of the Nazi regime.

In accordance with the provisions of the agreement the compensation is calculated based on the sum insured, if the technical data of the policy cannot be reconstructed any more. In order to show the current value of the policy the calculation takes into account a number of multipliers laid down in the agreement.

The payment calculated accordingly for policy [REDACTED] amounts to 2,624.29 EUR.. [...] Therefore, based on the newly established documents the correct offer for the three policies would amount to 2,624.29 EUR. Since this amount is below the offer of US \$9,000.00 which was already made we cannot revise our decision.”

30. [REDACTED] enclosed the following documents with this letter:
- a) A copy of the life insurance certificate for policy number [REDACTED];
 - b) A supplement to the insurance certificate for [REDACTED], dated 20th October 1933;
 - c) A redemption receipt for policy number [REDACTED], dated 15th January 1935; and
 - d) [REDACTED]’s letter to the solicitor Hugo Cahn dated 16th March 1953 detailing the history of its contractual relationship with [REDACTED].

THE ISSUE FOR DETERMINATION

31. The [REDACTED] initially offered the Appellant US \$9,000.00 for this claim on 21st December 2004. It was accepted as plausible that [REDACTED] may have issued three policies of unknown value to the Appellant’s grandfather. This was on the basis of the entry in [REDACTED]’s central register, which indicated that Mr [REDACTED] had made three applications for insurance. Although it was not known whether the contracts were actually concluded, these policies were accepted as having been issued on the basis of the Relaxed Standards of Proof.
32. During the course of the appeals process, however, [REDACTED] was able to find further information about the policies. It uncovered the policy documentation for policy number [REDACTED] and a letter to the solicitor Hugo Cahn dated 16th March 1953 referring to both policy numbers [REDACTED] and [REDACTED]. This letter indicated that only two policies had been issued to [REDACTED], as a third (policy number [REDACTED]) had been incorporated into policy number [REDACTED] and ceased to exist.
33. In its letter to the Appeals Office dated 17th November 2005, [REDACTED] stated that policy number [REDACTED] was issued on 1st April 1929 for an insured sum of RM 20,000.00. The policy was then converted into a paid up policy of RM 3,435.00 on 20th October 1933 (with effect from 1st January 1933).
34. [REDACTED] asserted that it was not liable for policy number [REDACTED] as the policy had been redeemed by [REDACTED] in 1935 and the surrender value of RM 2,102.25 paid out. It provided a copy of the redemption certificate dated 15th January 1935, which was signed by [REDACTED] and stated that he waived all further rights to the policy.
35. However, [REDACTED] accepted that it was liable for policy number [REDACTED], which was issued in 1930 for the insured sum of RM 5,000.00. Although there was evidence that this policy had left its portfolio by 1942, [REDACTED] considered the policy was eligible for payment, as it could not be sure that the proceeds had not been confiscated or paid into a blocked account. However, as the valuation for this policy was less than the offer made by the [REDACTED] on 21st December 2004 of US \$9,000.00, [REDACTED] stated that the former offer would stand.
36. However, under the terms of the Agreement, a policy is eligible for compensation if, on the Relaxed Standards of Proof, it is established that the policy was unpaid or not properly paid during the Holocaust era. Under Schedule 1 of the Valuation Guidelines, Annex D to the Agreement, a payment is deemed to have been made into a blocked account if, in the absence of evidence to the contrary, it was made on a German policy during the years 1933 – 1939.

37. In this case, there is insufficient evidence to prove that the surrender value of policy [REDACTED] was properly paid out. Although [REDACTED] submitted a copy of the redemption receipt, this does not prove that the request for redemption was made voluntarily by the policyholder, or that the proceeds of the insurance were paid directly into an account to which he had full and unlimited access. Accordingly, both policy number [REDACTED] and [REDACTED] are eligible for payment under the terms of the Agreement. The valuation of this policies is as follows:

VALUATION

Policy number [REDACTED]

38. Under sections 1.2 and 1.3 of the Valuation Guidelines, the valuation of a policy involves two phases: the assignment of a base value to the policy, and the application of appropriate multipliers to determine the policy's current value.

39. In this case the base value of policy [REDACTED] was the value of the original sum insured: RM 20,000.00. Although the policy was converted into a paid up policy on 15th January 1933, this was after the deemed date for the commencement of the Holocaust in Germany pursuant to Schedule 1 (1933). Section 3.4 provides that the base value shall only equal the paid up value where the conversion was made voluntarily by the policyholder in writing during or after the year of the start of the Holocaust. As [REDACTED] has produced no evidence to show that [REDACTED] initiated the conversion voluntarily, the base value is based on the original sum insured.

40. Pursuant to section 2.1, the policy's current value by calculated by converting the policy into Deutsche Marks at a conversion rate of 10 RM = 1 DM. This corresponds to a base value of DM 2,000.00. A multiplier of 8 is then applied to calculate the value of the policy at the end of the year 2000: DM 16,000.

41. Interest is then added to calculate the value of the policy up until February 2006 (being the month two months after this decision). These interest rates have been agreed in accordance with the Valuation Guidelines for 2001 and 2002, and have been fixed for 2003, 2004, 2005 and 2006 by Memorandum of the ICHEIC (2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5% 2005: 5%; 2006: 5%). A calculation on this basis leads to the amount of DM 16,864.00 for 2001; DM 17,707.20 for 2002; DM 18,548.29 for 2003; DM 19,475.70 for 2004; DM 20,449.49 for 2005 and DM 20,619.91 up until February 2006.

42. This amount when converted into Euros using a conversion factor of 1 Euro = 1.95583 DM results in a value of **Euro 10,542.79**.

Policy number [REDACTED]

43. As [REDACTED] explained in its letter to the Appeals Office dated 17th November 2005, calculations for this policy are based on the insured sum value of RM 5,000.

44. In accordance with section 2.1, the policy is converted into Deutsche Marks by dividing by 10: DM 500.00. A multiplier of 8 is then applied to calculate the value of the policy at the end of the year 2000: DM 4,000.00.

45. A calculation of the interest on the basis of the rates specified in paragraph 40 results in a the following values: DM 4,216.00 for 2001; DM 4,426.80 for 2002; DM 4,637.07 for 2003; DM 4,868.92 for 2004; DM 5,112.37 for 2005 and DM 5,154.97 up until February 2006.

46. This amount when converted into Euros using a conversion factor of 1 Euro = 1.95583 DM results in a value of **Euro 2,635.69**.
47. Accordingly, this results in a combined total of **Euro 13,178.48**.
48. It is acknowledged that this result may appear quite low from the standpoint of the Appellant. She has sought to provide evidence showing that her grandfather was a wealthy businessman with significant financial assets. However, the Appeals Panel in calculating this award is bound to apply the terms of the Agreement and its Annexes, including the Valuation Guidelines. The Valuation Guidelines were negotiated and agreed upon by the three Parties to the Agreement and must be applied when making a decision on a claim or an appeal. The Valuation Guidelines are binding upon Panel decisions as well as upon the parties to an appeal.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal succeeds.
2. The Respondent shall pay the Appellant Euro 13,178.48.
3. The proceeds of this payment shall be shared equally between the Appellant and her co-heir, Ms [REDACTED].

Dated this 16th day of December 2005

[REDACTED]