

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], née [REDACTED], was born in Mannheim, Germany on [REDACTED] 1934. She is the daughter of [REDACTED] who was born in Dynov, Poland on [REDACTED] 1898 and died in the Buchenwald concentration camp on 22nd September 1940.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 30th January 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming life insurance policies issued to her father [REDACTED] by an unnamed company. She was unable to provide any policy details or to name the beneficiary.

At section 11 of the claim form she stated:

“I was orphaned at the young age of six (6). My father was a businessman and, therefore, I assume that he had policies. He was murdered in Buchenwald September 22, 1940 and my mother died in a French concentration camp, Camp De Gurs, six weeks later November 11, 1940. I have no one to ask, so please check into this matter. We were left five war orphans...”

The Appellant named [REDACTED], [REDACTED], [REDACTED] and [REDACTED], as other living heirs.

4. The ICHEIC processed the claim form under claim number [REDACTED] and submitted it to the Respondent, among other companies, for investigation.
5. On 9th January 2003, [REDACTED] wrote to the Appellant informing her that it had searched its central register for evidence of a contract with her father. It stated:

“Our central register does contain an entry for Mr. [REDACTED]. This means the Mr. [REDACTED] has applied for life insurance coverage with [REDACTED]. Therefore, based on the application number, we have started a search for the corresponding file in our file archives.”

6. On 16th June 2005, [REDACTED] issued its final decision letter stating:

“We are pleased to inform you that we are able to offer a payment of Euro 2,323.41 for the life insurance contract of your father, Mr. [REDACTED], under the terms of the German Foundation “Remembrance, Responsibility and Future”.

The starting point of our research was the entry for Mr [REDACTED] in our central register. ... As you can see the entry does not contain details on the applied insurance coverage, in particular the sum insured, the amount of the premium or the projected insurance term. Its sole purpose was to find the corresponding file in our archive which is arranged in numerical order. The entry therefore only contains – apart from the personal data of the applicant – the application number [REDACTED].

Furthermore, we know from the remark “Uebertr A” (which means transfer to A) that a life insurance contract with the number [REDACTED] with the sum insured of RM 5,000.- starting on March 1, 1930 with an insurance term of 19 years.

... We know that in your particular case we have paid out the insurance benefit. We are not sure whether it was paid to the beneficiary. It is also possible that insurance benefits were not paid to the beneficiary but seized by authorities of the Nazi regime.

... We have now decided to offer you a fund benefit on humanitarian grounds. In doing so, we wish to express that the mere possibility of a payment to a person or institution other the beneficiary is reason enough to pay a benefit.

... The payment calculated accordingly for policy [REDACTED] taken out by your father amounts to Euro 4,646.83. ...

As your sister, [REDACTED], also filed a claim with the ICHEIC we have divided this sum by two as you are entitled to an equal share of the proceeds according to the succession guidelines of the agreement.

... As you indicated in your claim there are other living heirs of your father we would like to point out that by acceptance of our offer you are obliged to share the benefits as described in the consent and waiver form.”

[REDACTED] enclosed with this letter a copy of [REDACTED]’s name card from its central register.

It also enclosed the file card for policy number [REDACTED] indicating that the policy was cancelled on 1st December 1930. The back of the file card contains information regarding unpaid premiums.

7. The Appellant appealed the offer on 1st October 2005. In an attached letter to the Respondent dated 8th August 2005 she states:

“I can assure you that the insurance benefit of RM 5,000 was never paid to any of my father’s beneficiaries. I can also assure you that a payment of RM 5,000 in 1940 would have been significantly more meaningful to our family than a current payment of 4,646.83 Euros. Accordingly, I respectfully appeal to your decision and ask that the amount of payment be appropriately adjusted to economically equate with RM 5,000 in 1940.”

8. The Respondent responded to the appeal on 3rd November 2005 confirming its decision.
9. 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.
10. As no request was for an oral hearing was received, the appeal proceeded on a “documents only” basis.
11. The Appellant’s sister, Ms [REDACTED], accepted her share of the Respondent’s offer and signed a Consent and Waiver form on 19th December 2005, waiving all further claims to compensation regarding policy number [REDACTED].
12. 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

13. [REDACTED] has accepted that it issued policy number [REDACTED] to the Appellant's father prior to the war, and offered compensation on the basis that it could not be certain that payment was made to the rightful beneficiary when the policy was cancelled. Therefore, the sole issue for determination is whether the Respondent's valuation of the policies was in accordance with the Valuation Guidelines (Annex D to the Agreement).
14. Pursuant to sections 1.2 and 1.3 of the Valuation Guidelines, the valuation of a policy involves two phases: the first being the assignment of a base value to the policy; the second being the application of appropriate multipliers to calculate the policy's current value.
15. Where a policy has been issued in Germany, the company is required, pursuant to section 2.1, to assess the claim as if it had been considered under the German post-war Bundesentschädigungsgesetz (BEG). Accordingly, the policy's base value is first calculated by reference to the full sum insured, less any deductions or additions as required under the insurance contract. In this case, the policy's base value was the full sum insured: RM 5000.00.
16. Old savings compensation was then added to this value pursuant to the BEG, resulting in a total value of RM 9,032.00. The company's assessment of this compensation has been checked by the ICHEIC and confirmed as correct.
17. The base value is then converted into Deutsche Marks to account for the currency changes that took place in Germany in 1948. When the conversion rate of 10 RM = 1 DM is applied, this results in a value of DM 903.20.
18. Pursuant to the BEG, a multiplier of 8 is then applied to calculate the value of the policy up until the end of the year 2000, resulting in DM 7,225.60.
19. In accordance with section 2.2, interest is then added calculate the policy's value up until the month two months after the offer is made. These interest rates were set under the Valuation Guidelines for 2001 and 2002, and have been provided since for 2003, 2004, 2005 and 2006 by ICHEIC Memorandum after consultation with the contracting parties to the Agreement: (2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5%; 2005: 5%; 2006: 5%). This results in DM 7,615.78 for 2001; DM 7,996.57 for 2002; DM 8,376.41 for 2003; DM 8,795.23 for 2004 and DM 9,088.40 up until August 2005.
20. When converted into Euros applying a conversion rate of 1 Euro = 1.95583 DM this results in a final offer of Euro 4,646.83.
21. Therefore, the Appeals Panel confirms that the Respondent's offer of 16th June 2005 was correctly calculated in accordance with the Valuation Guidelines. Although it is recognised that the offer may seem low in current terms (particularly given the Appellant's accounts that her father was a wealthy businessman) the Appeals Panel, like the parties, is bound to

apply only the Valuation Guidelines in determining the appeal. Therefore, the offer was correct and must be sustained. The appeal is dismissed.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 15th day of February 2006

[REDACTED]