

## 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

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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**

### **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] 1934 in Budapest (Hungary). She is the daughter of [REDACTED] (formerly [REDACTED]) and [REDACTED] (formerly [REDACTED]), née [REDACTED]. [REDACTED] was born on [REDACTED] 1901 in Seregélyes (Hungary) and died on 22<sup>nd</sup> October 1958

in Budapest (Hungary); [REDACTED] was born on [REDACTED] 1907 in Budapest and died on 22<sup>nd</sup> September 1963. The Appellant is their only child.

The [REDACTED] family changed its name from [REDACTED] to [REDACTED] to “cover” its Jewish origin for protection from the German National Socialist Regime. They were taken to the ghetto in Budapest but escaped. [REDACTED] was also in a Soviet labour camp.

2. The Respondent is [REDACTED].
3. The Appellant submitted a claim form dated 15<sup>th</sup> April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that “[REDACTED]” issued a policy of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] confirmed in its decision letter dated 27<sup>th</sup> October 2003 the existence of “*policy No. [REDACTED]*” that had been taken out on 24<sup>th</sup> October 1934 and had an insured sum of Arany (Gold) Pengö 2,000.00. [REDACTED] offered a payment of US\$ 3,600.58.
5. The Appellant submitted an appeal to the Appeals Office dated 10<sup>th</sup> February 2004, which was accompanied by an attachment setting out the reasons for the appeal and a copy of a letter from [REDACTED], dated 30<sup>th</sup> December 2003.
6. The Appeals Office received the appeal form on 12<sup>th</sup> February 2004, acknowledged receipt of the appeal and mailed a copy to the Respondent on 19<sup>th</sup> February 2004.
7. The Appellant wrote back in a letter dated 26<sup>th</sup> February 2004 that reads: “... *I was in correspondence with [REDACTED] before submitting the Appeal Forms. I was trying to establish why I received such a low offer. After learning of what the conversions from Gold Pengö to Pengö should have been and still not understanding clearly how they arrived to the figure I decided to appeal. Please refer to correspondence between [REDACTED] and myself passed on to you already. ...*”.
8. [REDACTED] responded in a letter dated 5<sup>th</sup> March 2004 and requested the Appeals Panel for reasons it had set out before to “*reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it*”.
9. On 23<sup>rd</sup> March 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 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.

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 6<sup>th</sup> 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. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in her claim form:

- a) In section three she identifies the company that issued the policy as “[REDACTED]”. She asserts that the policy was purchased in Budapest, Hungary.
- b) In section five she provides the policy number as [REDACTED]. She asserts that the insured sum was 2,000 gold Pengö. The date of issue is 24<sup>th</sup> October 1934 and the date of maturity is 1<sup>st</sup> November 1954. She asserts that premium payments were made on a weekly basis and the premium payment was 15.38 Gold Pengö. She asserts that all premiums were paid to the best of her knowledge and were stopped because of the Second World War and the German occupation. With regard to question 5.11 which asks *“has anybody approached the insurance company about this insurance policy?”* she writes, *“1964 my solicitor put on application in copies enclosed”*.
- c) The policyholder is identified as [REDACTED] (formerly [REDACTED]), the Appellant’s father, who was born on 27<sup>th</sup> January 1901 in Seregelyes. She asserts that he changed his name to “cover” his Jewish origin to protect him from the Nazis. He died on 22<sup>nd</sup> October 1958.
- d) In section seven the insured person is identified as the Appellant’s father.
- e) In section eight the named beneficiary is identified as the Appellant’s mother, [REDACTED] née [REDACTED], who was born on [REDACTED] 1907 in Budapest, Hungary and who died on 22<sup>nd</sup> September 1953.
- f) With regard to the issue of compensation, in section nine the Appellant indicates that she has not received any compensation, and writes, *“at the time of my application no compensation agreement was concluded between Federal Republic and Hungary”*.
- g) In section eleven regarding *“further information”* the Appellant writes, *“an application was made by our solicitors. Please find copies of correspondence enclosed. I came to England as a Hungarian refugee in 1956. I received these documents after my parents died. I saw you advertisement on 19/02/2000 in the Saturday Telegraph which prompted me to reapply”*.

13. The following documents were submitted with the claim form:

- a) Copies of the Appellant’s British passport and driving licence.
- b) A copy of a letter dated 6<sup>th</sup> February 1964 to the Board of Trade regarding policy number [REDACTED] issued by [REDACTED]. This letter requests assistance in locating the company.
- c) A copy of a letter from the Board of Trade dated 17<sup>th</sup> February 1964 to the solicitors [REDACTED] & Co. regarding the afore-mentioned policy. This letter states that the British Embassy in Bonn has been asked if the company is in existence.

- d) A copy of a letter dated 24<sup>th</sup> March 1964 from the Board of Trade to the solicitors [REDACTED] & Co. informing them that a reply has been received from the Consul-General Berlin. This letter states, *“it would appear that the company has now been absorbed by [REDACTED] and in order to establish whether Mrs. [REDACTED] has any claim against this company the Consul-General would need to know whether premia were paid in Pengoe or Reichsmark before and during the war, and in what currency premia, if any, were paid subsequently”*.
  - e) A copy of a letter dated 28<sup>th</sup> April 1964 to the Board of Trade asking whether a compensation agreement between the German Federal Republic and Hungary will soon be concluded.
  - f) A copy of a newspaper article from 1967 regarding ‘Ostpolitik’.
  - g) A copy of the insurance policy, number [REDACTED] issued to the Appellant’s father by [REDACTED] in Budapest.
  - h) A copy of the Appellant’s birth certificate confirming the change of the family name to [REDACTED].
14. In her reasons for appeal the Appellant writes: *“...Having looked into the financial background I found that the offer is neither reflecting the intrinsic value of the policy nor is it taking into consideration the elapsed decades. ... The operative word being “Guidelines” must mean that they are a guide or aid in calculating the sum payable and should not be taken as a rule cast in stone. Neither do the Guidelines suggest a categorical exclusion of interest payable. I am informed by more than one financial advisor – familiar with insurance regulations – that under normal commercial practice it would be inconceivable for an insurance company to ignore interest payment after five decades of holding a matured policy. ...”*.

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

15. In the final decision letter issued on 27<sup>th</sup> October 2003 the Respondent confirms the issuing of policy number [REDACTED] to the Appellant’s father and states, *“due to the war-related loss of nearly all original documents we have been able to find out mainly on the basis of the document copies submitted by you that the a/m policy had been taken out on 24<sup>th</sup> October 1934 and an insured sum of 2,000.00 gold pengoes had been agreed upon. Moreover, an annual premium of 94.00 pengoes had been stipulated. The final maturity was 1<sup>st</sup> November 1954. We do not have any further information, mainly we are not able to make any statement as to further agreements in the favour of third parties. Based on these facts we have evaluated your claim in accordance with the ‘Valuation Guidelines’, which are part of the ‘Agreement’ subject to the above explanations alone to show the current value of the policy. For your better understanding, we have attached a valuation sheet to explain the calculation. This calculation leads to a current value in the amount of USD 3600.58 which we offer to you as compensation”*.
16. Further comments were made during the appeals process in a letter dated 5<sup>th</sup> March 2004, in which the Respondent states, *“as already mentioned to the claimant in our letter dd 27<sup>th</sup> October 2003 offering compensation and further, explanatory letters dd 19<sup>th</sup> November 2003 and 30<sup>th</sup> December 2003 we had to base the calculation of our offer on the rule of Section 7.3 of Annex D of the Valuation Guidelines which are part of the ‘Agreement’ dd 16<sup>th</sup> October 2002. The rule stipulates that insurance policies, which – as in the case in*

*question – were denominated with link to the gold price are treated as if taken out in a nominal currency. Based on this rule the offer was successively calculated subject to further criteria of the Valuation Guidelines properly. A further payment of interest on the amount of the offer, as requested by the claimant, is not provided by the ‘Agreement’ and could, hence, not be made For the same reasons explained above, we respectfully ask the Panel to reject the appeal submitted with respect to this claim, and to confirm [REDACTED]’s previous decision on it”.*

## **THE ISSUES FOR DETERMINATION**

17. The only issue for determination in this appeal is whether the valuation as calculated by [REDACTED] is correct.

## **VALUATION**

18. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines (Annex D) two phases. The first is the assignment of a base value to a policy; the second is the application of appropriate multipliers to the base value to produce the current value.
19. The base value of a policy, according to section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event, which in this case is the maturity date in 1954. The value at that time was (nominal) Gold Pengö 2,000. However, at that time Hungary had changed its currency to Forint, after the Pengö had suffered a hyperinflation. Nevertheless a calculation must be made on the basis of Pengö as described in the Valuation Guidelines (Annex D of the Agreement).
20. No deductions, as mentioned in section 3.3. of the said Guidelines, need be made, because there is no valid suggestion that premiums were not fully paid until the date of the insured event. The Appellant states in her appeal form that to the best of her knowledge all premiums were paid; the Respondent has no evidence of unpaid premiums and, therefore, did not make deductions which is in accordance with section 3.3.2 of the Valuation Guidelines.
21. Pursuant to section 7.3 of the Valuation Guidelines “*policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency*”.
22. The value of the policy in Hungarian Pengö corresponds, according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.1376 laid down in Step 1 of Schedule 2 of the said Annex, to the value of US\$ 275.20.
23. Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This results in a figure of US\$ 3,105.91 by the end of 2000.
24. According to Step 3 of Schedule 2 of the said Annex, additions must be made to the dollar 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 issued 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 amounts of US\$ 3,273.62914 for 2001, US\$ 3,437.310597 for 2002, and US\$ 3,600.5825803575 for 2003.

25. It is appreciated that from the Appellant's point of view there might be reason 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. Neither the Panel nor an individual Panel Member may substitute a calculation pursuant to those Guidelines with a calculation based upon a calculation of interest, as Appellant requests. The Guidelines are, indeed, Guidelines and not to be taken as "*a rule cast in stone*". However, to the extent that they provide rules for the calculation of interest, the Panel must accept and apply them when valuating the claim.
26. For the foregoing reason, the Appeals Panel concludes that the Valuation Guidelines as calculated by the Respondent were correct, and the Appellant is entitled to receive the sum in accordance with those calculations as reflected in this decision.

**IT IS THEREFORE HELD AND DECIDED:**

The appeal is dismissed.

Dated this 25<sup>th</sup> day of August 2004

For the Appeals Panel

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[REDACTED]