

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

Fax: ++ 44 (0) 207 269 7303

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], born on [REDACTED] 1923 in Hamburg-Altona (Germany). He is the nephew of [REDACTED], née [REDACTED]. [REDACTED] is the sister of the Appellant’s mother [REDACTED], née [REDACTED]. [REDACTED] who was born approximately 1898 in Hamburg-Altona was married to Dr. [REDACTED], who was born approximately 1896 in Kassel (Germany). They had no children. Neither survived the Holocaust. [REDACTED] who was born approximately 1896 did survive and died after 1945. She was the closest surviving relative of her sister [REDACTED].
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 15th March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that an insurance company he was not able to identify issued a policy of life insurance.
4. The ICHEIC submitted this claim to the [REDACTED]-Companies.
5. In a letter dated 30th December 2002 [REDACTED] informed the Appellant that it had checked its central register on the basis of the following data: “*Mr [REDACTED] (Dr.), born approx. 1896 in Kassel, Mrs [REDACTED] (Dr.), née [REDACTED], born approx. 1898 in Altona, Mrs [REDACTED], née [REDACTED], born approx. 1896*” without finding an entry for his uncle [REDACTED]. For his aunt [REDACTED], however, there was an entry. [REDACTED] also described the meaning of this match and further research it was going to perform. It continued “*concerning your mother, Mrs [REDACTED], we may have found an entry in our register. To be sure that this entry belongs to your mother, please provide us with additional information, such as place of birth and place of residence*”.
6. In a final decision letter dated 29th April 2003 [REDACTED] provided further details about the entry for the Appellant’s aunt [REDACTED] and offered the Appellant a total of US\$ 4,000 as a lump sum payment.

With regard to the possible entry for the Appellant’s mother [REDACTED] [REDACTED]informed him as follows: “*Starting from the data of your late mother, Mrs [REDACTED], that you forwarded us with letter of January 13, 2003 we now can exclude that the possible entry we mentioned in our last letter was made for your late mother. For this reason, we know that no life insurance contract under the name of [REDACTED], [REDACTED] or [REDACTED] existed with us*”.

Finally [REDACTED] gave further information concerning the Appellant’s late father, [REDACTED], as follows: “*As far as your late father, Mr. [REDACTED], is concerned, we regret to inform you that his name is not included in the questionnaire. Documents of the State Archive of Hamburg contain his date of birth being September 05, 1893. Please confirm this date. We will then arrange another research. Since the name of your father is not included in the declaration of consent form of your claim we kindly ask you to fill in the enclosed declaration of consent form and send it back to us. ... We need this declaration in order to effect our research in external archives*”. Claim File number [REDACTED] does not contain documents related to research about the Appellant’s father’s policies.

7. The Appellant did not accept this offer and submitted an appeal to the Appeals Office dated 14th May 2003 instead. The appeal was received on 26th June 2003.
8. The Appeals Office forwarded this appeal to [REDACTED] by letter dated 25th July 2003.
9. On 3rd September 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.
10. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
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.

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

12. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a) In the claim form the Appellant identifies Dr. [REDACTED] and/or [REDACTED] as the policyholders, insured persons and beneficiaries.
 - b) In answer to question 11 the Appellant states, “Dr. [REDACTED] and [REDACTED] were man and wife. They had no children. They were deported to Poland 1938-1939 and died as far as known in a concentration camp. The closest surviving relative was my late mother [REDACTED] (née [REDACTED]), who was [REDACTED]’s sister. Dr [REDACTED] was a judge in Altona, Germany. I am convinced that he had an insurance on his life in favor of his wife.”
 - c) The Appellant does not name the insurance company that issued the policy.
 - d) He states that the insurance policy was purchased in “Altona/Hamburg, Germany”.
 - e) He does not provide any details about the policy in question 5, but his answer to question 11 as quoted above indicates that the policy must have been a life insurance policy.

13. In his statement of Grounds of Appeal the Appellant writes:

- “1. [REDACTED] admits having issued an insurance policy on the life of Appellant’s aunt before 1941. [REDACTED] alleges however, that the insurance benefit was paid, yet they do not know to whom it was paid. ...
2. The onus of proof of payment of a contract debt rests on [REDACTED], and [REDACTED] admits this by saying ... “the mere probability of a payment to a person or an institution other than the beneficiary is reason enough to pay a benefit”.
3. In view of the aforesaid, the only question is, what is the amount of [REDACTED]’s liability, since they allege that they do not know the amount of the insurance contract.
4. Under the rules of Western laws, [REDACTED]’s liability under such circumstances is to pay a reasonable amount. This is also [REDACTED]’s view, since they contend that the minuscule amount on which they decided “exceeds the current value of an a v e r a g e contract concluded at the time”. “Average” and “Reasonable” expresses the identical principle in this context.
5. It is submitted, that the current a v e r a g e amount of a life insurance policy in Germany (which should also equal present value of the a v e r a g e amount of a life insurance policy issued prior to 1941) cannot be as little as \$ 4000 ! It is asserted, that nobody insures his life for four thousand Dollars.
6. It is established in insurance-professional circles, that on the average, life insurance policies are contracted for in an amount equal to six to eight times the annual gross income of the insured. If we base our calculation on a moderate income of a middle class person (lower income classes do not purchase life insurance - they cannot afford it), an annual income of \$ 50 000 to \$ 60 000 would be the appropriate amount. On the above basis the current a v e r a g e amount of a life insurance policy (as well as the

present value of an average life insurance amount before 1941) would be between \$ 300 000 and \$ 480 000”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. A letter sent by [REDACTED] dated 30th December 2002 states the following: “*our central register does contain an entry for your aunt, Mrs [REDACTED]. This means that your aunt had applied for life insurance coverage with [REDACTED]. Therefore, based on the application number, we have started to search for corresponding file in our file archives’.* [REDACTED] continues “*concerning your mother, Mrs [REDACTED], we may have found an entry in our register. To be sure that this entry belongs to your mother, please provide us with additional information, such as place of birth and place of residence.”*

15. In a final decision letter sent by [REDACTED] dated 29th April 2003 further details are provided about the entry for the Appellant’s aunt [REDACTED], “*The starting point for our research was the entry for your aunt in our central register (enclosure I). As you can see the entry does not contain details on the applied insurance coverage, in particular the sum insured, the amount of 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 S’ (which means transfer to S) that a life insurance contract with the number [REDACTED] was actually taken out, because only the existing contracts were transferred from one portfolio to another portfolio.”*

[REDACTED] continues, “*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. Since no file exists we have no information whatsoever on the possible terms of the contract.”* [REDACTED] also contacted the German State Compensation and Restitution authorities, the State Archives of Brandenburg and Berlin and the Federal Archive in Berlin, and informed the Appellant that this research was not successful. In neither the “*in-force-register*” of 1941 or the so called “*reserve register*” were any relevant entries found. It concludes: “*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. 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 an institution other than the beneficiary is reason enough to pay a benefit. 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.”*

16. In a letter dated 23rd May 2003 [REDACTED] explains its calculation on the basis of the average insured sum of Reichsmark 841.

THE ISSUES FOR DETERMINATION

17. Since the existence of a policy and the entitlement of the Appellant to the proceeds of this policy as the heir of [REDACTED] are not in question, the only issue for determination in

this case is whether the sum of US\$ 4,000 offered by [REDACTED] is correctly calculated according to the Valuation Guidelines (Annex D) .

18. Pursuant to section 4 (3) (ii) of the Agreement dated 16th October 2002 the subject of an appeal may be limited to whether the Valuation Guidelines have been correctly applied in calculating an offer made to the claimant

VALUATION

19. For policies issued in Germany (within the boundaries of 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.
20. In cases, in which as here the amount of the policy cannot be determined, section 7.1 of the Valuation Guidelines requires that 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).
21. 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 gives RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, has to be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30. That is the value to the end of 1969. In order to update the year end 1969 values to year end 2000 values, pursuant to Step 2 No. 3 of Schedule 2 the 1969 value then has to be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.
22. For offers made from January 2001 the value has to 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 which had consulted with the Foundation and the [REDACTED] as the other parties of 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 leads to the amount of DM 2,119.32 for 2001, DM 2,233.76328 for 2002 and DM 2,286.8151579 for 2003, which gives € 1.169,23 on the basis of an exchange rate of DM 1.95583 = € 1.00.
23. Nevertheless and irrespective of 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 at least a minimum payment of US\$ 4,000, if he is himself a survivor of the Holocaust, as the Appellant is in this case.
24. The Appeals Panel concludes that for the reasons set out above the offer made by the Respondent is correct.

Appellant: [REDACTED]
Claim No.: [REDACTED]

Appeal No.: [REDACTED]

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 29th day of January 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member