

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] 1957 in London, England. He is the grandson of [REDACTED] who was born on [REDACTED] 1893 in Berlin, Germany and died at sea on 29th October 1942.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 25th December 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming life insurance policies issued to his grandfather [REDACTED] by an unknown company. He was unable to provide any policy details or name the beneficiary.

The Appellant named his brother [REDACTED] as another living heir.

4. The ICHEIC processed the claim form under claim number [REDACTED] and submitted it to the Respondent, among other companies, for investigation. During the course of processing the claim was reassigned GMC claim number [REDACTED].
5. On 5th July 2005, [REDACTED] wrote to the Appellant informing him that it had found evidence of five policies issued to Mr. [REDACTED] in its archives with the numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. It explained that policy number [REDACTED] had expired in 1930 and its value had been put towards policy number [REDACTED]. It offered the Appellant a minimum payment of US\$ 3,000 for each of the remaining four remaining policies.
6. The Appellant appealed the offer on 11th October 2005 stating:

“I have received your [letter] dated 5th July 2005 informing me that you have located 4 policies for my Grandfather.

My family was very wealthy when they lived in Berlin and my father fled to London in 1933 and my grandfather managed to follow a few years later. He was unable to bring with him the policies he had or any of his property.

I would like to ask you to please review this case as we know that [REDACTED] would have taken out policies well in excess of the average for that period of time. He had a young son to provide for (born in 1925) and this would have been foremost in his mind, especially with the rise of the Nazis and the uncertainty that would bring.

My grandfather was killed in very tragic circumstances in 1942 whilst returning to the UK after being interned by the British in Australia and he had no time to sort out his affairs. Would you please open this file again and please try to locate the evidence showing the true value of his policies.”

7. The Respondent responded to the appeal on 28th October 2005 stating:

“As we informed Mr. [REDACTED], his grandfather held 5 policies with our company. We have no historic insurance file in reference to the policies of Mr. [REDACTED] or other documents from the time, only a note in our client data base stating that Mr. [REDACTED] was our customer, listing 5 policy numbers, indicating NiKr. for policy no. [REDACTED].

N.i.Kr., which is the abbreviation for “nicht in Kraft”, means that the policy was issued, but the policyholder decided not to pay into the contract.

We don't know what happened to the rest of the policies. Therefore we offered Mr. [REDACTED] compensation for them.

Unfortunately, because we only found an entry in our customer databank in reference to the remaining four policies, we were unable to determine the former value of the policies. Therefore, we have based our further calculation – in accordance with the “Valuation Guidelines” which are part of the Agreement – on the average sum insured in a life insurance policy in Germany between 1933 and 1945. This average sum insured was further multiplied to show the current value of the policy. Since the calculated value of these four policies was less than the minimum payment, we offered Mr. [REDACTED] U.S.D. 12,000.- for policies [REDACTED], [REDACTED], [REDACTED] and [REDACTED], as he is not a survivor of the Holocaust.”

[REDACTED] enclosed a copy of Mr. [REDACTED]'s name card with this letter.

8. On 21st November 2005 the Appeals Office informed both parties that the appeal would be on a “documents only” basis, unless it received a request from either party for an oral hearing within 14 days.
9. No request was received so the appeal proceeded on a “documents only” basis.
10. On 24th November 2005, the Appellant advised the Appeals Office that he had accepted the Respondent's offer in error, having misinterpreted the Respondent's letter dated 28th October 2005 as the final decision. The matter was brought before [REDACTED] who issued an order dated 28th November 2005 continuing the appeal and setting aside the Appellant's signed Consent and Waiver form in respect of the four policies.
11. 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 Panel Decision is made there.

CONCLUSIONS OF LAW

12. The main issue for determination is whether the Respondent's valuation of the policies was in accordance with the Valuation Guidelines (Annex D to the Agreement).
13. Pursuant to section 7.1 of the Valuation Guidelines, in cases where the amount of the policy cannot be determined, the offer must be based on a multiple of three times (3x) the average value for policies in the respective country, in this case Germany. According to Schedule 3 of the Valuation Guidelines, the average value of life insurance policies in Germany in 1938 was RM 841. This value, when multiplied by 3, results in a base value of RM 2,523.00.
14. When converted into Deutsche Marks at a conversion rate of RM 10 = 1 DM this equates to DM 252.30.

15. Pursuant to Schedule 2, the value of the policy up until the end of the year 2000 is then calculated in accordance with the Bundesentschädigungsgesetz (BEG) by applying a multiplier of 8, resulting in DM 2,018.40.
16. According to Schedule 2, interest is then applied to calculate the current policy's current value up until two months after the offer is made. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003, 2004 and 2005 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%; 2005: 5% and 2006: 5%). This leads to the amount of DM 2,127.39 for 2001, DM 2,233.76 for 2002, DM 2,339.86 for 2003, DM 2,456.85 for 2004, and DM 2,549.01 up until September 2005.
17. When converted into Euros at a conversion rate of 1 Euro = 1.95583 DM this results in a final offer of Euro 1,303.29 for each policy.
18. However, pursuant to section 2.3 of Valuation Guidelines, each claimant who is a not a survivor of the Holocaust is entitled to a minimum payment of at least US \$3,000.00 for each eligible German policy. Accordingly, in this case the Appellant was entitled to a minimum payment of US \$3,000 for each of his grandfather's four policies, resulting in a total offer of US \$12,000.
19. Therefore, the Respondent's offer of 5th July 2005 was calculated in accordance with the Valuation Guidelines. While it is accepted that the Appellant's grandfather was a wealthy man who likely had the means to take out policies of high value, in the absence of information as to the sums insured, the Respondent's calculations could only be based on average value. As the Appeals Panel, like the parties, is bound to apply only the Valuation Guidelines in hearing this appeal, the appeal must be dismissed on the basis that the calculations were correct.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 14th day of February 2006

[REDACTED]