

**THE APPEALS PANEL**

Established under an Agreement dated 16<sup>th</sup> October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

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THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax: ++ 44 (0) 207 269 7303

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]

Represented by:  
[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] 1953 in London. He is the grandson of Dr. [REDACTED] ([REDACTED]) ([REDACTED], [REDACTED]) [REDACTED] ([REDACTED]), who was born on [REDACTED] 1893 in Jedenzi, Bessarabia or in Lithuania (the information in the claim form and other documents varies) and died on 14<sup>th</sup> March 1945 in the Dachau concentration camp in Germany. Dr. [REDACTED] was, according to the Appellant's statement, a managing partner of a family finance house, a merchant bank called "*Kommerz bank*". He was also a qualified medical doctor.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 17<sup>th</sup> January 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that "[REDACTED]" issued a policy of life insurance to his grandfather.
4. In its final decision letter dated 16<sup>th</sup> August 2004 [REDACTED] made an offer of US\$ 12,507.36 and stated: "*... The starting point for our research was the entry for Dr. [REDACTED] in our central register (enclosure 1). ... The entry does not contain details on the applied insurance coverage. ... Fortunately, we were able to trace a register card consisting of two pages only (enclosure 2). According to the register card Dr [REDACTED] had concluded a life insurance [REDACTED] with us, commencing in December 1, 1929 with a sum insured of \$ 6,000.00 and an insurance term of 15 years. The annual premium amounted to \$ 382.20. Entitled to the benefits were his wife and the children in equal shares. In 1935 and 1938 Dr [REDACTED] took out a loan in the amount of \$ 2617.00 in total. As of August 1939 the life insurance was continued as paid up policy with a sum insured of \$ 383.00, There are no more details concerning this policy on the card. Furthermore, the policy number [REDACTED] is contained in our inforce register set up in 1941 containing all life insurance contracts including the corresponding technical data which were in effect at that time. The register was set up in order to prevent the loss of contract details during the war. To obtain further information regarding the fate of this policy, we have contacted the German State Compensation and Restitution authorities. None of these authorities, however, could help us in this matter. Also our research at the State Archive of Berlin, the Central State Archive of Brandenburg was not successful. Only the Federal Archive in Berlin could provide us with a document of the internal revenue of Berlin which also mentions the policy number [REDACTED], but gives no information about the fate of the policy (enclosure 3). Your client provided us with a letter of our company dated 1959 which indicates that the payment was to be made at the time (enclosure 4). However, we do not know whether a payment ceased to be made or whether Mr [REDACTED] finally submitted the document and payment was made subsequently. Therefore, we have searched in our so-called reserve register containing all life insurance contracts which were not settled by us, e.g. if the beneficiary could not be found or payment could not be made for other reasons. The setting up of such a register is required by law in order to establish reserves for subsequent payment. This register does not contain an entry for the number entered in the central register either. This means that no reserves were established for this policy. Therefore, the policy must have been paid out. Although we assume that the benefits were paid out, we would like to offer you a payment within the framework of the German Foundation "Remembrance, Responsibility and Future" to exclude all possibility of doubt. In doing so, we wish to express that the mere possibility of an unpaid policy is reason enough to pay a benefit. The starting point for our calculation was the reduced sum insured in the amount of \$ 383.00. This amount has been multiplied with the factor 25.6 in order to properly allow for increases in value and interest returns. Then interest for the years 2000 up to 2004 was added. According to the calculation the compensation amounts to \$ 12,507.36. A detailed explanation of the calculation is shown in the enclosed calculation sheet*".

5. The Appellant submitted an appeal to the Appeals Office dated 18<sup>th</sup> November 2004, which was forwarded by the Appellant's representatives on 9<sup>th</sup> December 2004 and which was accompanied by an attachment setting out the reasons for the appeal.
6. The Appeals Office received the appeal form on 20<sup>th</sup> December 2004 and mailed a copy to the Respondent.
7. [REDACTED] responded in a letter dated 10<sup>th</sup> March 2005 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*".
8. On 22<sup>nd</sup> March 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.
10. 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 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 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**

11. 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 three, he identifies the insurance company that issued the policy as [REDACTED]. He mentions that the policy was purchased in Stuttgart (Germany) [which is understood by the deciding Panel Member only as a reference to the seat of the company]. He adds as "*other information*": "*1959 correspondence attached between [REDACTED] and my late father, Mr [REDACTED]. [REDACTED] has acknowledged, following research in their archives and German state archives, that the policy was not paid out*".
  - b) In section four, he offers correspondence and other documents to support his case.
  - c) In section five, he identifies the policy in question as life insurance, policy number [REDACTED]. He is not aware of any payments resulting from the policy. He states that premium payments were made "*from the time my grandparents married to the time my grandfather was deported to Dachau*".
  - d) In sections six and seven, the Appellant identifies his grandfather [REDACTED] as the policyholder and insured person. Regarding former residences, the Appellant states: "*Jedenzi, Bessarabia 1893-1915; Odessa 1915-1921; Tauroggen, Lithuania 1921-*

1923/34; Memel 1923/24-1939; Kaunus (Kovno) 1939-15.7.1944". The Appellant is not aware of any other living heirs.

- e) In section eight, the Appellant names his father, [REDACTED], as the beneficiary. He was born 1921 in Odessa (Ukraine) and died 1972 in London. The Appellant does not know of any other heirs.
- f) In section nine, he states that no one has participated in any compensation/restitution procedure for this claim.
- g) In section eleven, regarding "further information", he states: *"The family bank where my grandfather [REDACTED] was managing director and partner 'Kommerz bank' had two branches one in Memel (now Klaipeda) and the other in Taurik (Tauroggen, Taurage), Lithuania. The bank was founded by my grandmother [REDACTED]'s father [REDACTED], together with his brother [REDACTED]. Two sisters [REDACTED] married the two [REDACTED] brothers. [REDACTED] married my great-grandfather [REDACTED]. [REDACTED] married [REDACTED]. A [REDACTED] brother was also a partner in the bank. The [REDACTED]s came from Taurik. It is probably the case that my grandfather would have had good connections with the [REDACTED] Insurance company as a banker. The family had wide financial and commercial interests ranging from flax and linen production, forestry, flour milling, timber exports and the financing of poultry farming and agriculture. My grandfather [REDACTED] owned a textile factory with hundreds of employees, owned the building which housed the bank in Memel, and had landholdings in Gdansk (Gdunia, Poland) and in Pommern (Shivelbein). There is no indication that my grandfather would have been unable to maintain payments on any policy he took out up to the time of his deportation/confinement to the Kovno ghetto; (these were not the only events that would classify him as a Holocaust victim). Basically, prior to his treatment by the Nazis he had been a wealthy man, who had married into an established family. My grandmother [REDACTED]'s dowry was said to be 400,000 gold reichmarks. My grandfather would have taken out an insurance policy when they married c 1920 to ensure that his family would have been able to sustain a standard of living to which they were accustomed, if he predeceased them. The bank in Memel was situated at 10, Alexander Str. and took up the whole of the ground floor. My grandparents lived in one of the apartments above the bank. The Krivavnik family lived in another. It is probable that the building's insurance was with [REDACTED] and a good payment history would corroborate the fact that my grandfather would have been able to keep up the payments on a life policy as well ..."*

12. The claim file contains, among others, copies of the following documents:

- a) A photo of a tombstone bearing the names of people killed in the Holocaust. Among the names listed are [REDACTED] and [REDACTED].
- b) A printout of a letter from [REDACTED] to Mr [REDACTED], export manager in London, dated 26<sup>th</sup> May 1959. It states: *"As we again have not heard from you following our letter of 28.4.1959, we would again like to ask you for the documents as set out in our letter of 25.2.1954"*.
- c) A declaration form "CI" for the "Finanzamt" (the inland revenue) dated 15<sup>th</sup> September 1941 where [REDACTED] states that [REDACTED] owes Dr [REDACTED] ([REDACTED]) \$ 333.83 plus a dividend of \$ 8.66, which equals RM 856.22, arising from life insurance policy [REDACTED].

13. The Appellant sets out the reasons for his appeal as follows: “... **B Issues in appeal** 1. The Claimant alleges that the Insurer erred in its decision to fix the insured sum at \$ 383, which is to serve as the basis for calculating the amount owed to the Claimant, and that the said sum should have been the original sum insured, i.e. \$ 6,000. 2. The issue to be resolved in this Appeal, therefore, is the following: what is the correct insured sum that is to serve as the basis for calculating the amount owed to the Claimant ? **C Arguments** The Claimant alleges that the correct insured sum, which is to serve as the basis for calculating the amount owed to the Claimant, is \$ 6000, being the original sum insured, for the following reasons: 1. As appears from the record produced by the Insurer (enclosure 2 attached to the Decision), premiums, totalling \$ 2,803.44, were paid in regularly between the years 1930 and 1938. 2. Although there is no indication as to why payment of the premiums was stopped, the reason is clearly obvious: the early onset of the Holocaust era in the Lithuanian county seat city of Memel, where the Insured lived and was employed as a prominent bank manager. Here are the relevant historical facts. 2.1 Memel was in the western part of Lithuania, adjacent to Germany, where ethnic Germans formed the majority of the population and were in constant conflict with the Lithuanian authorities. 2.2 When the Nazis assumed power in Germany in the early 1930s the situation in Memel became worse and Germany started an aggressive campaign to have that part of Lithuania annexed to Germany. 2.3 Between 1935 and 1939 the situation in Memel became violently anti-Jewish and in the local elections in 1938, the Nazis, espousing the application of the ‘Nuremberg Laws’ in Lithuania, obtained a clear majority, and about half the Jewish population (out of a Jewish population of 7000 in a total population of 51,000) were forced to emigrate from Memel. 2.4 On March 22, 1939 the German army entered Memel and the city was formally annexed to Germany. All remaining Jewish property was officially confiscated. 3. Like many other Jews at that time in that part of Europe, the Insured was forced to stop making the payment of the premiums as of 1939 since he needed to satisfy various tax and other currency and financial obligations imposed on him by the nazi regime. 4. The above reasons also forced the Insurer to take the Loan in 1935 and 1938. 5. The Insurer, therefore, was a typical (albeit unfortunately so) case of Jews who were forced by the duress of the Holocaust era, and/or by Nazi action which preceded it, to convert their insurance policies to paid-up or partially paid-up policies. 6. In fact, the ICHEIC has been well aware of the above situation of duress under which Jews were forced to convert their policies to paid-up policies. The ICHEIC, therefore, has stated in its Valuation Guidelines (point 3.4 referred to by the Insurer in its letter of October 25,2004, to the representative of the Claimant) that (only) if the conversion of the policy was before the start of the Holocaust era is the base value of the policy to equal the paid up value. 7. In other words, policies that were converted after the start of the Holocaust era are not be regarded as paid-up (cashed in) and the original sum insured is to serve as the base value for the purpose of calculating the sum owed. 8. In the light of the historical facts, as listed in 2 above, there is no doubt that the Holocaust era in that part of Lithuania, where the insured lived (Memel), clearly started before 1938. The insured did manage to pay the premiums until 1938, but then the situation became so bad that he was forced to discontinue the payments. 9. There have been some similar strongly criticized cases involving this particular Insurer, where the same approach was taken by the Insurer vis-à-vis so called paid-up or converted policies resulting from confiscated funds, or blocked accounts or inability to make payment by Jews under the Nazi regime”. In the following the Appellant gives an example and quotes an ICHEIC memorandum on confiscated policies and continues: “... 10. In light of all of the above, the Claimant alleges that the insured sum of the Policy should remain at \$ 6,000 and that the said figure form the basis for calculating the amount owed the Claimant, and which is to be paid to him by the Insurer” (some of the information in this letter is sourced in footnotes).
14. Following the Company’s response of 10<sup>th</sup> March 2005, the Appellant’s representative stated on 28<sup>th</sup> March 2005: 1. The Claimant acknowledges the admission of the Insurer “that the conversion of the life insurance [REDACTED] into a paid up policy in August

1939 is not to be considered as (the Insured has) to assume that the alteration of the contract occurred due to the persecution of the Nazi regime". 2. Thus in effect the Insurer agrees with the Arguments submitted to the Appeals Panel by the Claimant's Representatives and outlined in Annex 'A' of the Appeals Form, thereby admitting that the insured sum should be \$ 6,000 and not \$ 383. 3. The Insurer, however, now raises a **new** argument in rejecting the Claimant's claim to full compensation based on a policy valued at \$ 6,000, by alleging that the said sum of \$6,000 should be devalued as a result of a German law passed in August 26, 1938 (Reichs-Law-Act – 'RLA') and applicable to German insurance policyholders who were resident within the 'German Empire'. 4. The above new argument must be rejected for the following reasons: 4.1. It is contrary to accepted universal principles of justice for one side in a judicial, or quasi-judicial, proceeding to raise new arguments and to create a new front at an advanced stage of the proceedings such as is the case here. The Insurer cannot simply decide now to abandon one defence against the claim and raise a new one, which, as an after-thought, happens to be more convenient. 4.2. Regarding the merits of the new argument concerning the devaluation of the sum insured – without prejudice to the above – the RLA cannot apply here since Mr. [REDACTED] ('the Insured') did not live in Memel when the town was annexed and became part of the German Empire on March 22, 1939. 4.3. The Insured, in fact, left Memel and ceased being a resident there sometime towards the end 1938 or at the latest in the beginning of 1939, well before March 1939. The foregoing is confirmed by Ms. Dorothy Bohm née Israelit) of [REDACTED], London, UK who was a neighbor of the Insured at all relevant times. An affidavit by Ms. Bohm, confirming the foregoing will be filed separately. 4.4. Furthermore, as it is now a well accepted principal that the Nazi regime was an illegitimate and illegal regime, all laws passed by that regime, especially those of a confiscatory nature – such as the RLA – and pertaining to territories outside of Germany annexed by force, were illegal and had no validity. Therefore, the RLA must be ignored and any argument based on it must be rejected outright. 5. In light of the above, it is submitted that all the Insurer's calculations based on the conversion of the US dollar into RM in accordance with the RLA and the German Federal Compensation Law are incorrect and/or not relevant to this claim. 6. The claimant, therefore, reiterates his allegations and arguments, as contained in the Appeal Form, in support of his submission that the insured sum of the Policy should remain at \$ 6,000, and that this figure, without any deductions or devaluations and in accordance with ICHEIC rules, should form the basis for calculating the amount owed by the Insurer to the Claimant, and in particular the Claimant alleges that: 6.1. the Insured was forced to stop making the premiums as of 1939 since he needed to satisfy various tax and other currency and financial obligations of a discriminatory nature, imposed on him by the Nazi regime. 6.2. For the same reasons the Insured was forced to take out the loans of \$ 1,587 in 1935 and \$ 1,030 in 1938, which are, therefore, of a confiscatory nature and must not be taken into account in arriving at the sum insured or in calculating the claim owing".

15. The appeal file also contains a copy of an affidavit signed by [REDACTED] on 3<sup>rd</sup> April 2005. She states: "I grew up in Memel, and we lived there continuously until March 1939. We were the last Jewish family to leave Memel. My family were close neighbours and good friends of Dr. [REDACTED], his wife [REDACTED] and his only child [REDACTED]. From personal knowledge, I know that [REDACTED], his wife [REDACTED] and only child [REDACTED] ceased being resident in Memel, Lithuania, when they finally left there towards the end of 1938, or at the latest, in the beginning of 1939, well before March 1939".

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

16. [REDACTED] made an offer to pay \$ 12,507.36 for the reasons set out in its decision letter dated 16<sup>th</sup> August 2004 (see paragraph 4).
17. With this letter [REDACTED] enclosed copies of the following documents:
- a) An entry in [REDACTED]' central register for Dr [REDACTED]; Dr. med., bank director; born [REDACTED] 1893 in Tauroggen, (now Tauragė, Lithuania). The entry is marked [REDACTED].
  - b) A register card, prominently marked "Ausländer!" ["foreigner"], confirming the information provided by [REDACTED] in its decision letter .
  - c) An internal revenue document provided by the Federal Archive in Berlin which mentions the policy number [REDACTED], but has no information about the policy.
  - d) A letter from [REDACTED] to the Appellant's father [REDACTED] dated 28<sup>th</sup> April 1959 which reads: "As we again have not heard from you following our letter of 28<sup>th</sup> April 1959 we wish to ask you once again for the documents we mentioned in our letter of 25<sup>th</sup> February 1954".
  - e) A valuation sheet explaining the calculation leading to the offer of US\$ 12,507.36.
18. On 10<sup>th</sup> March 2005 [REDACTED] wrote in response to the appeal: *"We first calculated the compensation on the basis of the reduced sum insured in the amount of \$ 383.00. We assumed that the claimant's grandfather lived in Lithuania as he was citizen of Lithuania. As to our knowledge the Holocaust era started in Lithuania with the invasion of the German militaries in 1940. Therefore, we took into consideration the conversion into a paid up policy that occurred in August 1939. Along with the appeals documents the claimant's representative informed us that Mr [REDACTED] lived in Memel in 1939. We acknowledge that Memel has been integrated in the German Empire already on March 22, 1939. Therefore we agree that the conversion of the life insurance [REDACTED] into a paid up policy in August 1939 is not to be considered as we have to assume that the alteration of the contract occurred due to the persecution of the Nazi Regime. However, according to the Reichs-Law-Act of August 26, 1938 concerning foreign currency insurance contracts we have now to consider the conversion of the full sum insured amounting to \$ 6,000.00 into a RM value. According to article 1, paragraph 1 of this law, insurance contracts which were taken out in a foreign currency between a German insurance company and a policyholder who is resident within the German Empire have to be converted into insurance contracts with RM value (we have attached the text of the law as enclosure 1). Under the terms of article 2 of the above-mentioned law all claims and benefits that result from life insurance contracts as well as additional premiums, profit participation of the policyholders, interest and issued loans have to be converted into RM. According to article 1, paragraph 8 of the regulation regarding the implementation of the legislation about the law concerning the foreign exchange control, the area of Memel was part of Germany under the terms of the law concerning the foreign exchange control. This means that the law concerning the foreign exchange control was applicable to all persons living in the Memel-area (please compare the text of the regulation in enclosure 2). As the claimant's grandfather lived in Memel this law was also applicable to him. Thus, Mr [REDACTED]'s insurance contract [REDACTED] had to be converted into a RM valued insurance policy like all other foreign currency insurance policies of policyholders who were living in Memel. The Reichs-Law-Act of August 26, 1938 concerning foreign currency insurance contracts was a generally admitted law which had no discriminatory character. If a policy was issued in a foreign currency and was subsequently converted into the local currency due to a generally admitted law, then the current value has to be calculated in accordance to the regulations*

of this country under article 7.3 of the valuation guidelines which are part of the agreement. As policy number [REDACTED] was converted into RM, we have calculated our offer in accordance with the German Federal Compensation Law (BEG) which also served as the basis for post-war compensation proceedings. We have valued the life insurance contract [REDACTED] as shown on the enclosed valuation sheet (enclosure 3). The exchange rate from US-dollar into RM amounted 2.495 according to the Reichs-Law-Act of August 26, 1938. Accordingly the full sum insured amounts to RM 14,970.00 which serves now as basis for our calculation. From the full sum insured in the amount of RM 14,970.00 we have deducted the loans. For the loan in the amount of \$ 1,587.00 taken out in 1935 an additional contribution was charged in a quarterly amount of \$ 21.82. For the loan in the amount of \$ 1030.00 taken out in 1938 a quarterly additional contribution in the amount of \$ 14.16 was charged. Therefore, we have to deduct from the full sum insured the loans in the amount of RM 6,529.00 and the additional contributions in the amount of RM 1,869.00 after the conversion. The result is a base value of RM 6,572.00. The calculation was made without taking into account the then usual deduction of a war levy and loss of interest allowance. However, unpaid premiums were deducted. Furthermore, we have included the profit participation and the old savers compensations for losses incurred during the reform of the monetary system. Finally the sum was brought up to the value of 2000 using a factor of 8. The multiplier was agreed upon within the International Commission. Moreover, we have added interest for 2001, 2002, 2003, 2004 and 2005. Again, the interest rates were agreed upon within the ICHEIC. According to the German Federal Compensation Law the claimant is entitled to receive an offer amounting to € 7,803.33. Due to the circumstance that Mr [REDACTED] lived in Memel we had to calculate the compensation payment as explained before. On the other hand, we are aware that we have risen an expectation with our offer dated August 16, 2004 which we won't disappoint. Therefore, we would like to abide our offer as of August 16, 2004 but coevally ask for your understanding that we have no scope for an advance of this offer. For this reason, we respectfully ask the Panel to reject the appeal submitted with respect to this claim and to confirm our decision on it".

19. [REDACTED] enclosed with this letter copies of the following documents of relevance:

- a) Reich law of 26<sup>th</sup> August 1938 on insurance policies in foreign currencies.
- b) Legislation concerning the integration of the Memel region into the German Reich dated 23<sup>rd</sup> March 1939.
- c) A valuation sheet explaining the calculation leading to € 7,803.33.
- d) [REDACTED]'s final decision letter dated 16<sup>th</sup> August 2004 including attachments.
- e) A letter from the Appellant's representative to [REDACTED] dated 20<sup>th</sup> October 2004 seeking clarification of the calculation before a decision was taken to appeal.
- f) Letter dated 25<sup>th</sup> October 2004 from [REDACTED] to the Appellant's representative explaining [REDACTED]' calculation.
- g) A letter dated 9<sup>th</sup> November 2004 from the Appellant's representative to [REDACTED] questioning the level of the paid up sum and the deemed starting date of the Holocaust. He writes: "The German army may have invaded Lithuania in 1940, but certainly the concept of the 'Holocaust', as we know it to date, did not start with such invasion. The Holocaust began in Germany with the Third Reich, long before the invasion to Lithuania and before August 1939 (the date of conversion of the policy). Thus, from its beginning in Germany, the Holocaust already threatened all the neighbouring countries and affected the lives of the Jews living in them. The threat of the Holocaust was the



*obvious reason why Dr. [REDACTED] was forced to discontinue paying the premiums. In the light of the above, the rule that you refer to in the Valuation Guidelines is not applicable, and therefore the base value of the policy should be \$ 3,383 (the original \$ 6,000 less the loans) and not the paid up value as you state”.*

- h) A letter dated 10<sup>th</sup> November 2004 from [REDACTED] to the Appellant’s representative reaffirming the previous arguments and informing (again) about the possibility to appeal.

## **THE ISSUES FOR DETERMINATION**

20. The appeal was filed within the timeline of 120 days. The Appellant’s representative received the decision on 20<sup>th</sup> August 2004 and the Appeals Office received the appeal on 20<sup>th</sup> December 2004. This is 121 days after the date of receipt but the appeal was sent by FedEx already on 9<sup>th</sup> December 2004.
21. Since the details of the insurance are not in doubt and the Appellant’s family are Holocaust victims, the main issue is whether the valuation is correct.

## **VALUATION**

22. Under the Tripartite Agreement (see paragraph 10) the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the Agreement.
23. The first issue for determination is whether the policy is a policy issued in Germany within the boundaries of 1937 and, therefore, Section 2 of the Valuation Guidelines (Annex D of the Agreement) must be applied or whether the policy is a “non-German” policy. It is concluded that the policy must be treated as a “non-German” policy and, therefore, Section 2 of the Valuation Guidelines is not applicable. Although the Appellant states in his claim form that the policy was purchased in Stuttgart, Germany [see paragraph 11 a)], this statement is regarded as just referencing the seat of the company; further it does not correspond to the documents provided by [REDACTED]. The register card has, apparently from the beginning of the contract and without later changes, the entry “*Memel*” in the box “*Geschäftsstelle*” (administrative office). This indicates that the policy was purchased in Memel which is supported by the fact that [REDACTED], at that time called “[REDACTED]”, was doing business in the “*Memelgebiet*” (the Memel Area) (see “*Neumanns Jahrbuch der privaten und öffentlich-rechtlichen Versicherung im Deutschen Reich*”, edition for 1936). [REDACTED] itself initially, when applying Section 3.4. of the Valuation Guidelines (Annex D of the Agreement) in its calculation as set out in its letter dated 25<sup>th</sup> October 2004 regarded the policy as a “non-German” policy (Section 3.4 of the Valuation Guidelines is part of the valuation provisions for determining the base values of “non-German” policies).
24. Next issue for determination is whether the sum [REDACTED] has used as a basis for its calculation is correct.
25. [REDACTED]’ starting point using an insured sum of US\$ 6,000.00 is correct. However, [REDACTED]’ argument that this sum had, according to the quoted laws, to be converted from US\$ into Reichsmark (RM) is not accepted. This non-acceptance has nothing to do with the Appellant’s reasoning that [REDACTED]’ argument was presented too late or that the relevant laws (which had been laws of general application and had no specific

discriminatory character) were null and void as such. But the laws were not applicable for the Appellant's grandfather since during the decisive period (the Annexation of the Memel region) he was not residing in Memel any more. This is sufficiently plausible in view of the continuously deteriorating living conditions for Jews in the region and, in particular, in view of the affidavit by [REDACTED] as quoted in Para.15, according to which he had left Memel in late 1938, in any case "well before March 1939". That the Appellant's grandfather's insurance policy was not compulsorily converted is corroborated by the register card described as "enclosure 2" of the decision letter [see paragraph 17b)]. The policyholder is marked as "Ausländer" and the policyholder's account with all relevant entries is in US\$. The qualification of the Appellant's grandfather as "Ausländer" is confirmed by [REDACTED]' statement for the German income revenue dated 15<sup>th</sup> September 1941 which notifies his account (given in US\$ and RM) as "enemy asset".

26. As set out above (see paragraph 23) Section 2 of the Valuation Guidelines is not applicable and the calculation of the offer must follow the provisions set out in Section 3 of the Valuation Guidelines.
27. If, as here, the insured person or the policyholder died during the Holocaust era, the base value at the date of the insured event is the full sum insured minus any specific deduction (unless the company can demonstrate that the policy had been voluntarily converted to "paid up" status by the policyholder) (section 3.2 of the Valuation Guidelines). Here, it is known that [REDACTED] died in March 1945 in the Dachau concentration camp.
28. Pursuant to Section 3.3 of the Valuation Guidelines specific deductions must be made for:
  - a) Loans taken out during the life of the policy but before the beginning of the Holocaust era and not repaid (Section 3.3.1 of the Valuation Guidelines), and
  - b) Premiums not paid, subject to, among others, the following conditions:
    - If premiums stopped after the date of deportation (from the evidence) or the start of the Holocaust era (using Schedule 1), the company shall deduct those unpaid premiums from the full sum insured, up to a maximum of two years.

[REDACTED] correctly deducted the loans of in total US\$ 2,617.00 which had been taken out in 1935 and 1938, at a time before the Holocaust era started in the Memel Area. It is acknowledged that Jews, as the Appellant's representative has submitted, were subjects of discrimination also before the annexation of the Memel region. However, start of the Holocaust in the sense of the Agreement means a policy and measures which can be attributed to the German Nazi Regime, not just to discriminatory policies and actions of the German ethnic minority in Memel. In the absence of a fixed date in the Agreement for the start of the Holocaust in Memel it appears, applying the standards for countries with fixed dates, appropriate to assume, that the Holocaust era in Memel started with the annexation of the region in March 1939, therefore after the loans were taken out.

[REDACTED] in principle also correctly deducted non-paid premiums. However, it did not, what is concluded to be incorrect, limit these deductions to a maximum of two years. There can be no question that the premiums were not paid as a consequence of the Holocaust.

[REDACTED] finally admitted the Appellant's argument based on most obvious facts that "the alteration of the contract [i.e. the conversion of the contract into paid up status in August 1939] occurred due to the persecution of the Nazi-Regime" after the Memel Area had been integrated into the German Empire in March 1939.

29. Applying the above steps leads to the following calculation. From the insured sum of US\$ 6,000.00 the loans of in total US\$ 2,617.00 and the premiums for two years (US\$ 766.00) must be deducted. This brings the policy to a base value of US\$ 2,617.00.
30. Pursuant to Step 2 of Schedule 2 of the Valuation Guidelines, this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This is US\$ 29,535.462 by the end of 2000.
31. According to Step 3 of Schedule 2 of the Valuation Guidelines, additions must be made to the dollar 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 to 2005 by a Memorandum of ICHEIC issued 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 %; 2005: 5.0% according to the month, in which the decision is made, plus two months, i.e. 9/12 of 5.0 %), which results in the amounts of US\$ 31,130.376948 for 2001, US\$ 32,686.8957954 for 2002, US\$ 34,239.5233456815 for 2003, US\$ 35,951.499512965575for 2004, and US\$ 37,299.6807447017840625for 2005.

**IT IS THEREFORE HELD AND DECIDED:**

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 37,299.68 no later than the last day of the second month following the month of the decision, which is 30<sup>th</sup> September 2005.

Dated this 27<sup>th</sup> day of July 2005

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[REDACTED]