

**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**

**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], nee [REDACTED], who was born on [REDACTED] 1928. She is the daughter of [REDACTED] and [REDACTED], nee [REDACTED]. Her father was the cantor of the “*Israelitische Kultusgemeinde*” (Jewish community) in Schweinfurt, Germany. He was born on [REDACTED] 1889 and died in 1943 in Auschwitz or Theresienstadt. He was officially declared dead on 31<sup>st</sup> December 1945. The Appellant is, together with her sister [REDACTED], née [REDACTED], heir of [REDACTED].

2. The Respondent is [REDACTED] as successor of “[REDACTED]” and “[REDACTED]”.
3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claimed that her father was holder of a life insurance policy. As insured persons she identified him or her mother [REDACTED]. She named herself or her sister [REDACTED] as beneficiaries.
4. The ICHEIC submitted the claim to the German companies.
5. The respondent found documents relating to the Appellant’s father and was able to confirm the existence of the life insurance policies No. [REDACTED] and No. [REDACTED] taken out by [REDACTED] with “[REDACTED]” and No. [REDACTED] taken out with “[REDACTED]”. Both companies are predecessor companies of [REDACTED].
6. In a letter dated 7<sup>th</sup> April 2003 the Respondent informed the Appellant about details of the above named contracts and made the following decisions:
  - a) Policy No. [REDACTED]  
*“Given the fact that the calculated current value of the policy No. [REDACTED] of Mr. [REDACTED] of € 1,169.23 is less than the agreed minimum payment, we are pleased to offer you and your sister, Mrs. [REDACTED] a joint payment of US\$ 4,000 for the compensation of policy No. [REDACTED]”.*
  - b) Policy No. [REDACTED] and No. [REDACTED]  
*“... Based on the Agreement your inquiry had been reviewed for possible prior decisions by relevant compensation or restitution authorities with regard to the insurance policies we found. ... According to the Agreement a policy is not eligible for additional compensation, if that specific policy was covered by a prior decision of a German restitution or compensation authority. ... The German authorities have now confirmed that you and your sister, Mrs. [REDACTED], nee [REDACTED], had filed a claim under the German Compensation Laws regarding the “[REDACTED]” policy No. [REDACTED] and the “[REDACTED]” policy No. [REDACTED]. The “Bayerische Landesentschädigung- und Staatsschuldenverwaltung – Landesentschädigungsamt” has confirmed that policies No. [REDACTED] and No. [REDACTED] were subject matter of the decision by the “Bayerische Landesentschädigungsamt”, dated 16.08.1963 in the compensation proceeding of Mr. [REDACTED] under file-number “[REDACTED]”.*
7. The Appellant did not accept the offer or the other decisions made by the Respondent and submitted an Appeal Form to the Appeals Office dated 24<sup>th</sup> September 2003, which the Office received on 30<sup>th</sup> September 2003, i.e. after the 120 days timeline for an appeal.
8. The Appeal Form received from the Appellant was an incomplete Appeal Form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to 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 to the Appeal Guidelines, a declaration waiving any right to appeal such decision as provided in the Appeals Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration waiving the right to make any claims against the Appeal Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law. The Appeal Form the Appeals Office received was just the first page of an

Appeal Form without the declarations, contained in either the so-called “old” Appeal Form (former Annex G of the Agreement dated 16<sup>th</sup> October 2002) or the amended Appeal Form.

9. The Appeals Office asked the Appellant to clarify what kind of Appeal Form the Respondent had sent to her together with the decision letter. In due course it was determined that this was page one of the two page “new” Appeal Form.
10. The Appellant sent a complete Appeals Form, which the Appeals Office received on 13<sup>th</sup> October 2003. In this Form the Appellant sets out the reasons for her appeal as follows: *“There are numerous discrepancies in the insurance Companies’ claim for pay-out to my father in 1939 when he was imprisoned in Dachau and in 1942 when he was in Theresienstadt. I can find no signature to substantiate that he ever received any money”*.
11. With regard to the delay in filing the appeal the Appellant wrote in the Appeal Form: *“The reason for my request for a time delay for my appeal is that I was not in America for several weeks and on my return, I had great difficulty to find a person who could translate the documents I received from Köln. ... I am requesting additional time so that I can find a person who can properly guide me in this matter”*.
12. In a letter dated 27<sup>th</sup> October 2003 the Appeals Office asked the Appellant at the direction of the Appeals Panel to answer the following question: *“When did the decision letter dated 7<sup>th</sup> April 2003 arrive and during which time have you been absent ?”*. The Appellant responded in a letter dated 6<sup>th</sup> November 2003, which the Office received on 9<sup>th</sup> November 2003, as follows: *“I do not know when the letter dated April 7, 2003 arrived, but I saw it upon my arrival from New York during the middle of May. It was very difficult to be able to get an interpreter who could tell us exactly what the contents of the various forms meant. In August, we again had to leave the U.S. for a wedding of a close relative before we were able to get the documents back from the interpreter. Upon arrival home my husband was diagnosed with severe wet macular degeneration of both eyes with some retina detachment and pockets of serous fluids. He had to have immediate treatment of Photo Dynamic Therapy the second of which took place during the past week. My husband usually takes care of this kind of communication and is just getting back to being able to do so.. I do hope that you will consider my request for an extension favourably.”*
13. The Appeals Office forwarded this letter to the Respondent on 10<sup>th</sup> November 2003, which responded on a letter dated 13<sup>th</sup> November 2003 that *“regarding the compliance with the time limit we do not like to comment on it”*.
14. On 9<sup>th</sup> January 2004 the Panel decided that the Appellant would be reinstated to the position she would have been in had the Appeal had been filed within the period of 120 days after receipt of the decision letter. Further, she was granted the opportunity to complete her reasons for appealing until 31<sup>st</sup> January 2004.
15. On 29<sup>th</sup> January 2004 the Appellant called the Appeals Office and informed it that she was not at her home, but had been informed that the interim order dated 9<sup>th</sup> January 2004 had arrived there. The Office informed the Appeals Panel which granted a further extension until 5<sup>th</sup> March 2004.
16. On 4<sup>th</sup> March 2004 the Appeals Office called the Appellant and asked her whether a further statement about the reasons for appealing would be filed and whether an oral hearing would be requested. The Appellant informed the Appeals Office that there would be no request for an oral hearing and that no further statement would be submitted. The Appeals Office informed the Respondent orally that it would not be requesting an oral hearing.

17. As both parties have indicated that there would be no request for an oral hearing, the appeal proceeds on a “*documents only*” basis.
18. 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 Panel Decision is made there.

## **THE CLAIM**

19. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
  - a) The Appellant did not identify any insurance company in the claims form and provided no details concerning the policy.
  - b) In section six, she identifies the policyholder as [REDACTED] or [REDACTED] [REDACTED], her father, born on 30<sup>th</sup> December 1889 in Würzburg, Germany. She states that her father was the cantor of the Jewish cultural community of Schweinfurt.
  - c) In section seven, [REDACTED] and [REDACTED], née [REDACTED], born on 9<sup>th</sup> March 1891, are identified as the insured persons.
  - d) In section eight, the Claimant is identified as the beneficiary. Her sister, [REDACTED], is identified as a living heir.
  - e) In section eleven, regarding ‘further information’ the Claimant writes, “*I was a very young child when I was sent to England by my parents in April 1939 (via Kindertransport). All I can remember is that we were well off. My father was employed by the Israelische Gemeinde in Schweinfurt, Germany and I am convinced that they must have had life insurance policies for the rabbi and cantor (for their employees). This was told to me by a survivor. Also my father was an individual who would have made sure that he is covered with appropriate policies – for his family. I was too young to give you any details. All our possessions were confiscated and I never received anything from an Wiedergutmachung except education claim*”.
20. The Appellant writes in her reasons for appeal, initially received on 30<sup>th</sup> September 2003, “*there are numerous discrepancies in the insurance companies’ claim for pay-out to my father in 1939 when he was imprisoned in Dachau and in 1942 when he was in Theresienstadt. I can find no signature to substantiate that he ever received the money*”.

## THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. In the final decision letter issued on 7<sup>th</sup> April 2003 the Respondent writes “*according to the documents we found and the information given by the compensation authorities relating to policy No. [REDACTED] Mr. [REDACTED] has stipulated in the insurance contract a sum insured of RM (Reichsmark) 3000.00 with an annual premium of RM 120.00. the policy started as per 01.10.1929 and would have had a duration of 23 years. The final maturity of the insurance contract would have been 01.10.1952. The policy was redeemed in 1942 with a surrender value of RM 1559.00. Relating to policy No. [REDACTED] Mr. [REDACTED] has stipulated in the insurance contract a sum insured of RM 5000.00 with an biannual premium of RM 120.50. The policy started as per 01.04.1927 and would have had a duration of 20 years. The final maturity of the insurance contract would have been 01.04.1947. The policy was redeemed as per 01.04.1939 with a surrender value of RM 2266.00. Based on the Agreement your inquiry has been reviewed for possible prior decisions by relevant compensation or restitution authorities with regard to the insurance policies we found...According to the Agreement a policy is not eligible for additional compensation, if that specific policy was covered by a prior decision of a German restitution or compensation authority...The German authorities have now confirmed that you and your sister, Mrs [REDACTED], née [REDACTED] had filed a claim under the German Compensation Laws regarding the ‘[REDACTED]’ policy No. [REDACTED] and the ‘[REDACTED]’ policy No. [REDACTED]. The ‘Bayerische Landesentschädigungs- und Staatsschuldenverwaltung – Landesentschädigungsamt’ has confirmed that policies No. [REDACTED] and No. [REDACTED] were subject matter of the decision by the ‘Bayerisches Landesentschädigungsamt’, dated 16.08.1963 in the compensation proceeding of Mr. [REDACTED] under file-number ‘[REDACTED]’. Settlement proceeds in the amount of 692.65 Deutsche Mark have already been paid to the community of heirs, Mrs [REDACTED] and Mrs. [REDACTED]. Hence, no more claims may be made under policies ‘[REDACTED]’ No. [REDACTED] and ‘[REDACTED]’ No. [REDACTED]”.* The Respondent continues “*Given the fact that the calculated current value of the policy No. [REDACTED] of Mr [REDACTED] of € 1,169.23 is less than the agreed minimum payment, we are pleased to offer you and your sister, Mrs [REDACTED] a joint payment of US\$ 4,000 for the compensation of policy No. [REDACTED]”.*”
22. In its letter to the Appeals Office dated 13<sup>th</sup> November 2003 the Respondent repeats its reason for rejecting the claim concerning policies [REDACTED] and [REDACTED] and writes, “... *the claim of Mrs [REDACTED] concerning the policies No. [REDACTED] and No. [REDACTED] is not eligible for compensation in the ICHEIC process”.*”
23. The final decision letter includes the following documents from the compensation authority relating to the policies claimed.
- a) An official order for payment of DM 346.32 to be paid to [REDACTED] and DM 346.33 to be paid to [REDACTED]. This document is dated 19<sup>th</sup> August 1963.

- b) A ruling of the Bavarian compensation authorities dated 16<sup>th</sup> August 1963. This ruling deals with claims made by [REDACTED] née [REDACTED], and [REDACTED] née [REDACTED] for compensation following their father's death. This ruling awards the sisters DM 692.65 in compensation for loss of insurance other than social security for policy number [REDACTED] with [REDACTED] and [REDACTED] with [REDACTED]. The compensation payment for policy [REDACTED] concluded with [REDACTED] is calculated to be DM 310.94, and the compensation payment for policy [REDACTED] concluded with [REDACTED] is calculated to be DM 381.71.
- c) A letter from the Bavarian compensation authorities dated 25<sup>th</sup> April 1963 to [REDACTED] insurance informing the company that it has received claims for compensation for a policy issued to [REDACTED] born 30<sup>th</sup> December 1889 for the insured sum of RM 5000. This letter asks [REDACTED] to estimate the compensation under §§ 127 et seq BEG.
- d) A letter to the compensation authorities from [REDACTED] regarding policy number [REDACTED], dated 16<sup>th</sup> May 1963. This letter informs the authorities that the policy was taken out on 1<sup>st</sup> April 1927 for a term of 20 years with an insured sum of RM 5000. It states that the policy was redeemed on 1<sup>st</sup> April 1939 and the redemption value was RM 2266. [REDACTED] is unable to state to whom the payment was paid. It provides a calculation for compensation of DM 387.71.
- e) A letter from [REDACTED] to the compensation authorities of Bavaria, dated 16<sup>th</sup> May 1963, providing information on policy number [REDACTED]. This policy was taken out by [REDACTED], born 30<sup>th</sup> December 1889 on 1<sup>st</sup> October 1929 for an insured sum of RM 3000. The policy was due to mature on 1<sup>st</sup> October 1952. The annual premium payment was RM 120. The policy was redeemed in 1942 and the redemption sum of RM 1559.90 was paid, but [REDACTED] cannot establish to whom and when the payment was made. [REDACTED] calculates compensation to be DM 310.94.

## **ISSUES FOR DETERMINATION**

24. There is no doubt that the Appellant's father had several insurance policies with "[REDACTED]" and "[REDACTED]", that the Appellant as heir of her parents could be entitled to the proceeds of these policies and that all family members were Holocaust victims. Therefore, the claim of the Appellant in general is within the scope of the Agreement. But, as far as the policies [REDACTED] and [REDACTED] are concerned, the Respondent has succeeded in establishing a valid defence in accordance with the Agreement. According to Section 17.3 Appeal Guidelines the claimant is not entitled to payment from the Foundation funds 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 in accordance with Section 2 (1) (c) of the Agreement."

25. The Respondent proved that two policies [REDACTED] and [REDACTED] were the subjects of a compensation proceeding by providing compensation and restitution authority

archive evidence in the form of, inter alia, a “*Bescheid*” (decision) dated 16<sup>th</sup> August 1963, which records that the afore-mentioned policies were the subject of compensation proceedings under the BEG law and as a result the Appellant and her sister received a compensation payment of in total DM 692.54, which they had to share in equal parts. Since this is the case, the two policies in question undoubtedly were covered by a decision of the compensation authority, and the Panel therefore, according to section 2.2.2 Appeal Guidelines, lacks jurisdiction to reopen any claim with regard to such policies. Although not necessary for the Panel’s decision, it should be noted that the Appellant’s reasons for the appeal, i.e that her father in Dachau and Theresienstadt did not receive any money and that there is no signature from him to substantiate such payments do not affect the conclusions and seem to be based on a misunderstanding. The very fact that the Appellant’s father is presumed not to have received money due is the basis upon which the compensation authority in 1963 decided the case in favour of the appellant and her sister.

26. As far as the third policy No. [REDACTED] is concerned the Respondent has made an offer of US\$4,000.00 and, therefore, a further issue for determination is, whether the offer made has been correctly calculated.

## VALUATION

27. 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.
28. In cases, as here, where 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).
29. According to Schedule 3 of the 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 calculate the value from the end of the year 1969 to the end of the year 2000, 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.
30. 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 the official exchange rate of DM 1.95583 = € 1.00.

Notwithstanding the above calculations, 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\$ 4,000.00 where, as here, the claimant is a survivor of the Holocaust.

31. The Appeals Panel concludes that for the reasons set out above the offer of US\$ 4,000.00 made by the Respondent is correct.

**THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:**

The appeal is dismissed.

Dated this 16<sup>th</sup> day of March 2004

The APPEALS PANEL

\_\_\_\_\_  
Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member