

## 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], born on [REDACTED] 1929 in Berlin, Germany. She is the daughter of ([REDACTED]) [REDACTED], born in Breuna, Germany on [REDACTED] 1888 and of [REDACTED], born on [REDACTED] 1896 in Dessau, Germany. [REDACTED] was first deported to Theresienstadt in 1942/43 and later sent to Auschwitz concentration camp where he died in 1945. [REDACTED] passed away on 25<sup>th</sup> June 1941 in

Leipzig, Germany. The Appellant was nine years old when she had to leave her parents on a “Kindertransport” to England in 1939.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim form dated 16<sup>th</sup> October 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) in which she claimed that her father had taken out one or several insurance policies. She states that her mother was the beneficiary of the contract(s).
4. After the claim was submitted to [REDACTED] by the ICHEIC, it send a preliminary decision letter dated 16<sup>th</sup> July 2001, informing that it had searched for a contract in the name of the Appellant’s parents. [REDACTED] found the application numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]/[REDACTED] for insurance policies with the Appellant’s father [REDACTED].

However, [REDACTED] declined payment for the insurance contracts arguing that the insurance policies have already either been settled or compensated.

It states that insurance policies [REDACTED] and [REDACTED] were settled on 30<sup>th</sup> June 1938 with the Appellant’s father when the surrender values of RM 9,260 and RM 8,300 were paid out to him.

The insurance contracts with the numbers [REDACTED] and [REDACTED] had commenced on 1<sup>st</sup> July 1931 with an insured sum of each RM 20,000. As of 30<sup>th</sup> June 1938 premium payment had stopped and on 29<sup>th</sup> August 1938, [REDACTED] had cancelled the insurance contracts and the surrender values of RM 5,680 and RM 4,460 were paid out to him.

[REDACTED] adds, that the Appellant had also been compensated for the insurance policy [REDACTED] by the compensation authorities in Berlin by payment of DM 1,806.

It further states that Insurance policy number [REDACTED]/ [REDACTED] commenced on 1<sup>st</sup> April 1927 with an insurance sum of RM 100,000. Since 31<sup>st</sup> March 1939 premium payments had stopped and the Appellant’s father had cancelled the insurance contract on 31<sup>st</sup> March 1939 the surrender value of RM 46,884 had been paid out to him.

The contract had also been compensated by the German restitution authorities and payment of altogether DM 7,790,09 had been made to the Appellant and to [REDACTED] and [REDACTED] as joint heirs to [REDACTED].

5. [REDACTED] provided copies of the following relevant documents:

(i) A letter from [REDACTED] to the compensation authority in Hildesheim dated 24<sup>th</sup> March 1959 providing information about life insurance policy [REDACTED]. The letter refers to the addressee’s reference number [REDACTED].

(ii) A decision by the compensation authority in Hildesheim with the reference number [REDACTED] (insofar referring to insurance number [REDACTED], see (i)) dated 13<sup>th</sup> September 1960 awarding payment of DM 1,806 to [REDACTED]. DM 681.80 of this sum had to be paid as court fee.

(iii) A letter from [REDACTED] to the compensation authority in Hildesheim dated 21<sup>st</sup> February 1962 providing information about life insurance policy [REDACTED]. The letter refers to the addressee’s reference number [REDACTED].

(iv) A decision by the compensation authority in Hildesheim with the reference number [REDACTED] (insofar referring to insurance number [REDACTED], see (iii)) dated 8<sup>th</sup> July 1963 awarding payment of DM 7,790 to the common heirs of [REDACTED] which are

[REDACTED], nee [REDACTED], [REDACTED], nee [REDACTED] and [REDACTED], nee [REDACTED].

(v) A receipt for [REDACTED] dated 29<sup>th</sup> August 1938 over RM 9,260 for insurance policy [REDACTED] signed by the niece [REDACTED] of the Appellant's parents and signed also by them;

(vi) A receipt for [REDACTED] dated 29<sup>th</sup> August 1938 over RM 8,300 for insurance policy [REDACTED] signed by the daughter [REDACTED] and the Appellant's parents;

(vii) A receipt for [REDACTED] dated 29<sup>th</sup> August 1938 over RM 5,680 for insurance policy [REDACTED], signed by the daughter [REDACTED] and the Appellant's parents.

6. By its final decision of 18<sup>th</sup> April 2005, [REDACTED] reiterates its findings in regard to insurance policies [REDACTED] and [REDACTED] but states in regard to insurance policies [REDACTED], [REDACTED] and [REDACTED] that it was possible that the surrender values had been paid into blocked accounts. It therefore referred the claims to the [REDACTED] ([REDACTED]).
7. By letter of 23<sup>rd</sup> June 2005, the [REDACTED] wrote to the Appellant, stating that the insurance policy number [REDACTED] was for the benefit of [REDACTED] niece [REDACTED], while insurance policies [REDACTED] and [REDACTED] were for the benefit of the Appellant's sisters [REDACTED] and [REDACTED]. The [REDACTED] reversed [REDACTED] previous decision and offered payment of € 4,764.13 for insurance policy [REDACTED], € 4270.22 for policy number [REDACTED] and US\$ 4,000 for policy number [REDACTED].
8. With her Appeal dated 6<sup>th</sup> July 2005 against [REDACTED] decision, the Appellant states in regard to insurance policy [REDACTED], that court fees of DM 681.80 were deducted from the awarded compensation of DM 1,806 for the insurance policy [REDACTED]. The remaining compensation was further reduced by her costs for legal advice. She states that the insurance policy was for the insured sum of RM 20,000 and that her father had given it up only because he needed to pay for "fines levied on all Jews in 1938". The Appellant requested for her claim to be reconsidered and argues that she should receive payment of US\$ 4,000 minus the compensation paid to her by decision of the restitution authority Hildesheim of 13<sup>th</sup> September 1960.
9. The Appellant also writes with respect to insurance policy [REDACTED]/[REDACTED] on behalf of herself, of [REDACTED], nee [REDACTED] (daughter of [REDACTED]), [REDACTED], son and heir of [REDACTED], nee [REDACTED] and of [REDACTED], daughter and heir of [REDACTED], nee [REDACTED]. She argues that the insurance contract was for an insured sum of RM 100,000 while she and her two sisters each received DM 2,596.67 (7,790.09 altogether) as compensation. She argues that each beneficiary should receive US\$ 4,000 minus the compensation already received. She reiterates, that her father had sold the policy only to be able to pay for the "fines levied on all Jews in 1938".
10. In response to the appeal, the [REDACTED] informed that the Appellant and her relatives had accepted the offers made to them (for insurance policies [REDACTED], [REDACTED] and [REDACTED]). The Appellant had signed consent and waiver forms and provided documents showing that her relatives had given her power of attorney. [REDACTED] provided a copy of a letter from the Appellant to the [REDACTED], informing about the beneficiaries and heirs to the beneficiaries who were entitled to the payments. Accordingly, they are [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. It further provided copies of the signed consent and waiver form dated 2<sup>nd</sup> August 2005 and of the power of attorneys by the Appellant's relatives [REDACTED], [REDACTED],

[REDACTED] and [REDACTED]. In addition, the Appellant's relatives had provided payment instruction and insofar had each signed a consent and waiver form.

11. 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

12. By letter of 18<sup>th</sup> April 2005 [REDACTED] concluded that the payments for policies A [REDACTED], [REDACTED] and [REDACTED] made in 1938 could have been paid into blocked accounts which the beneficiary – the Appellant's father – could not dispose of or only in a restricted way by order of the Nazi regime. The offer for further payment by the [REDACTED] of further € 4,764.13 for insurance policy [REDACTED], € 4270.22 for policy number [REDACTED] and US\$ 4,000 for policy number [REDACTED] was therefore correct and was accepted by the Appellant.
13. There is no doubt that the Appellant's father held the insurance policies number [REDACTED] and [REDACTED]/[REDACTED] with [REDACTED], that he was a Holocaust Victim because he died in the concentration camp Auschwitz, and that the Appellant as his daughter and heir is entitled to make a claim. The claim therefore is valid within the scope of the Agreement.

However [REDACTED] has succeeded in this case in establishing a valid defence in accordance with Section 17.3 of the Appeal Guidelines, Annex E to the Agreement. This states that the Appellant is not entitled to payment if:

17.3.4            *"the policy (or policies) in question are considered to have been covered by a decision of a German restitution or compensation authority".*

14. [REDACTED] has provided archive evidence that the policies with the numbers [REDACTED] and [REDACTED]/[REDACTED] were subject to previous compensation proceedings.

In particular, [REDACTED] has provided two decision of 13<sup>th</sup> September 1960 and 8<sup>th</sup> July 1963 by the restitution authority in Hildesheim which awarded compensation of DM 1,806 (paragraph 5 (i) above) and DM 7,790 (paragraph 5. (iii) above) for the insurance policies no. [REDACTED] and [REDACTED]/[REDACTED].

Accordingly, the claims were subject of a previous compensation proceeding and fall within the ambit of Section 2(1)(c) of the Agreement. Therefore, the Appeals Panel lacks jurisdiction to review those decisions.

[REDACTED] decision to decline payment for the two policies was therefore correct.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 22<sup>nd</sup> day of December 2005

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[REDACTED]