

## **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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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

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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], born on [REDACTED] 1925 in Józefowo (Poland). He is the son of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1882 in Lobzenica (Poland) and died on 17<sup>th</sup> November 1960 in Bydgoszcz (Poland). Details about the Appellant’s mother are not given.

The Appellant has a sister, [REDACTED], née [REDACTED]. She is his co-Claimant and co-Appellant.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim form dated 17<sup>th</sup> March 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that “[REDACTED]” issued a policy of life insurance. [REDACTED] is a German company which is not a company that signed the [REDACTED].
4. The ICHEIC submitted the claim on 19<sup>th</sup> October 2001 to [REDACTED] (later [REDACTED] and now [REDACTED]) which is neither a [REDACTED] company nor a German company, but owned “[REDACTED]” at that time. The ICHEIC also sent the claim to the [REDACTED].
5. [REDACTED], of which [REDACTED] was a part at that time, confirmed receipt of the claim by letter dated 1<sup>st</sup> November 2001 and informed the Appellant (directly) as follows: *“On 30<sup>th</sup> October 2001 I received from the International Commission for Holocaust Era Insurance Claims (ICHEIC) details of your enquiries regarding a possible policy issued by [REDACTED] prior to the Second World War. ... I have passed your details to [REDACTED] so that they can investigate your claim. I will contact you again when those enquiries are complete. ...”*.
6. [REDACTED] investigated the claim and concluded (in internal correspondence dated 20<sup>th</sup> December 2001 with [REDACTED]): *“Since we must assume that no payment was made on this policy Mr. [REDACTED] has a claim of German Marks 42,- insured sum plus German Marks 375,- profits which gives a total of German Marks 417,- (EUR 213,21)”*.
7. In a letter dated 5<sup>th</sup> June 2002 (a copy of which was not forwarded to ICHEIC), [REDACTED] (by then renamed [REDACTED]) informed the Appellant about its offer and its calculations in reference to insurance policy number [REDACTED] taken out by the Appellant’s father. The Appellant answered in a letter dated 25<sup>th</sup> June 2002 (no copy was forwarded to ICHEIC) and confirmed that he and his sister are the beneficiaries of this policy and accepted settlement by payment of € 213.21. On 23<sup>rd</sup> July 2002 [REDACTED] paid this a[REDACTED]nt.
8. In October 2003 the claim again was sent to [REDACTED] (probably by the Appellant, but it is not entirely clear because the claim file closes with the correspondence of November 2001 quoted above and without further documented actions by the parties or ICHEIC). [REDACTED] responded in a letter dated 28<sup>th</sup> October 2003: *“Based on the information that you have provided in the claims-form we have searched intensively in our records and in relevant archives for information on a life insurance policy taken out by Mr [REDACTED]. In accordance with the Agreement we have found a registry showing your father as policyholder in our company archives and are able to confirm the existence of policy no. [REDACTED], taken out by Mr [REDACTED] in 1911. In 2002 we offered you payment for the policy in question, which you and your sister accepted. Payment was made in July of 2002. In their Agreement ICHEIC, the Foundation and the [REDACTED] have stipulated that any claim settled between a claimant and an insurance company will not be reopened for further compensation”*.
9. The Appellant, in line with the information he received from [REDACTED], submitted an appeal to the Appeals Office dated 12<sup>th</sup> February 2004, in which the reasons for the appeal were set out and which was accompanied by copies of documents already submitted in the claim procedure.

10. The Appeals Office received the appeal form on 19<sup>th</sup> February 2004 and forwarded a copy to [REDACTED] on 27<sup>th</sup> February 2004.
11. [REDACTED] responded in a letter dated 8<sup>th</sup> March 2004 and summarised what happened in this case (see paragraphs 7, 8 and more detailed 18).
12. On 12<sup>th</sup> August 2004 the Appeals Office informed both parties that the appeal will be decided 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.
13. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
14. 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**

15. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in the claim form:
  - a) The question “*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?*” is answered with “yes”.
  - b) In section three of the claim form he indicates “[REDACTED]” as the company that issued the insurance policy. The policy was purchased in Berlin, Germany.
  - c) In section four he lists the documents he included: insurance policy number [REDACTED] dated 6<sup>th</sup> July 1911, revaluation plan dated 31<sup>st</sup> December 1929, a letter “*To our longstanding policyholders*”, a letter from “[REDACTED] and [REDACTED]” dated 4<sup>th</sup> March 1931, a revaluation certificate dated 5<sup>th</sup> March 1931 and a letter from “[REDACTED]” dated 10<sup>th</sup> February 1933.
  - d) The Appellant indicates in section five the type of insurance as life insurance. The policy number is [REDACTED], the currency Reichsmark and the sum insured 6,000. The policy was issued on 6<sup>th</sup> July 1911 and the maturity date is indicated as 14<sup>th</sup> February 1968.
  - e) The policyholder is identified as [REDACTED], the Appellant’s father. The Appellant names his sister [REDACTED], residing in Gdansk, Poland, as another heir to the policyholder.
  - f) The insured and the beneficiary also is [REDACTED].
  - g) In section nine the Appellant states that he never applied for compensation, as he did not know that this was possible.

- h) In section eleven the Appellant lists further documents he attached in addition to the aforementioned documents: an identification document, an obituary for his father and his father's death certificate.
16. The Appellant sets out the reasons for the appeal as follows: *"I can not agree to the exchange of the amount claimed on the rate 10 RM : 1 DM /the letter dated 5<sup>th</sup> June 2002/ because: 1. On 6<sup>th</sup> July 1911, my father [REDACTED] took out from [REDACTED] the life insurance in German Goldmarks / Goldmarks Teilungsplan dated on 14<sup>th</sup> February 1924/ Annex 2, point B/. 2. [REDACTED] guaranteed to pay back the sum of the insurance in a declared time, in the full real value of it, which results from the following regulation: a/ "Kriegsfonds" [warfund] / Allgemeine Versicherungsbedingungen für Todesfallversicherung [General conditions for straight life insurance]/ Annex 1, §24/. b/ "Teilungsplan und Sicherheitsrücklage" [sharing agreement and contingency reserve] according to which all losses of the Insurance Company are covered by the Insurance Company, and not by the insurant / Annex 2, point D/. c/ on 10<sup>th</sup> February 1933 [REDACTED] sent a letter to my father from which it is clear that mortgage was the main base on which the life insurance was guaranteed / "aufgewertete Hypotheken" [revaluated mortgages] / and not only cash / Annex 3/. According to 'Aufwertungsschein' [revaluation form] no [REDACTED] dated 5<sup>th</sup> March 1931, the amounts of the insurance was established on 417.00 Reichsmark / Annex 4/. After the Second World War German Mark was devaluated. The exchange rate of RM to DM was 10:1. Therefore, to establish the guaranteed life insurance value, as in point 3, the given amounts should increase up to 4,170.00 RM, and then devaluated to 417.00 DM. The amount of 417.00 DM is today of approximately the same value as 417.00 RM in 1930. The [REDACTED] had been making profit on the insured amount for more than ninety years. ..."*

## **THE INVESTIGATION AND DECISION BY THE RESPONDENT**

17. The Respondent denied further payment for the reasons quoted above (paragraph 8).
18. In response to the appeal the Respondent stated in its letter dated 8<sup>th</sup> March 2004: *"[REDACTED] (now [REDACTED]) informed Mr [REDACTED] in a letter dated June 5, 2002 about our offer and the calculations in reference to insurance policy no. [REDACTED] taken out by his father, Mr [REDACTED]. In return, the only statement we received from Mr [REDACTED] was that he accepted the settlement, also in the name of his sister (see enclosure: letter of Mr [REDACTED] dated June 25, 2002). Payment to Mr [REDACTED] was sent out by [REDACTED] on July 23, 2002. When we received the claim again in October 2003 we did not reopen the claim for further compensation since the claim had been settled. The calculations in reference to policy no. [REDACTED] are explained in our internal note dated December 20, 2001 and in the print out of our communication with [REDACTED] (now [REDACTED]), London of December 20, 2001 (see enclosures). We have no historic insurance file in reference to policy no. [REDACTED] or other documents from the time, only a note in our client database stating that Mr [REDACTED] was our customer (see enclosure). The basis for our calculations were the documents that were provided by Mr [REDACTED]"*.

The Respondent provided a letter dated 25<sup>th</sup> June 2002 which is written by the Appellant and in which the Appellant states that he and his sister [REDACTED] *"accept settlement of the above amount"*, although there is no specific amount mentioned in the letter. There is a handwritten note on the letter stating that 213.21€ should be transferred to the Appellant's account. The Respondent provided a calculation dated 20<sup>th</sup> December 2001 that shows how the amount was calculated, the copy of an e-mail sent from the Respondent to

[REDACTED] and a copy of an old insurance card which shows the name of the Appellant's father, his birth date and the number of the insurance policy.

## **THE ISSUES FOR DETERMINATION**

19. The first issue for determination is whether the Panel has jurisdiction in this case.

Pursuant to section 7.4 of the Valuation Guidelines (Annex D of the Agreement) - prior settlement by companies - *“any claim settled between a claimant and an insurance company after the war will not be reopened, even if the claimant would be entitled to a larger amount under the Valuation Guidelines”*. This provision addresses settlements made in “pre-ICHEIC” times, i.e. settlements made between companies and policyholders, insured or beneficiaries at a time between the end of the Second World War (“*after the war*”) and before the Valuation Guidelines were agreed upon, or settlements made outside the ICHEIC procedures. But its application is not inappropriate if, as in this case, the settlement was made in an ongoing claim procedure, because it reflects the general rule that settlement ends a dispute, and that, once a case is settled, it can be reopened only under special circumstances such as a finding of deception or duress underlying the settlement. This is not the case here. But reopening is also possible if the settlement was imbedded in certain procedural rules, on which the parties to the settlement could rely, and these rules had been neglected in a manner prejudicial to the weaker contracting party. The Panel concludes that such is the case here. [REDACTED], a German company bound to the Agreement even if belonging to a non-[REDACTED] “mother company”, failed to properly apply the Valuation Guidelines (Annex D of the Agreement). The Appellant, not expert in the ICHEIC's claims process had a right to rely in good faith on the correct application of the rules by [REDACTED]. Despite a promise made by [REDACTED], no copies were sent to the ICHEIC so that ICHEIC was not in the position to take note of the incorrect application of the Guidelines and intervene in favour of the Appellant. Even though the Appeals Panel assumes no action in bad faith and accepts that the company's actions which misled the Appellant were inadvertent, the Panel holds that the case should be reopened. This is especially so since the Panel does not know whether [REDACTED] in its offer informed the Appellant about his right not to accept an offer and to appeal the decision of the company ([REDACTED] failed to provide a copy of this letter in the appeals procedure as requested by section 8.1 of the Appeal Guidelines and by letter dated 27<sup>th</sup> February 2004). Therefore, the Panel concludes that it has jurisdiction in this case.

20. Since the existence of the policy is not questioned and the Appellant and his sister are Holocaust victims and as children of their father heirs of the beneficiary, the only further issue for determination is whether the valuation made by [REDACTED] is correct. That the valuation was not correct is explained in the succeeding section to this award.

## **VALUATION**

21. Pursuant to section 2.1 of the Valuation Guidelines *“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 shall 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”*.

22. The first step of a valuation following the BEG is applying § 128 BEG that explicitly states that all unpaid premiums are to be deducted on a basis 10 Reichsmark = 1 Deutsche Mark. In addition, the so called “*old savings compensation*” of RM 3,750 (§ 128 I BEG) must be added. This leads to the amount of (RM 417.00 + 3,750.00 =) RM 4,167.00.
23. Pursuant to § 128 I BEG “*Benefits denominated in Reichsmarks or which would have been paid in Reichsmarks under the regulations in force prior to the currency conversion will be calculated using the laws and regulations issued on the occasion of the monetary reforms*”. This reference to “*monetary reforms*” relates to the Währungsgesetz (currency law) and §§ 16 and 24 Umstellungsgesetz (conversion law) under which there must be a conversion on the basis of the rate Reichsmark 10 = Deutsche Mark 1, resulting in DM 416.70.
24. However, [REDACTED] failed to apply the other steps that must be applied according to the Valuation Guidelines as lined out in the following.
25. To calculate the value to 2000 according to section 2.1 of the Valuation Guidelines a multiplier 8 must be applied which results in DM 3,333.60.
26. 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 upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 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: 5.0 % according to the month, in which the decision is made, plus two months, i.e. 13/12 of 5.0 %). When calculating the interest the calculation must be based on an amount of DM 3,333.60 until July 2002. From August 2002 onwards the payment made in July 2002 must be reflected and the interest must be calculated on the basis of (DM 3,333.60 – DM 417.00 =) DM 2,916,60. This results in the amount of DM 3,513.6144 for 2001, DM 3,676.85732 for 2002, DM 3,851.5080427 for 2003 and DM 4,060.1313950129167 for 2004 which gives € 2.075,91 on the basis of an exchange rate of DM 1.95583 = € 1.00. The sum of DM 417.00 (€ 213.21) paid in July 2002 has to be deducted which gives DM 3.643.13 or € 1,862.70.
27. 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, if he is himself a survivor of the Holocaust, as the Appellant is in this case. However, the equivalent in US\$ of 213.21 € which have already been paid in July 2003 (see paragraph 18) must be deducted.
28. It is concluded, therefore, that the offer made by the Respondent, for the reasons set forth above, is incorrect.

Appellant: [REDACTED]  
[REDACTED]

Appeal No.: [REDACTED]

Claim Nos.:

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

1. The appeal succeeds.
2. [REDACTED] shall pay a total of US\$ 4,000.00 minus the equivalent of € 213.21 in US\$ (which have already been paid) to be divided in equal shares between the Appellant and his sister [REDACTED] no later than the last day of the second month following the month of the decision, which is January 2005.

Dated this 10<sup>th</sup> day of November 2004

The Appeals Panel

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Timothy J. Sullivan  
Chairman

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Rainer Faupel  
Panel Member

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Abraham J. Gafni  
Panel Member