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]

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

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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

PANEL DECISION

The Appeals Panel 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] (formerly [REDACTED]), who was born on [REDACTED] 1923 in Munich, Germany. He is the only son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED], who was the owner of a manufacturing business in Munich called "*[REDACTED]*" was born on [REDACTED] 1875 in Kleineicholzheim, Württemberg (Germany); [REDACTED] was born on [REDACTED]

1893 in Bamberg, Franconia (Germany). Neither survived the Holocaust. In a letter dated 7th February 2003 the Appellant gives the following information about the circumstances of their deaths: "*In early October 1941, they were removed to a camp (Sammellager) from which, on November 20th, 1941 they (together with 998 men, women and children) were entrained for Kaunas in Lithuania. On November 25th, 1941 all those people, including my parents, were summarily murdered (shot) by Einsatzkommando A*".

2. The Respondent is [REDACTED].

3. The Appellant submitted an "un-named" claim dated 3rd June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that his father was holder of an insurance policy. Initially, further details were not known.

4. The ICHEIC submitted the claim to the Member Companies and German companies.

5. In a letter dated 6th November 2001 [REDACTED] informed the Appellant "*the International Commission has forwarded your inquiry concerning a life insurance contract concluded prior to 1945 ...*" and gave him the following further information about the results of its research: "*We regret, no entry exists in the register for yourself, Mrs [REDACTED], née [REDACTED] and the business. For this reason, we know that no life insurance contract under your name, the name of Mrs [REDACTED] and under the name of the business existed with us. Concerning Mr [REDACTED] we may have found an entry in our central register. However, the entry contains another date of birth. To be sure that this entry belongs to your relative, please check the above mentioned date of birth and inform us accordingly*". The date of birth mentioned in this letter was [REDACTED] 1875; in the first Claim Form the Appellant did not give the names of policyholder and insured but only the policyholder's and insured's date and place of birth and the statement that he, the Appellant, is the son of the policyholder, whose date of birth was given as "*[REDACTED] 1878*".

6. The Appellant responded in a letter dated 12th March 2002.

7. By letter dated 29th April 2002 [REDACTED] informed the Appellant "*we have now concluded our research into external archives for a life insurance contract for your father Mr [REDACTED] ... . Unfortunately no corresponding file exists. However, on account of the fact that during the war a substantial part of our files was destroyed, this is not unusual. On account of the fact that no file exists we have no information whatsoever on the possible terms of the contract*". [REDACTED] described further efforts to obtain information by contacting German State Compensation and Restitution authorities and State Archives in Berlin and Brandenburg, which were not successful. It continued: "*We regret, we have to inform you that there is no proof of a contract concluded by Mr. [REDACTED] with us*". Finally it is pointed out that "*apart from this, we know that if a policy had existed the insurance benefit was duly settled*" and explained this by informing the Appellant that there are no entries in the so called "*in force register from 1941*" and in the "*reserve register*". Finally the company writes: "*Our intent is – in accordance with the guidelines of the International Commission – to compensate life insurance claims which have remained unsettled so far and for which we have documentation. This however, does not apply to your inquiry as, on the one hand, we could not establish the existence of a contractual relationship and, on the other hand, we definitely know that under the number entered in the central register no benefits were left unsettled. We wish to point to the fact that the International Commission offers all applicants the possibility of an appeal against the decision of an insurance company. This is to provide assurance to you and other claimants that the insurance company is adhering to the standards that were established by the International Commission to ensure fair payment* ".

8. In a final decision letter dated 10th April 2003 [REDACTED] states, "*In the meantime, the ICHEIC provided us recently with the information that your father had indeed taken out a life insurance # [REDACTED] with us: According to a declaration of asset dated June 27, 1938 the surrender value amounted to RM 1339 (enclosure 1). According to a questionnaire for emigrants the surrender value amounted to RM 1280 on August 13, 1939 (enclosure 2).*" This letter continues with information about the "*in force register of 1941*" as mentioned above and ends with an offer, for which the following reasons are given: "*We know that in your particular case we have paid the insurance benefit. However, 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. ... Unfortunately it is not possible to calculate insurance # [REDACTED] in accordance with the German Federal Compensation Law because only surrender values are known. We do not know the sum insured, the date of commencement and the insurance term. These information are necessary for a calculation in accordance with the German Federal Compensation Law. Insofar as the technical terms of an insurance policy cannot be reconstructed it is agreed that the payments are being made in the form of lump sum settlements. For each policy a lump sum of $ 4.000 will be offered. ... We are pleased to inform you that we can offer a total of $ 4.000 within the framework of the German Foundation "Remembrance, Responsibility and Future"* ".

9. The Appellant submitted an appeal to the Appeals Office dated 14th May 2003, which was accompanied by an attachment setting out the reasons for the appeal.

10. By letters dated 25th July 2003 the Appeals Office acknowledged receipt of the appeal and forwarded a copy of the Appeal Form and the attachment setting out the reasons of the appeal to [REDACTED].

11. On 2nd October 2003 the Appeals Office informed both parties that the appeal will be 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.

12. The Appellant responded by letter dated 4th October 2003 and asked for clarification of certain information provided in the letter dated 2nd October 2003. The Appeals Office answered those questions at the direction of the Appeals Panel by letter dated 9th October 2003. Copies of the afore-mentioned letters were sent to [REDACTED] by letter dated 10th October 2003.

13. In a letter dated 21st December 2003, which the Appeals Office received on 24th December 2004, the Appellant wrote: "*... In pursuance of my overall planning and intended objectives, I formally place on record the fact that, in the intervening 7 months last past, nothing whatever has been heard from you concerning the progress of my said appeal and manifestly, no date for a hearing of it has yet been set*".

14. The Appeals Office, which had misunderstood the date of the afore-mentioned letter (which was given as "*[REDACTED]*"), at the direction of the Appeals Panel replied in a letter dated 9th January 2004 by writing: "*In your letter of 3rd December 2003, you requested an oral hearing. The Appeals Panel is unable to act in this request as your waiver was accompanied by a letter qualifying the waiver provisions mandated by the Annex to the Appeal Guidelines. Until such time as you execute the waiver provisions as contained in the Appeals Form without any qualifications, the Panel lacks jurisdiction to rule on your request for an oral hearing or any other aspect of this matter including a decision on the merits of the claim. Accordingly the Appeals Panel has requested that you file such an unqualified waiver form, a copy of which is enclosed, within 30 days of this letter otherwise the claim must be dismissed for lack of jurisdiction*". A copy of this letter was sent to the Respondent for its information.

15. The Appellant answered in a letter dated 15th January 2004, in which he asserted "*No such or any request for an oral hearing has ever been made*". He continued: "*What is more, in my letter to you of October 4th. 2003 ... I made it incandescently plain that an oral hearing would only be requested if the Respondent were to file a counter-notice by way of rebuttal. To the best of my knowledge, no such Notice has ever been filed, ergo, no request for an oral hearing has ever been made by myself*". Addressing the question of the unqualified waiver and repeating his request for more information about the 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], the Appellant wrote: "*It follows that the contents of your letter are based on a fundamental misconception of facts and, accordingly are devoid of validity and import. In that context I iterate the contention – further and expressly pleaded in paragraphs 2 and 3 of my Notice of Appeal – that in the face – and spite – of an express request to you in that behalf, I have never received nor have I had sight of a copy of the terms of the Agreement of "October 16th. 2002". In the event it is a travesty of Justice to set an ultimatum requiring me to submit to and waive my rights in respect of documents which I have never seen and which, in defeasance of the ordinary rules of Justice, have never been disclosed to me. Nevertheless I am pleased to aver and declare submission to and to deem myself bound by the concessions and waivers demanded of me under Clauses 1;3;4 and 5 of the terms set out on the second Page of the Appeal Form. Conversely and by reason and virtue of the matter set out in this letter where they are detailed and fully particularised, I cannot be expected and I decline to express my acknowledgement and to waive my rights in relation to Clause 2 of that form, the details and terms of which have never been disclosed to me. ...*". Attached was among others an Appeal Form, in which the afore-mentioned clause number 2 was deleted and paragraph 13 of the attachment setting out the reasons for the appeal was extinguished (as to the exact wording of this paragraph see below, paragraph 27).

16. At the direction of the Appeals Panel the Appeals Office responded in a letter dated 20th January 2004, in which it confirmed that it noted that an oral hearing had not been requested and again advised the Appellant that deleting the second clause is, in effect, deleting the waiver and has the effect of depriving the Appeals Panel of jurisdiction to rule on any aspect of this matter. Attached to this letter were copies of the afore-mentioned Agreement dated 16th October 2002 (see paragraph 15) and its Annex E (the Appeal Guidelines). The Appeals Office forwarded copies of this letter and the Appellant's letter dated 15th January 2004 to the Respondent.

17. Because of the absence of a response from [REDACTED] in the appeals procedure, the Appeals Panel contacted [REDACTED] to inquire about this apparent omission. [REDACTED] informed the Appeals Office that there should be a response dated 19th August 2003 and forwarded a copy of this letter plus its attachments on the 20th January 2004 by fax. The Appeals Office forwarded copies of these documents on the same day to the Appellant.

18. In a letter dated 2nd February 2004, which the Appeals Office received on 4th February 2004, the Appellant informed the Appeals Office that he had returned on 1st February 2004 from abroad and found himself confronted by two separate files of documents both post-marked January 20th. 2004. The Appellant, further, set out the following in this letter: "*One of the files of the documents included or consisted of a copy of "the Agreement", a sight of which I had first requested as long ago as mid 2002 both by way of correspondence and by implication in my Notice of Appeal which has now been supplied some 19 months later. This hiatus must represent something of a record in examples of that, which, in English law, is termed "inordinate and unconscionable delay". What is more, it is precisely the absence of a copy of the Agreement and my inability to consider and weight its terms, which made it impossible for me to acquiesce in submission to the waivers demanded of me. The whole*

matter and this particular aspect of it will now have to be reviewed. Time, on my part, is required for this purpose and any deadline imposed by you in these circumstances would be most unjust and inequitable. The matter is and the various issues are further complicated by the fact that I have now been unexpectedly confronted by a Counter-Notice filed by the Respondent. That is so notwithstanding that I have frequently enquired and have been as frequently and authoritatively assured that no Counter-Notice has been filed by them. The alleged and purported absence of such a Counter-Notice has moved me to say that an oral hearing is not required. If you will be good enough to check your record and files, you will observe that this election on my part, that is to say "no oral hearing required" was always and expressly made subject to the absence of a counter notice filed on the Respondent's behalf. That situation has now altered. In that context it is stressed – and I put on record the fact – that this surprise and, indeed, "ambush" development is essentially due to the negligence of the ICHEIC authorities. In the event and on the basis of matters hereinbefore raised and complained about, it is my submission that the ICHEIC authorities as well as the Appeals Office ought not to dictate and lay down timing limitations in this case. These matters and the entirely novated situation requires careful and extended consideration on my part. Please take Notice that, bearing in mind and having due regard to my professional and other commitments, I require a minimum of 2 calendar months to consider my position and to submit, if thought apposite, a written Response to the Respondent's Counter-Notice alternatively to plead a response and, at the same time, request an oral hearing. In the same period and on hand of my copy of the Agreement, I will decide to what, if any extent, I can now accept and submit myself to your demands for unconditional waivers of all my residual rights and remedies. Your response, comments, observations and directions are awaited in early course".

19. In a letter dated 5th February 2004 the Appeals Office informed the Appellant that the Appeals Panel extended until 30th April 2004 the deadline to respond to [REDACTED]'s letter dated 19th August 2003. In addition to the Agreement and its Annex E, a copy of Annex D (The Valuation Guidelines) was also provided to the Appellant.

20. The Appellant sent another appeal form, which had no deletions, in a letter dated 15th April 2004 with an additional statement that reads: "*It is only fair to say that without in any way making this waiver conditional, I will further consider my position in relation to the Human Rights legislation applicable in the European Union jurisdiction once a decision has been made handed down in respect of my pending Appeal*". Attached to this letter was a statement with the title "*Rejoinder*", bearing the same date as the letter, which reads: "*In so far as the same amount to admissions of the matters contended fort in the Grounds of Appeal and safe in so far as is hereunder expressly admitted by him, the Claimant refutes the accuracy and legal justification of that which the Respondent contends by way of his Answer thereto and to the effect that they are matters of law as represented by the applicable Guideline and the Claimant joins issue thereupon. And in particular the Claimant argues and specifically asseverates and contends that:*

1. The Claimant here asserts that the Respondent's response to the Claimant's Grounds of Appeal evidences the Respondent's and misconceived attitude adopted by him by way of justification for his decision against which this appeal lies.
2. The Claimant admits that his late father took out a Life Insurance policy numbered [REDACTED]. No date is given for this event nor does the Respondent state the value of the policy on the happening of the assured event. To the best of the Claimant's recollection and honest belief, the said policy was taken out on the Claimant's date of birth and was secured for an amount of RM 100,000.00. The Claimant's late father who held a good deal of and allowed the claimant to play with "Inflation" money frequently mentioned the sum of RM 100,000.00 and expressed satisfaction with the fact that the policy was taken out and was paid for before inflation had set in and had devalued his funds. The Respondent appears to argue that not he but that the Appellant should bear the consequences of his, the

Respondents inability to produce any and all related files, notwithstanding that no responsibility for this lacunae attaches to the Appellant and that no evidence, save mere assertion, has been submitted to explain the absence of relevant evidence in this case.
3. The Claimant is a British citizen (naturalised in April 1947) a member of the British Army 1941 – 1948 and a practising member of the English Bar between 1963 and 2003, contends that he is entitled to expect that this Appeals Panel will apply the applicable Guidelines and law fairly and equitably, there being nothing in the said Guidelines which is designed to prevent the Panel to do justice on equal terms to all parties before it.
3. The Claimant avers and contends that the absence of relevant files and other evidence at all material times owned and held in the custody of the Respondent is not and cannot be due to any default, omission and/or negligence on his part and accordingly should not be resorted to and relied upon as a defence by the Respondent, thus relieving him of his duty of discharging the burden of proof which, in fairness and in the particular circumstances of this case, should lie upon him in a matter where it is admitted by him that a life insurance policy was in fact taken out with the [REDACTED] and was duly paid for by the Claimant's father. The Appellant further contends that the Respondent's reasoning and Defence, ostensibly in reliance on unproven matters and events beyond his control, consists of mere excuse and argument but is devoid of any reliable corroborative or supporting evidence.
4. The Appellant observes that it is the Respondent's claim that his decision, now appealed against, is in conformity with the applicable Guidelines. The Claimant, in turn, argues and contends that the Respondent's said contentions are fairly and justly relied upon. That assertion the Respondent disputes for the reasons already mention earlier in his rejoinder and feels that they need not be iterated here once more.
5. Last but not least the Appellant avers and contends that in considering the facts and events in this case the Appeals Panel ought, in fairness, accord equal credibility to the party's statements and assertion and execute a just balancing exercise when weighing the credibility of the evidence before it. In this context not to be accorded any credence in excess of that which is to be applied by the Panel to the Appellant's rebuttal and general evidence and overall credibility".

21. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.

22. 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.

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

THE CLAIM

23. The Appellant has submitted the following information in relation to the claim for the proceeds of an insurance policy in his claim form.

    a) He does not identify any insurance company in the claim form. However, he states that the policy was purchased in Bavaria, Germany.

    b) Question 5 "*What do you know about the insurance policy*", which among others contains questions about currency, insured sum and date of issue and maturity, is answered with "*nothing known*".

c) He further states that the policyholder was his father [REDACTED] and the insured person "*assumed Wife [REDACTED] and Beneficiary (claimant)*". With regards to the named beneficiary the Appellant writes "*not known, possibly claimant*".

d) He gives the information that the policyholder was the owner of a manufacturing business in Munich and states '*possibility – likelihood of policy (policies) connected with firm known as '[REDACTED]'*".

24. There are two claim forms in the claim file. In the second claim form the Appellant identifies his father's date of birth as "*[REDACTED] 1875*".

25. The Claim was subsequently distributed as an "unnamed claim" and [REDACTED] found a match after the ICHEIC had provided a copy of an asset declaration list ("*Verzeichnis über das Vermögen von Juden*") in the name of [REDACTED] signed on 27th June 1938. This details an insurance policy with [REDACTED], no. [REDACTED] to the value of RM 1339. Furthermore, in a questionnaire dated 13th August 1939, which is completed for those applying to emigrate, a life insurance policy with [REDACTED].-Bank Nr. [REDACTED] to the value of RM 1280 is listed.

26. In a letter dated 7th February 2003 the Appellant writes, "*…following the events of November 9th./11th. 1938 (Kristallnacht) my father was compelled to surrender all his business and personal assets by way of Arianisation and contribution to the enormous fine imposed on the Jewish communities in Germany following the [REDACTED] shooting. In that behalf a Treuhänder (Trustee) appointed by the competent Reich's authority called at our home where I (the aged 15 years) was present. In the course of this meeting my father was 'asked' to sign certain documents, he effect of which was to deprive him of his business, his stocks and shares as well as his and my mother's Life Insurance policies. There was also a policy in my name though I am sure it was not a Life assurance one.*"

27. In the attachment to the Appeals Form dated 14th May 2003 ("*Notice and Grounds of Appeal*") he sets out the reasons for his appeal as follows:

"*1. The Appellant has, on April 10th. 2003, been served with a final decision by the respondent company based, it is alleged and asserted, on "Humanitarian Grounds" tendering in that behalf a sum totalling $ 4,000.00. It is contended by the Respondent that this sum was calculated, was arrived at and is awarded in accordance with German Federal Compensation Law and based, overall, on an agreement (to which the appellant was not and is not privy and by which he is not bound) made between the ICHEIC and the [REDACTED].*
2. In that context and behalf the Appellant avers and respectfully submits that, contrary to ordinary basic judicial precepts and precedents, there has been no disclosure or discovery to him of the specific terms of German Compensation Law nor of the full and relevant terms of the said agreement between ICHEIC and the [REDACTED].
3. In the face and the light of that omission and in the absence of the said missing documentation and documentary material, the Appellant was, at all material times, put at a substantive disadvantage in formulating the grounds of and reasons for his appeal in which the quantum of the said award is challenged and disputed by reason of the appellant's manifest disability to determine whether the amount awarded was lawful, was properly and accurately calculated and whether in the circumstances where the appellant had – or may have had – a discretion in making an award, whether that discretion was fairly and equitably exercised and discharged.
4. In consequence of the said premises, the Appellant does not admit that the Respondent's said decision was made fairly, properly and justly nor that it was based on any equitable and/or moral foundations and made in strict accordance with German (Compensation) law or in compliance with the terms of the said agreement.

5. Further and in the alternative, the Appellant will say and contend that by making the said decision and by calculating and setting quantum @ $ 4,000.00, the Respondent has essayed and has sought to ignore and to avoid his true and full contractual liability by seeking to shelter behind the restrictions and limitations inherent in the said [REDACTED] agreement. The Appellant's said argument is and his contentions are based on the following Grounds and Reasons, namely:

6. *The Respondent is and at all material times was, a corporate Life Assurance company within the periphery of and subject to the legal and commercial duties and liabilities imposed upon such undertakings by an by virtue of any applicable statute and subject always to common usages and appropriate commercial practices.*

7. On a date in or about September of the Year 1924 and on the Appellant's first birthday, the Appellant's father took out a Life policy No. [REDACTED] with the Respondent company. It was, at all times, an express and written terms of the said policy that, upon the contingent demise of the life of the Insured, the Respondent company as underwriter was under a duty to – and was bound to - make payment in full to the deceased's personal representatives and/or to his relic, heirs and successors.

8. In or about a day in June of 1938 the Respondent conspired and/or agreed and he cooperated with the then German Economic and Administrative authorities to the effect that their Insured should be dispossessed of the policy document and barred from receiving the proceeds and benefits of the said policy the value of which, in the process, resulted and reverted to the Respondent company.

9. Subsequently and to the knowledge of and with the consent of the Respondent who was on constructive Notice as to National Socialist attitude towards a "final solution of the Jewish Question" the said governing authority contrived to murder the Appellant's father (the Respondent's Insured) by shooting him (and 998 others) on November 25th. 1941. In the event the death of the Appellant's said parent occurred and was brought about otherwise than by due and lawful judicial process. By reason of that event and on the said day in November 1941, the said Life policy matured and became operative. In consequence thereof and subject only to the illegal and ineffective confiscation of that policy, the benefits of the said policy fell into possession and ownership of the policyholder's personal representatives, his relic, heirs and successors.

10. In defeasance of their said legal and moral duty and in breach of the terms of the said policy and, further, in unlawful co-operation – and by conspiring – with the insured's wrongful executioners, the Respondent paid over and surrendered the entire accumulated benefit of the sum assured to his co-conspirators and otherwise than to a person or persons lawfully entitled to the same thereby wrongfully depriving the policy's beneficiaries of their entitlement.

11. In pursuance of his said allegations, contentions and averments, the Appellant will further argue that if, as has been presaged and earlier contended for, the Respondent has, indeed, fully discharged and, as is claimed, under duress has paid out the benefit of the said policy by surrendering the same to the relevant Government authority and this is, himself, a victim of the state's racial policies, the Respondent's redress in that behalf and his claim for relief should be addressed to the relevant German authorities and not by seeking to recover his alleged losses from – or by seeking to indemnify himself out of – funds properly, rightfully and morally due to the Appellant. Accordingly the Respondent ought not, in justice or fairness, be allowed and enabled to deny his own full liability by sheltering behind and by relying on the terms of the said agreement under which he has purportured to offer only a limited sum of money but has at the same time, denied and forsaken his true liability to his Insured.

12. In the premises the Appellant asseverates and claims, in the particular circumstances of this case and appeal, that the Respondent's tender to pay over the sum only of $ 4,000.00 is a derisory offer in the light of the irrefutable facts herein pleaded and amounts to a decision which should not, in fairness and justice, be upheld.

13. Lastly the Appellant will say that if this honourable Appeals Panel is, by its composition rules, guidelines, restraints, mandate and jurisdiction, prevented from doing justice

according to the merits of the Appellant's case, the latter herein expressly reserves the right to proceed under German Federal Law, against the said Assurance company for his losses and damages plus interest consequent thereupon".

28. In the "*Rejoinder*" dated 15th April 2004 (see above paragraph 20) the Appellant gives – for the first time – further details about currency, insured sum and date of issue of the policy.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

29. Reference is made to the first decision letter dated 29th April 2002 and to the final decision letter dated 10th April 2003 (see above paragraphs 7 and 8).

30. In its statement dated 19th August 2003 (see above paragraph 17) [REDACTED] writes: " *... The Claimant's father, Mr. [REDACTED], had taken out a life insurance policy number [REDACTED] with [REDACTED]. Unfortunately, no corresponding file exists due to the fact that during the World War II a substantial part of our files was destroyed. The only document at our proposal is a declaration of assets dated June 27, 1938 in which the life insurance policy number [REDACTED] is mentioned with the surrender value amounting to RM 1.339,-. Since we do not know any other important technical data, such as the sum insured, the date of commencement and the insurance term, it is not possible for us to calculate the offer in accordance with the German Federal Compensation Law. Our offer as of April 10, 2003 was made in accordance with the Valuation Guidelines. Since we could not reconstruct the terms of the insurance policy taken out by the claimant's father we calculated our offer according to section 7.1 for unknown values. Given the fact that the calculated amount of € 1.169.23 (attachment 1) is below the minimum payment required by section 2.3 of the Valuation Guidelines we offered an amount of $ 4,000.00*".

THE ISSUES FOR DETERMINATION

31. The first issue for determination is whether the Appellant filed his appeal pursuant to the afore-mentioned Agreement (see above paragraph 22) and its Annex E (The Appeal Guidelines). There is no doubt that the Appellant filed his appeal within the 120 days provided by Section 4 (3) of the Agreement, because the decision of the Respondent, which is appealed, was issued on 10th April 2003 and the appeal arrived at the Appeals Office on or about 25th July 2003. A more precise determination, as to when the Appeal arrived at the International Business Reply Service of TNT in Rotterdam or Schiphol, The Netherlands, cannot be made, because no notation of date of receipt was made. However, the Appellant added restrictions to the required waiver by adding paragraph 13 in his reasons for appeal, which reads: "… *the latter* (the Appellant) *expressly reserves the right to proceed under German Federal Law against the said Assurance company for his losses and damages*" in case his appeal does not succeed. This is not in accordance with section 7.2 of the Appeal Guidelines. The Panel is only able to process an appeal if the Appellant signs an "unqualified" waiver. By adding the afore-mentioned paragraph 13 the waiver was qualified. In his letter dated 15th January 2004 Appellant did not add this paragraph 13; however, he deleted number 2 of the waiver, which reads: "*By signing this Appeal Form ... you acknowledge receipt of the Appeal Guidelines. The 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] (the Agreement, including all Annexes), to which the Appeal Guidelines refer, are available on request to the Appeals Office at the address below.* ***You agree to be bound by these documents***". The Appellant did sign an "unqualified waiver" after he had received the

Agreement and its Annexes in response to his request dated 15th January 2004 and thus, filed a valid appeal pursuant to section 7.2 of the Appeal Guidelines.

32. The next issue for determination in this appeal is whether the Appellant has met his burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:

    17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;

    17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and

    17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.

33. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed – or, as here, which were the contractual conditions of an existing policy - is a heavy one, even when the burden is limited to establishing that the assertion is "plausible" rather than "probable". Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant's assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company.

34. There is no doubt that the Appellant's father had a life insurance policy with [REDACTED], that the Appellant as heir of his parents could be entitled to the proceeds of this policy and that all family members were Holocaust victims. The Respondent does not deny this.

35. However, the Panel has concluded that the Appellant has not met his burden of proof in establishing that his father took out a policy for an insured sum of RM 100,000.00. His evidence lacks the requisite authenticity and particularity. The Appellant did not identify the source of his knowledge after he initially stated in his claim form that he has no knowledge about details of the claimed insurance policy. In addition the surrender value (one of the few details of the policy that it was possible to reconstruct from the declaration of assets) of between RM 1,280 and RM 1,339 in 1938/39 does not match for a policy taken out in 1923 (the Appellant's year of birth) with an insured sum of RM 100,000.00.

VALUATION

36. Under the Tripartite Agreement (see paragraph 22 above) the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. For policies issued in Germany (within the boundaries if 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the

base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X.

37. In cases where, as here, policies existed but the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that an offer must be made and the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (section 7.1 of the Valuation Guidelines).

38. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 is RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, must be converted from RM into DM by using the converting factor RM 10 = DM 1, which results in DM 252.30. That is the value to the end of 1969. To update this value by the end of 1969 to the value by the end of 2000, pursuant to Step 2 number 3 of Schedule 2, the 1969 value must be multiplied by 8. Eight times DM 252.30 is DM 2,018.40.

39. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex additions must be made to the value up to the end of 2000 for the subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC following consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 6/12 of 4.75 %), which results in DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,286.8151579 for 2003, or € 1.169,23 on the basis of an exchange rate of DM 1.95583 = € 1.00.

40. Notwithstanding the above calculation, pursuant to section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company a minimum payment of US$ 4,000 (per policy), if he is himself a survivor of the Holocaust, as the Appellant is in this case.

41. The Appeals Panel is aware that – from the Appellant's point of view – there are reasons for criticizing the results of the valuation of the policy when calculated according to the Valuation Guidelines. However, as explained above (paragraph 36) the Appeals Panel, as well as the Appellant by signing the Appeal Form, is bound by the Agreement and its Annexes, including the Valuation Guidelines. The Panel may not substitute a calculation pursuant to those Guidelines by a calculation based upon an unproven sum (in this case RM 100,000.00). Where, as here, the amount of the policy cannot be determined the valuation must be consistent with the Valuation Guidelines that provide a calculation method as set out above (paragraphs 37 to 40).

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 15th day of June 2004

The Appeals Panel

_____	_____	_____
Timothy J. Sullivan	Rainer Faupel	Abraham J. Gafni
Chairman	Panel Member	Panel Member