

## 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 [REDACTED] was born in Brno, Czechoslovakia on [REDACTED] 1934. He is the son of [REDACTED] and [REDACTED] (née [REDACTED]). [REDACTED] claims the proceeds of an insurance policy taken out by his grandfather [REDACTED] who was born in Susice (Schüttenhofen), Czechoslovakia on [REDACTED] 1876; he was transported to Theresienstadt and other concentration camps and died the 8<sup>th</sup> May 1945.
2. The Respondent is [REDACTED].

3. The Appellant submitted an ICHEIC Claim Form as well as a European Insurance Policy Claim Form to the International Commission on Holocaust Era Insurance Claims (ICHEIC) dated 15<sup>th</sup> December 2003 and 13<sup>th</sup> February 2000 in which he claimed that his grandfather had taken out one or several insurance policies. He names himself and [REDACTED] as another living heir to his grandfather.

4. The ICHEIC claims process discovered the following relevant documents:

(i) A copy of [REDACTED]'s asset declaration dated 29<sup>th</sup> July 1938. It mentions the insurance policy number [REDACTED] issued "[REDACTED]". The policy is listed with an insured sum of US\$ 1,000 (RM 2,485.38) and a re-purchase value of US\$ 494.82 (RM 1,229.82). A loan is listed as having been raised on the insurance policy of US\$ 330 (RM 1,367).

Furthermore, the document contains a statement by [REDACTED] declaring that the information he had received from the insurance companies on which he had based his own declaration seemed wrong to him.

(ii) A letter from [REDACTED] to the head of the police department in Berlin dated 26<sup>th</sup> January 1939 in which he reiterated his statement made in the asset declaration doubting the information provided by the insurance companies.

(iii) A letter by the "Länderbank Wien AG" dated 19<sup>th</sup> June 1947 regarding [REDACTED]'s heirs. The bank lists a number of insurance policies in the name of [REDACTED], which it had found in the depot of "Reichsleiter Baldur v. Schirnach". The letter lists an insurance policy with "[REDACTED]" of the number [REDACTED] with the value of \$1,000 and three additions to the policy.

The Appellant provided copies of his grandfather's birth certificate and a court decision by the High court of Wien dated 08<sup>th</sup> November 1948. It declares that [REDACTED] had been taken to Theresienstadt in April 1942 and that he had not survived the 8<sup>th</sup> May 1945.

5. After the claim was submitted to [REDACTED] by the ICHEIC, [REDACTED] confirmed that it had found evidence of an insurance contract with the Appellant's grandfather number [REDACTED].

With the help of the asset declaration, [REDACTED] was also able to find additional evidence of terms of the insurance policy in its technical register of 1940. The register provided details about all policies valid at the time but without mentioning the names of the policyholder. Information provided in the asset declaration permitted [REDACTED] to match the policy here in issue with the policy information included in the technical register. The technical register established that the policy had a face value of US\$ 1,000 and had been converted into an unpaid/non-contributory policy as early as 1937. [REDACTED] further states that the unpaid/non-contributory sum insured was US\$ 536 (RM 2,495) and was agreed to fall due on 1<sup>st</sup> August 1946.

[REDACTED] compared its findings with the information from the asset declaration of a surrender value of US\$ 494.82 (RM 1,229.82).

It offered payment of € 3,749.44 (US\$ 4,918.89) to the Appellant and wrote that it had based its offer on for the Appellant more favourable information of its technical registers because this value exceeded the surrender value as stated in the asset declaration.

In their calculations, [REDACTED] had deducted the policy loan of US\$ 330 from the policy's value of US\$ 536.

6. By letter of 10<sup>th</sup> June 2005, the ICHEIC had offered the additional sum of US\$ 1,537.59 from ICHEIC's humanitarian fund to the Appellant. The letter explained that the Chairman of the ICHEIC Lawrence Eagleburger had decided that all Austrian dollar policies denominated in US dollars were subject to revised valuation guidelines. Similar to [REDACTED]'s calculation, the calculation was based on the information from [REDACTED]'s technical register deducting the policy loan of US\$ 330 from a policy value of US\$ 536.
7. With his Appeal dated 30<sup>th</sup> June 2005 against [REDACTED]'s decision, the Appellant states that the asset declaration ("property list") did not show that a loan on the policy had been taken out before 1938 nor had his grandfather accepted that a loan had been raised on the policy. Furthermore, [REDACTED] had submitted no evidence that [REDACTED] actually had received a loan. Instead, the appellant emphasized that [REDACTED] had doubted the accuracy of the information he had received from the insurance companies and had asked for clarification. Furthermore, the policy that had been found in the bank deposit of Baldur von Schirnach did not show a reference to a loan. Therefore, the Appellant asked for a recalculation of the policy based on the full policy value of US\$ 1,000.
8. The Appellant has registered further claims with the ICHEIC against the insurance companies [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] for his relatives [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

His claim against [REDACTED] for [REDACTED] has been decided and an offer has been made to the Appellant. The Appellant challenges the decision with his appeal number [REDACTED].

9. In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision in July 2004, this appeal was assigned to [REDACTED].

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.

The seat of the Appeals Panel is Geneva, Switzerland, and the Decision is made there.

## CONCLUSIONS OF LAW

10. There is no doubt that the Appellant's grandfather held the insurance policies number [REDACTED] with [REDACTED], that he was a Holocaust Victim because he died in the concentration camp Theresienstadt, and that the Appellant as his rightful heir is entitled to make this claim. The claim therefore is valid within the scope of the Agreement.
11. However, [REDACTED]'s offer together with the additional offer from the ICHEIC represents the correct value of the Appellant's claim.

(i) [REDACTED] based its calculation of the policy value on the more favourable information from their technical register of 1940. There is legitimate doubt about the accuracy of the information provided in the asset declaration, but the asset declaration allowed [REDACTED] to use its technical register of 1940 to identify the policy and to use the uncontested information it contained to determine the actual value of the policy. According to the register, the policy had been converted to an unpaid/non-contributory sum insured of US\$ 536 (RM 2,495). The reduction of the policy value occurred as early as 1937,

prior to the beginning of the Holocaust in Austria in 1938 (Schedule 1 of Annex D to the Agreement). The calculation of the policy therefore had to be based on this reduced value instead of the full sum insured of \$1,000 as set out in Section 3.4 of the Valuation Guidelines.

(ii) [REDACTED]'s submission that the policy loan had been taken out and used prior to 1938 is plausible.

12. The base value of the insurance policy therefore had to be calculated based on its value of US\$ 536 minus the policy loan of US\$ 330:

$$\text{US\$ } 536 - \text{US\$ } 330 = \text{US\$ } 206$$

13. To bring the base value up to the current value of the present day, it has to be increased by agreed factors (Section 6 of the Valuation Guidelines). For policies that were denominated in a foreign currency, Schedule 4 to the Valuation Guidelines applies to bring up the value to the year 2000 (Section 7.3 of the Valuation Guidelines).

$$\text{US\$ } 206 \times 25 \text{ (for the year 1945)} = \text{US\$ } 5,150$$

14. In addition, interest has to be added as follows: 5.4% for 2001, 5% for 2002, 4.75% for 2003, 5% for 2004 and 5% for 2005 (Step 3 of Schedule 1 to the Valuation Guidelines). Since the time of the decision was in January 2005, interest for the year 2005 had to be paid only for the month of January plus two further months:

(i) US\$ 5,428.10 (2001), US\$ 5,699.51 (2002), US\$ 5,970.23 (2003), US\$ 6,268.74 (2004), US\$ 6,347.10 (2005).

(ii) [REDACTED] had offered US\$ 4,918.89 (€ 3,749.44). The difference to the current value of the claim is US\$ 1,428.21 (US\$ 6,347 - US\$ 4,918.89 = US\$ 1,428.21).

The interest until the top up offer was made in June 2005 (plus two further months) calculates to US\$ 41.66, which has to be added to the sum owed in January (Step 3 of the Valuation Guidelines).

(iii) This calculates to the sum of **US\$ 6,388.76** as the value of the insurance policy in June 2005.

15. The Appellant has received offers from [REDACTED] and the ICHEIC of altogether **US\$ 6,437.5**.

16. The offer, which is US\$ 48.74 higher than the amount calculated in this Opinion reflects that the amount offered was appropriate under the Valuation Guidelines.

17. The offer has to be paid out in equal shares to the Appellant and to [REDACTED] as another heir of [REDACTED].

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 13<sup>th</sup> day of December 2005

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[REDACTED]