

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 NUMBERS: [REDACTED], [REDACTED]
[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], born on [REDACTED] 1960 in Milford, Connecticut (USA).

The Appellant's great-grandparents are [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born in Dinslaken (Germany) on [REDACTED] 1877. He fought for the German army in China during the Boxer Rebellion in 1900 and he was a German soldier during World War I from 1914-18. He and his wife, [REDACTED], ran a butcher shop in Duisburg-Ruhrort, Germany from 1909 until it was closed by the National Socialists. After the so called "Kristallnacht" on 9th November 1938, [REDACTED] was deported to the Dachau concentration camp where he was a forced labourer. He perished in the Holocaust. [REDACTED] was born on [REDACTED] 1877 in Billerbeck (Germany) and died in June 1941 in Cologne.

The Appellant is one of three heirs of [REDACTED] and [REDACTED]. His co-heirs are [REDACTED] and [REDACTED].

2. The Respondent is [REDACTED] ([REDACTED]), the [REDACTED].
3. The Appellant submitted four claims form dated 13th August 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that an insurance company he could not name issued policies of life insurance to his great-grandparents.
4. The ICHEIC gave these claims numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED], and 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].

The Appellant has been awarded a humanitarian payment on claim number [REDACTED] by the competent ICHEIC body.

5. In addition, the Appellant submitted a claim form dated 13th January 2002. This claim was given claim number [REDACTED]. The claim is for a policy issued to the Appellant's grandfather, [REDACTED]. The Appellant could not identify the issuing company. According to ICHEIC's database, no matches have been identified yet on this "unnamed" (no insurance company named) claim.

According to the ICHEIC's database, this claim was also processed under claim number [REDACTED]. However, the claim processed under this number is a replica claim to claim number [REDACTED]. The ICHEIC's document management system does not contain any documents under this number.

6. In a letter dated 6th November 2001 [REDACTED] states that it has conducted a search of its central register for the names of the persons mentioned in the claims ([REDACTED], née [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). [REDACTED] adds that it has found an entry for [REDACTED] with a slightly different date of birth, but [REDACTED] assumes that this is the Appellant's great-grandfather. It requests the Appellant's understanding for the fact that the further research would take some time.
7. In a letter dated 19th September 2002 [REDACTED] states: "*We have now concluded our research into external archives for a life insurance contract for Mr [REDACTED].... The starting point for our research was the entry for your great grandfather Mr [REDACTED] in our central register (enclosure 1). As an entry was made each time an application for life*

insurance was filed we do not know whether a contract was actually concluded or not We regret, we have to inform you that there is no proof of a contract concluded by Mr [REDACTED] with us. Apart from this, we know that if a policy had existed the insurance benefit was duly settled. ... Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims which have remained unsettled so far and for which we have documentation. This, however, does not apply to your inquiry”. An attached note points out that this is a provisional decision.

8. In a letter dated 16th August 2004 [REDACTED] wrote the Appellant: *“The audit procedure agreed with ICHEIC has now been completed. The thorough review by external auditors confirmed that our application processing procedure is consistent with the ICHEC standards agreed. Irrespective of the confirmation of our claims handling procedure it has recently been agreed between our company, the ICHEIC and the [REDACTED] ([REDACTED]) that a payment will be offered from the humanitarian fund in those cases where we found an entry in our central register but have no further reference that a life insurance contract actually came into existence. We are pleased to propose your claim concerning policy application number [REDACTED] for a payment out of this fund. The responsibility for this procedure rests with the [REDACTED]”.*
9. In its decision letter dated 25th August 2004 [REDACTED] describes the background to the agreement concerning humanitarian payments on [REDACTED] entries in [REDACTED]’s central register (“Zentralregister”, ZRG). Regarding the existence of a policy, [REDACTED] writes: *“Such an entry [ZRG] only proves that an application for an insurance contract with the company was once filed under the number [REDACTED]. It does not verify the existence of a policy”.* [REDACTED] continues: *“Although your claim would concern an insurance policy that was paid by [REDACTED] you are entitled to a humanitarian payment of the same amount as if the policy had remained unpaid. ... [REDACTED] is unable to determine any details of the policy Therefore, we have based our calculation – in accordance with the ‘Valuation Guidelines’ which are also part of the ‘Agreement’ – on the average sum insured in a life insurance policy in Germany between 1933-1945. This average sum insured was further multiplied to show the current value of the policy. ... Given the fact that the calculated current value of the policy of Mr. [REDACTED] of € 1,246.20 is less than the agreed minimum payment we are pleased to offer you US \$ 3,000.00 for the compensation of this policy. ... We ... understand that you and your relatives, Mr [REDACTED] and Mrs [REDACTED], are his legal heirs”.*
10. The Appellant submitted an appeal to the Appeals Office dated 10th December 2004, which was accompanied by an attachment setting out the reasons for the appeal.
11. The Appeals Office received the appeal form on 22nd December 2004 and mailed a copy to the Respondent.
12. [REDACTED] responded in a letter dated 17th January 2005 and stated: *“We believe that our decision in this case was completely in line with the ‘Agreement signed on 16th October 2002’ between ICHEIC, the German Foundation and the [REDACTED]. ... 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 favor’ of the claimant. In this context, we have also tried to emphasize that the offer was already based on a value far above the average value of an insurance policy at that time”.* The [REDACTED] provides further details and concludes: *“If the claimant is appealing the ‘Valuation Guidelines’ and its valuation methodology itself, we can only point out that these guidelines are the result of the agreement between ICHEIC and the German Foundation and were endorsed by the American and German Government. ... We do not see any basis that would justify a different or higher offer”.*

13. On 28th 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.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
15. 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

16. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:

Claim number [REDACTED]

- a) In sections three, four, five and six, he is unable to provide any details about the policy, the company that it issued it or the policyholder.
- b) In section seven, he identifies his great-grandmother, [REDACTED] née [REDACTED], as the insured person. She was born on [REDACTED] 1884 in Hemelingen (Germany) and died in “*Auschwitz, 1942 ?*”. The Appellant identifies [REDACTED] and [REDACTED] as other living heirs.
- c) In sections eight and nine, he is unable to provide any information regarding the beneficiary of the policy or whether anyone has participated in any compensation/restitution procedure for this claim.

Claim number [REDACTED]

The claim form is identical to the one submitted in [REDACTED] with the exception that, in section seven, the Appellant identifies his great-grandfather, [REDACTED], as the insured person. [REDACTED] was born on [REDACTED] 1881 in Sofia (Bulgaria) and died in “*Auschwitz ? 1942*”. The Appellant identifies the same living heirs as in claim [REDACTED].

Claim number [REDACTED]

The claim form is identical to the ones above with the exception that, in section seven, the Appellant identifies his great-grandmother, [REDACTED] née [REDACTED], as the insured person. She was born on [REDACTED] 1877 in Billerbeck (Germany) and died in June 1941 in Cologne. The Appellant identifies the same living heirs as above.

Claim number [REDACTED]

The claim form is identical to the ones above with the exception that, in section seven, the Appellant identifies his great-grandfather, [REDACTED], as the insured person. [REDACTED] was born on [REDACTED] 1877 in Dinslaken (Germany) and died in “one of the concentration camps“. The Appellant identifies the same living heirs as above.

17. The Appellant sets out the reasons for her appeal as follows: *“I am writing this appeal letter regarding my ICHEIC claim for my great grandfather, [REDACTED]. The ICHEIC claim numbers originally assigned were [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] has stated to me in a letter dated August 25, 2004 that [REDACTED] has identified an application for an insurance contract for [REDACTED] as [REDACTED]. However, they claim that they could not verify the existence of an actual policy. They further state that the policy, if it existed, was duly settled based on their claim that no insurance contract existed in their inforce register of 1941. [REDACTED] was born in Dinslaken, Germany on [REDACTED], 1877. He fought for the German army in China during the Boxer Rebellion in 1900. He fought as a German soldier during World War I from 1914-18. He and his wife, [REDACTED], ran a butcher shop in Ruhrort, Germany from 1909 until it was closed by the Nazis. After Krystallnacht, November 9, 1938, [REDACTED] was taken to Dachau. The last reference I have regarding his life is that he was forced to work in a factory sorting scrap metal to make mattress fillings. He was not seen nor heard from again. I have been offered \$ 3000 U.S. to settle this claim based on the ‘average value’ of a German life insurance policy between 1933 and 1945. The ‘average value’ has arbitrarily been determined to be 841 RM, then adjusted and converted to euros. Although I greatly appreciate the fact that [REDACTED] has found evidence of an application for my great grandfather, I feel compelled to appeal the financial offer based on the fact that many Germans at that time had multiple insurance policies, the ‘poor man’s Swiss bank account’, from the research that I have done. In addition, I strongly believe that even if [REDACTED] had only one policy, he would have had a larger face value on his policy than the average German citizen. If [REDACTED] could verify the presence of an application, why are we not provided with a copy of his application for life insurance? What was the face value of insurance that my great grandfather applied for? Surely if they could verify an application they would be able to verify the amount of the insurance requested. As you know, vast numbers of these insurance policies were ‘blocked’ by the Nazi Government and could not be cashed out if the policy owners were Jewish. As you also know, many of these policies were ‘cashed out’ by the Nazi Government after the policy owners were murdered. [REDACTED] was taken to Dachau very early in the Holocaust and almost certainly was tortured and murdered prior to 1941 when [REDACTED]’ inforce register was created. Thus, his policy likely was nonexistent in 1941 due to the very likely fact that it was cashed out by the Nazi Government, not by any of his relatives. It is my understanding that insurance carriers at that time made a great deal of money due to the inability of policy owners and their relatives to successfully claim their legitimate proceeds either from the deaths of the policy owners or the inability to access the ‘cash value’ of the policies. It is also my understanding that the Reich mark was a currency linked directly to the value of gold. Although I understand that the RM was subsequently devalued and made essentially worthless after the war, the currency had real value at the time that insurance policies were purchased and I do not accept the formula that has been utilized to determine a current value for my great-grandfather’s insurance policy. As you know, how to value an insurance policy issued during Nazi Germany in today’s currency is controversial and open to actuarial interpretation in many different ways. To summarize, I am appealing [REDACTED]’s offer for two different reasons. The first is based on a presumptive value of the [REDACTED] policy that [REDACTED] purchased. A successful business owner and two time war veteran most likely had an above average lifestyle and as such, likely had insurance policies worth much more than the average German citizen. I therefore challenge the presumption that he had ‘an average policy’ and do not feel that I*

should accept 'the average' simply because [REDACTED] cannot verify that his application for insurance was ratified. I would ask that [REDACTED] provide us with a copy of the application and specifically provide to us the amount of insurance applied for by my great grandfather. The second reason for appeal has to do with the means of calculating value for a life insurance policy issued during the Nazi regime in today's currency. If we can agree upon a fair value for [REDACTED]'s [REDACTED] policy, then I would like to have an opportunity to get an independent actuarial analysis of the value of that policy in today's currency. Thank you for the opportunity to appeal [REDACTED]'s offer to me and [REDACTED]'s other living relatives. We look forward to receiving a timely response from you and hope that some of the details I have provided regarding my great-grandfather's life will help you in further researching his assets and ultimately provide us with a more equitable proposal".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. After [REDACTED] had had a match for application number [REDACTED] in its central register, and after this case was transmitted to the [REDACTED] for payment from the humanitarian funds, [REDACTED] offered a payment of US\$ 3,000.00 (to be shared with the Appellant's co-heirs [REDACTED] and [REDACTED]) for the reasons set out in [REDACTED]'s decision letter dated 25th August 2004 (see paragraph 9). [REDACTED] confirmed its decision in its letter written in response to the appeal (see paragraph 12).

THE ISSUES FOR DETERMINATION

19. The first issue for determination is what is the subject of the appeal. Although the Appellant lists all four claim numbers, he is, in fact, only appealing claim number [REDACTED]. This is made clear in the reasons for appeal ("*I am writing this appeal letter regarding my ICHEIC claim for my great grandfather, [REDACTED]...*").

20. The next and main issue of the appeal is whether [REDACTED]'s valuation is correct.

VALUATION

21. Under the Tripartite Agreement (see paragraph 15) the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the Agreement. For policies issued in Germany (within the boundaries if 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.

22. 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).

23. 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.

24. 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 value up 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 after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 %; 2004: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5.0 %), which results in the amount of DM 2,127.3936 for 2001, DM 2,233.76328 for 2002, DM 2,339.8670358 for 2003 and DM 2,437.361495625 for 2004 which gives € 1,246.20 on the basis of an exchange rate of DM 1.95583 = € 1.00.
25. 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\$ 3,000 (per policy), if he, like the Appellant and his co-heirs in this case, are not survivors of the Holocaust.
26. It is acknowledged that – from the Appellant’s point of view and given the financial circumstances of his great-grandfather – there are reasons to question the results of the valuation of the policies applying the Valuation Guidelines. However, as already explained above (paragraph 21), the Appeals Panel is bound by the Agreement and its Annexes, including, among others, the Valuation Guidelines. They 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. Therefore, a calculation based on an unverified assumption, as suggested by the Appellant, cannot be made.

Finally, the Appellant seems to be lead by the incorrect assumption that from the index cards of [REDACTED]’s central register (ZRG) it can be seen what was the insured sum. This is, however, not the case. Those index cards only show name and surname, date of birth, place of birth or place of residence and sometimes the profession of applicants. They do not show any specific details of the insurance contracts for which applicants applied. These details are traced by the application number and an insurance contract number which is on the ZRG index cards. As the central register is [REDACTED]’s only remaining complete register, [REDACTED] depends on (incomplete) internal registers or information from external registers for additional research. If there is no information in internal or external archives, [REDACTED] can only verify that there was an application for an insurance policy without knowing further details of the insurance contract.

Appellant: [REDACTED]	Appeal No.: [REDACTED]	Claim Nos.: [REDACTED], [REDACTED], [REDACTED], [REDACTED]
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IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 28th day of April 2005

[REDACTED]