

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]

Represented by:
[REDACTED],
Saint-Denis (France)

APPELLANT

AND

[REDACTED]

RESPONDENT

DECISION

[REDACTED] makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW and enters the following decision pursuant to section 10 of the Appeal Guidelines:

BACKGROUND

1. The Appellant is [REDACTED], née [REDACTED], born on [REDACTED] 1925 in Orlowen, Eastprussia (Germany). She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1893 in Borghorst (Germany) and died in 1962 in Santiago (Chile); [REDACTED] was born on [REDACTED] 1891 in Liessen, district of Angerburg (Germany) and died on 16th February 1952 in Santiago (Chile).

The Appellant has a sister, [REDACTED], née [REDACTED], born [REDACTED] 1926, and a brother, [REDACTED], born on [REDACTED] 1939.

The [REDACTED] family fled Germany in 1939 to escape persecution by the German National Socialist Regime and emigrated to Chile.

The Appellant is represented by her son.

2. The Respondent is [REDACTED].
3. The Appellant submitted several claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” ([REDACTED]) issued policies of life insurance to her father and that a company, which she could not name, issued commercial or property insurance.

These claims were assigned claim numbers as follows:

- a) No. [REDACTED] – This has been determined to be a so-called “replica file” and has been closed.
- b) No. [REDACTED] – This file contains a note that reads: “*The Claimant has appealed the decision made in relation to this claim*”. However, there is no decision letter in this claim file.
- c) No. [REDACTED] – This is a claim against an unnamed company for “*commercial and property insurance*”.
- d) No. [REDACTED] – This is the subject of the appeal now under consideration.

In the decision letter of [REDACTED], dated 23rd October 2003, there is an erroneous reference to another claim number ([REDACTED]). That number, however, is in no way related to claim number [REDACTED].

4. The ICHEIC submitted the claims to the [REDACTED] and the German companies.
5. [REDACTED] stated in its decision letter dated 23rd October 2003: “*We refer to your mother’s inquiry regarding insurance policies taken out by your grandmother, Mrs. [REDACTED]-[REDACTED] and your grandfather, Mr. [REDACTED] with [REDACTED] which now belongs to [REDACTED]. ... In accordance with the “Agreement” [REDACTED] has found a file company card in the company archives. This file card refers to policy No. [REDACTED] taken out by Mr. [REDACTED]. According to the files found by [REDACTED], Mr. [REDACTED] has stipulated in the insurance contract a sum insured of RM (Reichsmark) 5,000.00 for the policy No. [REDACTED] with an annual premium of RM 213.45. The policy started as per 1st December 1927. The final maturity of the insurance contract would have been 1st December 1947. [REDACTED] further found a letter of [REDACTED] dated 25th November 1938 as well as a statement for the blocked account No. [REDACTED] which show that the policy of Mr. [REDACTED]*”

for which your mother has filed a compensation claim was surrendered on 31st December 1938 and accordingly paid out 4th January 1939 into a blocked account with [REDACTED], [REDACTED]. Please find attached a copy of the file card, the letter of [REDACTED] and the account statement". [REDACTED] continued and explained why, although the insurance policy was properly paid by [REDACTED], the Appellant is entitled to a payment as if the policy had remained unpaid and explained, why the sum that must be paid is US\$ 4,000.

6. The Appellant submitted an appeal dated 22nd February 2004 to the Appeals Office, which was accompanied by an attachment setting out the reasons for the appeal.
7. The Appeals Office received a facsimile appeal form on 23rd February 2004 and, on 25th February 2004, an original copy accompanied by a copy of a power of attorney, dated 8th August 2000, issued by [REDACTED] in Santiago (Chile), which shows that Appellant's son is allowed to represent his mother in the claim and appeals procedure. The Appeals Office mailed copies of these documents to the Respondent on 22nd March 2004.
8. [REDACTED] responded in a letter dated 7th April 2004, in which it asked the Panel "to consider the following arguments when deciding upon the reasons provided by the Claimant for his appeal". [REDACTED] continued by setting out its view on the value of the Reichsmark and the deduction of unpaid premiums in response to the Appellant's reasons for appeal (for further details see paragraph 16).
9. On 30th April 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.
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.

In conformity with section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

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

THE CLAIM

12. In the claim file, which is a print out of an e-file, there are two copies of the claim form, which are very similar. There are, however, several differences: In section three of one claim form no insurance company is identified and no place of purchase is provided. In the other the company is identified as "[REDACTED]" and it is further asserted that the policy was purchased in Germany. In section five of one form the type of insurance is stated as "life insurance" and "other" to which is added, "commercial or property insurance". In the other claim form only "life insurance" has been marked with the comment, "see documents enclosed".

The Appellant provides the following information with respect to the claims:

- a) In section six of both claim forms the policyholder is identified as [REDACTED], the Appellant's father, who was born on [REDACTED] 1893 in Borghorst, Germany. He died in 1962 in Santiago, Chile. [REDACTED] and [REDACTED] née [REDACTED] (the policyholder's two other children) are identified as living heirs of the policyholder.
 - b) The insured person is identified as the Appellant's father.
 - c) The beneficiary is unknown.
13. The Appellant provided additional supporting documents with the claim forms:
- a) Copies of her, her son's and her mother's passport.
 - b) Copy of a letter dated 11th October 1938 from the "[REDACTED]" (the President of the Finance Directorate of Cologne) to the "[REDACTED]" ([REDACTED]) which states: *"That the above-named persons [[REDACTED] and Frau [REDACTED]] can only dispose of their life insurance at the [REDACTED] in Berlin with my approval"*.
 - c) A copy of a letter dated 2nd February 1939 from the [REDACTED] to Mr [REDACTED], which states: *"Further to your application of 30th of the previous month I herewith alter my decision dated 8 October 38 as follows. The monthly amount of RM 500.- excluded from the security order may now be taken from your account at the bank [REDACTED] in Cologne instead of from your previous account at the [REDACTED] at Königsberg, Branch Lötzen"*.
 - d) A copy of a letter from Mr [REDACTED] to the [REDACTED] dated February 1939 asking for the release of RM 3,358.60 from his blocked account at the [REDACTED] in relation to enclosed invoices.
14. The Appellant sets out her reasons for appeal as follows: **" 1. Value of the Reichsmark – Research we have carried out into the value of the Reichsmark in the 1930's has shown that, in terms of "purchasing power", the sum specified in [REDACTED] policy number [REDACTED] is considerably higher than the offer put forward by the [REDACTED] [[REDACTED]]. – We do not feel that the conversion rate of 10 Reichsmarks = 1 Deutschmark is fair. This conversion rate was introduced in 1948, whereas the policy was wound up in 1938. If my grandparents had been in possession of this policy in 1938, they would have had access to a sum approximately ten times greater than the sum we are being offered today. For the value of the Reichsmark, see in particular: Ritsch/Spoerer, "Jahrbuch für Wirtschaftsgeschichte" [Journal of Economic History], 1997. 2. Deduction of unpaid premiums – Please refer to the document titled "Holocaust Era Insurance Claims – Processing Guide". On page 28 of the said document, under the section titled "Additional rules for determining value for policies with known and unknown base values", you will find the following: "Specific deductions to the base value could be made if: ... 2. Premiums were not paid, subject to the following conditions ... If premiums stopped after the date of deportation or the start of the Holocaust era (using Schedule I), the company shall deduct those unpaid premiums from the full sum insured, up to a maximum of two years. Please also refer to the letter from [REDACTED] dated 25th November 1938 to my grandfather. Under no circumstances does this document alone prove that my grandparents bought back the policy of their own free will. Indeed, you will find the following written on the reverse of the document: "Consequently we must point out, that the policy can only be converted or bought back by 1/12/38, if we have received the relevant application by no later than 30/11/38. If we have not received the relevant application by no later than 30/11/38. If we have not received any such application by this date, we will be forced to cancel the policy of our own accord, since the premiums have been in arrears since**

1/9/38". In its "valuation sheet", however, the [REDACTED] deducted "9 unpaid premiums" instead of two".

THE INVESTIGATION AND DECISION BY THE RESPONDENT

15. The [REDACTED] offered US\$ 4,000.00 in its decision letter of 23rd October 2003 for reasons set out and summarised above (paragraph 5).

16. In its response dated 7th April 2004 the [REDACTED] writes: "*1. Value of the Reichsmark: We believe that the Claimant's alleged "research [...] carried out into the value of the Reichsmark in the 1930s" is unsubstantiated, as we have not seen any documentation filed by him to support his assertion. However, even if the Claimant's allegations were true, a decline of "purchasing power" of the Reichsmark from the 1930s to the end of its existence in 1948 would have to be attributed to the result of war which affected the whole German economy, as well as the economies of all countries at war during this era. The exchange rate of 10 Reichsmark = 1 Deutsche Mark was fixed by the German Länder on behalf of laws ("Gesetze zur Neuordnung des Geldwesens" von 1948) promulgated by the military governments in Germany of the Allies of World War II. We believe it is not appropriate for us to comment on the "fairness" of these laws. ... This state fixed exchange rate became the legal basis for all following (economic) laws, including the "Bundesentschädigungsgesetz" which is the basis for our compensation offers for German policies according to the Agreement, Annex D No.2". 2. Deduction of Unpaid Premiums: We believe that the Claimant is mistaken when he tries to base the arguments for his appeal on the "Holocaust Era Insurance Claims Processing Guide". As stated in the disclaimer on page 2 "This processing guide is not a legal document". In fact it was never signed or endorsed by all parties of the "Agreement dated 16th October 2002". The [REDACTED] deeply regrets the misquotation of the Agreement dated 16th October 2002" on page 28 of this processing guide to which the Claimant refers in his appeal. It is not correct that "For all claims, whether issued in or outside of Germany [...] the company shall deduct those unpaid premiums from the full sum insured, up to a maximum of two years (emphasis added)". In fact the "Agreement dated 16th October 2002" is making a strict distinction between "Policies issued in Germany" (see Annex D No. 2) and Determining Base Values (not Germany)" (see Annex D No. 3). According to Annex D No. 2 the valuation of compensation for German policies is solely based on the "Bundesentschädigungsgesetz" (BEG). § 128 II BEG explicitly states that all unpaid premiums have to be deducted on a basis 10 Reichsmark = 1 Deutsche Mark. The limitation that unpaid premiums shall be deducted "[...] up to a maximum of two years" is only stipulated in Annex D No. 3.3.2. referring to policies "not [in] Germany". The [REDACTED] has also pointed out this misquotation to ICHEIC and will do so again. ...".*

THE ISSUES FOR DETERMINATION

17. Since the existence of a policy and the entitlement of the Appellant to the proceeds of this policy as heir (one of three heirs) of her parents are not in question, the main issue for determination is whether the sum of US\$ 4,000 offered by the [REDACTED] is correctly calculated according to the Valuation Guidelines (Annex D). This will be discussed under the caption "Valuation" below.

18. However, a preliminary determination must be made as to whether the Appellant is the only person entitled to the proceeds of the insurance policy.
19. Where it appears that a third person may be entitled to part of the proceeds of an insurance policy claimed in the appeal, the decision of the Panel shall reflect any such entitlement and the Panel may order the payment of the appropriate amount to any such third person out of the sum awarded by the Panel (section 19.2 Appeals Guidelines).
20. The Succession guidelines as set out in Annex C of the Agreement must be applied in matters concerning the right of the Claimant to succeed to or inherit the benefits of an insurance policy (the "Proceeds") from the person who was entitled to the Proceeds at the insured event (the "Deceased Person"). The Appellant states that the beneficiary of the life insurance policy is unknown and that there are three living heirs of the policyholder, namely she and her two siblings [REDACTED], née [REDACTED], and [REDACTED]. If there are, as here, issue and no spouse (category A1-A3 of the Succession Guidelines) all proceeds are distributed to issue as provided in Paragraph 2(i) of the Succession Guidelines. Where the Proceeds or part of the Proceeds are to be divided in accordance with this Paragraph 2 (i), those proceeds shall be divided into as many equal shares, as there are (a) living members of the nearest generation of issue then living. Thus, the Appellant and her two siblings are entitled to receive equal shares of any amounts to be distributed and the decision of the Respondent must be adjusted accordingly.

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. Where there is, as here, evidence that policies were paid, but the payment was into a blocked account, these policies shall be given the same valuation as applied to unpaid claims (section 5.1 Valuation guidelines). The payment to the Claimant shall be made by the [REDACTED] after corresponding amounts have been provided by the Foundation.
23. For policies issued in Germany the payment during the period from the start of 1938 through the end of 1939 is deemed to be made into a blocked account if it was made to the policyholder or beneficiary, unless there is evidence that the payment was not made into a blocked account (section 5.5.2 Valuation Guidelines). Here, it is positively known that a payment was made into a blocked account. Whether the policy was bought back of the owner's free will or whether it was bought back under duress, therefore, is not relevant to the issue of valuation.
24. Pursuant to section 2.1 of the Valuation Guidelines, the company shall assess the claim as if it had been submitted to the BEG and use the same methods of valuation. As the Respondent pointed out correctly in its letter dated 7th April 2004, one 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.
25. A valuation applying the prescribed steps leads to a base value of RM 5,778.95, which is the difference of RM 5,000 (insured sum) reduced by RM 1,921.05 (the nine non-paid

premiums of RM 213,45 each totalling RM 1,921.05) plus the so called “old savings compensation” of RM 2,700 (§ 128 I BEG).

26. 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 577.895.
27. To calculate the value to 2000 a multiplier 8 must be applied resulting in DM 4,623.16.
28. 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 % according to the month, in which the decision is made, plus two months, i.e. 12/12 of 4.75 %), which results in the amount of DM 4,872.81064 for 2001, DM 5,116.451172 for 2002 and DM 5,359.48260267 for 2003, which gives € 2.740,26 on the basis of an exchange rate of DM 1.95583 = € 1.00.
29. 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.
30. It is concluded, therefore, for the reasons set forth above, that the offer made by the Respondent is correct.
31. It is appreciated that from the Appellant’s point of view, there might be reasons to criticize the result of the valuation of the policy when calculated according to the Valuation Guidelines. It must be recognized, however, that the Appeals Panel and its Members as well as the Appellant by signing the Appeal Form, are bound by the Agreement and its Annexes, including the Valuation Guidelines. The BEG method that must be applied for policies issued in Germany, cannot be ignored. Finally, it is irrelevant whether “Processing Guides” containing incorrect information are handed out to Claimants or Appellants. The only rules that are binding are those contained in the Agreement and its Annexes.

Appellant: [REDACTED]

Appeal No.: [REDACTED]

Claim No.: [REDACTED]

IT IS THEREFORE HELD AND DECIDED:

1. The appeal is dismissed.
2. The decision made by [REDACTED] is amended to require that the offer of US\$ 4,000 be divided among the Appellant, her sister [REDACTED], née [REDACTED], and her brother [REDACTED] in equal shares.

Dated this 25th day of August 2004

For the Appeals Panel

[REDACTED]