

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]

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER: [REDACTED]
CLAIM NUMBERS: [REDACTED];
[REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]

BETWEEN

[REDACTED],
[REDACTED] and
[REDACTED]

APPELLANTS

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. Appellant [REDACTED] was born on [REDACTED] 1927 in Szeged. He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1892 in Veszprem (Hungary) and died on 11th January 1962 in Budapest;

[REDACTED] was born on 21st October 1899 in Detta (Romania) and died on 3rd November 1979 in Budapest. [REDACTED] had a brother, [REDACTED], who died and had two children, [REDACTED] and [REDACTED]. Since [REDACTED] decided the claim submitted by [REDACTED] with regard to [REDACTED] and [REDACTED] as well, they too filed appeals. All the appeals are subject of this decision (see para. 22, 23 below).

The [REDACTED] family lived in Budapest and were forced to hide for eight months during 1944 and 1945 to escape persecution by the National Socialist regime.

2. The Respondent is [REDACTED] as the legal successor of “[REDACTED]” and “[REDACTED]”.
3. The Appellant [REDACTED] submitted claims to the International Commission on Holocaust Era Insurance Claims (ICHEIC), to which ICHEIC assigned the claims numbers shown below and by which he claims that companies issued policies of life insurance to his father [REDACTED]:
 - a) Claim Number [REDACTED]
A life insurance policy issued on 29th September 1928 by “[REDACTED]”, policy number [REDACTED], with an insured sum of US\$ 125, which was to mature on 29th September 1948.
 - b) Claim Number [REDACTED]
A life insurance policy issued on 21st July 1931 by “[REDACTED]”, policy number [REDACTED] (this number is given by the Appellant in his claim form, but the copy of the policy is hard to read – the translator read [REDACTED], [REDACTED] read [REDACTED]) with an insured sum of US\$ 2,000, which was to mature on 21st July 1951.
 - c) Claim Number [REDACTED]
A life insurance policy issued on 29th September 1928 by “[REDACTED]”, policy number [REDACTED], with an insured sum of US\$ 175, which was to mature on 29th September 1948.
 - d) Claim Number [REDACTED]
A life insurance policy issued on 29th September 1928 by “[REDACTED]”, policy number [REDACTED], with an insured sum of Swiss Francs 5,000, which was to mature on 29th September 1948.
 - e) Claim Number [REDACTED]
A life insurance policy issued on 21st July 1931 by “[REDACTED]”, policy number [REDACTED], with an insured sum of US\$ 2,000, which was to mature on 21st July 1951.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letters dated 15th April 2003, which were addressed to the Appellant, his niece [REDACTED] and his nephew [REDACTED]: “*We are pleased to inform you that we are willing to offer you, within the framework of the German Foundation and ICHEIC procedures, a voluntary payment in the total amount of USD 24,772.76 ...*”, which had to

be shared regarding the shares of inheritance as follows: US\$ 12,386.38 for the Appellant and US\$ 6,193.19 for each of the Appellant's late brother's children [REDACTED] and [REDACTED]. Calculations of the offer per claim and policy number (ICHEIC number [REDACTED] / policy number [REDACTED], ICHEIC numbers [REDACTED] and [REDACTED] / policy number [REDACTED], ICHEIC number [REDACTED] / policy number [REDACTED] and ICHEIC number [REDACTED] / policy number [REDACTED]) were attached; claim number [REDACTED] / policy number [REDACTED] was treated as being one policy [together with policy number [REDACTED] (or [REDACTED] or [REDACTED])], and, therefore was awarded only once.

5. The Appellants submitted appeals dated 4th, 23rd and 26th May 2003, which were accompanied by attachments setting out the reasons for their appeals
6. The appeal forms received from the Appellants were incorrect appeal forms in that they 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 16th 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 Appeal 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 Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant [REDACTED] by letter dated 18th June 2003 to sign an amended appeal form.
8. In addition, the Appeals Office acknowledged receipt of the two appeal forms sent by [REDACTED] and [REDACTED] in letters dated 21st July 2003 and informed them, that their uncle [REDACTED] had already filed an appeal prior to the receipt of their appeal forms. Further, the Office informed [REDACTED] and [REDACTED] that their appeals would be resolved in the appeal filed by their uncle [REDACTED].
9. On 7th August 2003 the Appeals Office received the new Appeal Form, which is dated 30th June 2003 plus attachments that already had been sent with the "imperfect" appeal form and mailed a copy to the Respondent.
10. [REDACTED] responded in a letter dated 9th September 2003 and requested the Appeals Panel for reasons it had set out before to "*reject the appeal submitted with respect to these claims and to confirm [REDACTED]'s previous decision on it and specifically our payment offer of USD 24,772.76, without any further interest*".
11. On 9th 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.
12. No request for an oral hearing has been received from either party. The appeal proceeds on a "*documents only*" basis.
13. 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

14. Appellant [REDACTED] has submitted the following information in relation to the claim for the proceeds of a life insurance policy.

a) Claim Number [REDACTED]

In the claim form the Appellant identifies “[REDACTED]” as the company that issued an insurance policy to his father [REDACTED]. For further details of the policy he refers to a copy of the policy number 227637. These details are:

- (i) Currency: US\$
- (ii) Sum insured: 125
- (iii) Date of issue: 29th September 1928 (replacing policy number [REDACTED])
- (iv) Date of maturity: 29th September 1948
- (v) The insured and beneficiary is his father and, in the event of his earlier death, his mother [REDACTED], née [REDACTED], or her lawful heirs.

b) Claim Number [REDACTED]

In the claim form the Appellant identifies “[REDACTED]” as the company that issued an insurance policy to his father, [REDACTED]. For further details of the policy he refers to a copy of the policy number [REDACTED] (or [REDACTED] or [REDACTED]). These details are:

- (i) Currency: US\$
- (ii) Sum insured: 2,000
- (iii) Date of issue: 31st July 1931
- (iv) Date of maturity: 21st July 1951
- (v) The insured and beneficiary is his father and, in the event of his earlier death, his children [REDACTED] and [REDACTED].

c) Claim Number [REDACTED]

In the claim form the Appellant identifies “[REDACTED]” as the company that issued an insurance policy to his father, [REDACTED]. For further details of the policy he refers to a copy of the policy number [REDACTED]. These details are:

- (i) Currency: US\$
- (ii) Sum insured: 175
- (iii) Date of issue: 29th September 1928 (replacing policy number [REDACTED])
- (iv) Date of maturity: 29th September 1948
- (v) The insured and beneficiary is his father and, in the event of his earlier death, his mother [REDACTED], née [REDACTED], or her lawful heirs.

d) Claim Number [REDACTED]

In the claim form the Appellant identifies “[REDACTED]” as the company that issued an insurance policy to his father, [REDACTED]. For further details of the policy he refers to a copy of the policy number [REDACTED]. These details are:

- (i) Currency: Swiss Franks
- (ii) Sum insured: 5,000
- (iii) Date of issue: 29th September 1933
- (iv) Date of maturity: 29th September 1948
- (v) The insured and beneficiary is his father and, in the event of his earlier death, his mother [REDACTED], née [REDACTED], or her lawful heirs.

e) Claim Number [REDACTED]

In the claim form the Appellant identifies “[REDACTED]” as the company that issued an insurance policy to his father, [REDACTED]. Further details of the policy he gives as follows:

- (i) Policy number: [REDACTED]
- (ii) Currency: US\$
- (iii) Sum insured: 2,000
- (iv) Date of issue: 21st July 1931
- (v) Date of maturity: 21st July 1948
- (vi) The insured is his father and the “*first beneficiary*” is his mother [REDACTED], née [REDACTED].

On this file there is no copy referring to a policy with the details given above but only a copy of the policy number [REDACTED] (or [REDACTED] or [REDACTED]).

15. With regard to premium payments for the policies Appellant [REDACTED] has, without providing details or presenting receipts or other written evidence, answered question 5.10 (“*To the best of your knowledge, were all premiums paid?*”) with “yes” in all claims forms.

16. Appellant [REDACTED] submitted further documents, which are:

- a) A copy of a birth certificate for [REDACTED] ([REDACTED]?) in poor quality,
- b) A translated extract from the register of births for [REDACTED],
- c) A copy of a death certificate for [REDACTED],
- d) A copy of a death certificate for [REDACTED] and
- e) A copy of the Appellant’s, [REDACTED]’s, US passport.

17. In the “old” appeal form dated 4th May 2003 Appellant [REDACTED] lists the following claim numbers: [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] and sets out the reasons for appeal as follows: “[REDACTED] *as a subsidiary of the [REDACTED] offered to pay me USD 12,386.39 (50 % of the total settlement sum) and to my nephew, [REDACTED] and niece, [REDACTED] each USD 6,193.19 (25 % of the total settlement sum in compensation of the unpaid four insurance policies (ICHEIC claim numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]) that my father [REDACTED] contracted with subsidiaries of the [REDACTED], before the war. This offer is unacceptable for the following reasons:*

- 1.) All four policies detailed in the [REDACTED] offer, were originally contracted in hard currencies (i.e. in USD or CHF) with the explicit intention that future proceeds of the policies should maintain their values irrespective of anticipated devaluations of the pre-war Hungarian currency, Pengo. Both [REDACTED] subsidiaries, [REDACTED] and [REDACTED] had accepted these conditions when they agreed to issue the above four life insurance policies to my father in hard currency values (USD and CHF).
- 2.) The calculations that [REDACTED] used for determining the amount of compensation due to us are badly flawed and are contrary to both, the letter and the spirit of the ICHEIC Guidelines. [REDACTED] incorporated a number of arbitrary steps into their computations in a deliberate and crude attempt to reduce the amounts of compensation that are due to us. ...”

In further paragraphs numbered 3.) and 4.) he sets out alleged mistakes [REDACTED] had made in the calculation. In an “attachment No.1 Correct calculation of compensation amounts” he outlines what he regards the correct calculation, which is:

“ICHEIC Claim No.	Insurance Company	Policy No.	Original Sum Insured	Value 1998	Value 2000	Value 2003	USD Equivalent
[REDACTED]	[REDACTED]	[REDACTED]	USD 175	1750	2186	2238	2238
[REDACTED]	[REDACTED]	[REDACTED]	USD 125	1250	1561	1598	1598
[REDACTED]	[REDACTED]	[REDACTED]	USD 5000	50000	62450	63933	46667
[REDACTED]	[REDACTED]	[REDACTED]	USD 2000	20000	24980	25573	25773
<i>Total value</i>							76076”.

In a further attachment he provides copies of a calculation made by [REDACTED] in a matter not belonging to the present claims or appeal.

The appeal forms submitted by [REDACTED] and [REDACTED] dated 23rd and 26th May 2003 contain the same reasons for appeal and attachments.

18. In the “new” appeal form dated 30th June 2003 Appellant [REDACTED] repeats his reasons for appeal as set out in the “old” appeal form and recalculates his calculation considering the fifth policy as follows:

“ICHEIC Claim No.	Insurance Company	Policy No.	Original Sum Insured	Value 1998	Value 2000	Value 2003	USD Equivalent
[REDACTED]	[REDACTED]	[REDACTED]	USD 175	1750	2186	2238	2238
[REDACTED]	[REDACTED]	[REDACTED]	USD 125	1250	1561	1598	1598
[REDACTED]	[REDACTED]	[REDACTED]	USD 5000	50000	62450	63933	46667
[REDACTED]	[REDACTED]	[REDACTED]	USD 2000	20000	24980	25573	25773
[REDACTED]	[REDACTED]	[REDACTED]	USD 1000	10000	12490	12787	12787
<i>Total value</i>							88863”.

19. Appellant [REDACTED] expresses his concerns about the correct valuation in further statements dated 20th September 2003, 24th November 2003 and 2nd January 2004. In his letter dated 20th September 2003 he writes: ... *I acknowledge that my claim refers only to four life insurance policies written on my late father, [REDACTED]’s life. The details of the policies are outlined on the attached sheet*”. The above-mentioned attachment was not submitted with this letter; however, in the letter dated 2nd January 2004 there was such an

attachment showing a recalculation the Appellant made “based on conversion of the nominal values of policies contracted in foreign currencies”.

This attachment reads as follows:

ICHEIC Claim No.	Insurance Company	Policy No.	Original Sum Insured	Goldpengo equivalent	pure gold troy ounces	Nominal Value USD	Value 1998 USD	Value 2000 USD	Value 2004 USD	
[REDACTED]	[REDACTED]	[REDACTED]	USD 175	175	890.75	0.75268375	313.87	3138.69	3920.23	4013.33
[REDACTED]	[REDACTED]	[REDACTED]	USD 125	125	636.25	0.53763125	224.19	2241.92	2800.16	2866.66
[REDACTED]	[REDACTED]	[REDACTED]	USD 5000	5000	5850.57	4.943735632	2061.54	20615.38	25748.61	26360.14
[REDACTED]	[REDACTED]	[REDACTED]	USD 2000	2000	10180.00	8.6021	3587.08	35870.76	44802.58	45866.64
<i>Total value</i>									79107”.	

and is based on the following calculation scheme:

- 1.) *The definition of the Hungarian currency prior to World War II was “Aranpengo”, i.e. “Gold Pengo”; its value was defined by the Hungarian Ministry of Finance Regulation No. 4560/1931 as the value of 0.263157 gram of pure gold or its daily market value at any time.*
- 2.) *The current market value of 0.263157 gram of gold (that is equivalent of 0.000845 troy oz. of pure gold) is US\$ 0.35 (US\$ 417/troy ounce of gold price as quoted in the Wall Street Journal January 2, 2004 issue)”.*

The conversion factors used are:

“Goldpengo/USD	5.09
Swiss Fr/USD	4.35
Pure gold/Pengo	0.000845
USD/gold troy oz.	417
1998 Value/Nominal Value	10
USD 2000 value/USD 1998 value	1.249
USD 2004 value/USD 2000 value	1.023”

THE INVESTIGATION AND DECISION BY THE RESPONDENT

20. In the decision letters dated 15th April 2003, [REDACTED] states, “we are pleased to inform you that we are willing to offer you, within the framework of the German Foundation and ICHEIC procedures, a voluntary payment in the total amount of USD 24,772.76 on the policies above mentioned [the following claims/policies were quoted on top of the decision letter: “Policies n. [REDACTED] issued to Mr. [REDACTED] by [REDACTED]’s subsidiary “[REDACTED]” and n. [REDACTED], n. [REDACTED], n. [REDACTED] issued to Mr. [REDACTED] by [REDACTED]’s subsidiary “[REDACTED]” in Hungary – ICHEIC claims nn. [REDACTED] / [REDACTED] / [REDACTED] / [REDACTED]”]. As this offer has to be shared between you (50%) and your brother’s children (25% each), the ex gratia offer made to you is USD 12,386.38”.
21. Attached to this letter were four valuation sheets, in which calculation were made as follows:

- a) Claim Number [REDACTED] (policy number [REDACTED])

- (i) “Sum insured: USD 125”
 - (ii) “Unpaid premiums: none”
 - (iii) “Loans granted: none”
 - (iv) “Paid-up value as at 1945: USD 125”
 - (v) “Amount to be offered: USD 1,119.46”
 - (vi) “Minimum offer: USD 2,000”
- b) Claim Numbers [REDACTED] / [REDACTED] [policy number [REDACTED] (or [REDACTED] or [REDACTED])]
- (i) “Sum insured: USD 2000”
 - (ii) “Premiums: paid up to the end of the war”
 - (iii) “Loans granted: none”
 - (iv) “Paid-up value as at 1945: USD 1,400”
 - (v) “Amount to be offered: USD 12,537.77”
- c) Claim Number [REDACTED] (policy number [REDACTED])
- (i) “Sum insured: USD 175”
 - (ii) “Unpaid premiums: none”
 - (iii) “Loans granted: none”
 - (iv) “Paid-up value as at 1945: USD 175”
 - (v) “Amount to be offered: USD 1,567.22”
 - (vi) “Minimum offer: USD 2,000”
- d) Claim Number [REDACTED] (policy number [REDACTED])
- (i) “Sum insured: CHF 5,000”
 - (ii) “Premiums: paid up to the end of the war”
 - (iii) “Loans granted: none”
 - (iv) “Paid-up value as at 1945: CHF 4,000”
 - (v) “Amount to be offered: USD 8,234.99”

22. In a “draft” decision letter dated 22nd (possibly an error) April 2003 [REDACTED] made a lower offer of US\$ 23,459.44 because it did not calculate the minimum offer to be made. The Appeals Panel regards the higher offer in the decision letter dated 15th April 2003 as appealed.

23. The [REDACTED] response in the appeals process dated 9th September 2003, which relates to all claims, states “*The claims at issue relate to an Eastern European country where [REDACTED]’s former subsidiary ‘[REDACTED]’ (which had taken over in 1937 the subsidiary ‘[REDACTED]’) was completely nationalized and expropriated immediately after the end of World War II. As a consequence of that, the only complete archives of the insurance activities – which were kept locally in compliance with local laws, as well as the financial reserves covering the value of the policies – were subtracted to [REDACTED]’s control. Due to the nationalization and expropriation of its former subsidiary, [REDACTED] has nowadays no legal obligation with respect to the policies issued in that country by this subsidiary or its predecessors, and accepts to process the related claims only on humanitarian basis, within the framework of the German Foundation and ICHEIC system. ...*

As far as the issues raised by the appellant are concerned, we would like to point out that,

- i. *Both our offer dated April 15, 2003 (for USD 24'772,76) and the claimant's appeal concern four (and not five) life insurance policies (more specifically, three issued by '[REDACTED]'* and one issued by '[REDACTED]'.)
- ii. *With respect to the [REDACTED] policy n. [REDACTED] and to the [REDACTED] policy n. [REDACTED] the payment offer has been correctly based on the 'paid-up values' as at 1945, given that these two policies matured well after the end of World War II, as the policyholder/insurer died in 1962 (§ 3.5 of the Valuation Guidelines). On the other hand, the payment offers for the [REDACTED] policies n. [REDACTED] and n. [REDACTED] have been based on the full insured sum, as an una tantum premium had been wholly paid for these two policies.*
- iii. *The Hungarian law n. 4050/1936 – issued on June 26, 1936 – provided for the compulsory conversion of all the obligations previously expressed in foreign currencies, according to the exchange rate in force at the time of the maturity of the same obligations. Therefore, in compliance with the Valuation Guidelines (§ 7.3), the policy values have been converted into local currency. this law of general application – issued well before the beginning of any Holocaust-related persecution – operated differently from the similar law which was issued for example in Poland in 1934: while the Polish policies denominated in foreign currencies were immediately converted and re-denominated into local currency (Zloty) at a fixed rate (for example: 1USD = 5,4 Zloty), the Hungarian insurance obligations (both the insured sums and the premium instalments) kept their original denomination in foreign currency (Pengo) at the rate then in force. This is the reason why all the documentation in our possession (submitted by claimants within other ICHEIC claims) related to payments of sums denominated in foreign currencies, which took place in Hungary after 1936, shows that the original amount – expressed in foreign currency – was converted into Pengo in compliance with the law n. 4050/1936. As an example and clear evidence of that, we enclose several receipts (extracted from other ICHEIC claims) of premiums paid after June 1936 with respect to policies denominated in foreign currencies, where one may see the compulsory conversion applied, by using a variable exchange rate. In this respect, we wish also to point out that [REDACTED] decided to apply a compulsory conversion rate (1 USD = 5.09 Pengo) which is much more favourable to the claimants than the rates prevailing at the end of the war (about 1 USD = 3.5 Pengo). This is made with respect to all the Hungarian policies issued in foreign currencies (the policies issued in foreign currencies different from US Dollars are firstly converted into US Dollars, if a direct exchange rate with Pengo is not known. Taking into due consideration the dramatic devaluation of Pengo at the end of the war (when its value was almost annulled, so that it was replaced by the new currency 'Forint' at an exchange rate of several millions of Pengo for each Forint), and that any policy issued in foreign currency would have been however cashed in Pengo, the valuation methods applied by [REDACTED] are not fully compliant with the German Foundation Valuation Guidelines, but also extremely favourable to the claimants*
- iv. *Any different valuation payment practice allegedly followed by other companies should be considered either the consequence of special clauses possibly included in the contract, or an ex gratia extra payment which cannot take place in the light of the German Foundation Valuation Guidelines.*

For the reasons outlined above, we respectfully ask the panel to reject the appeal submitted with respect to these claims, and to confirm [REDACTED]'s previous decision on it, and specifically our payment offer of USD 24,772.76 without any further interest”.

24. With this letter [REDACTED] sent:
- a) Examples of [REDACTED]'s and [REDACTED]'s premium receipts dated before and after June 1936 showing the then equivalent of foreign currency premiums to be paid in Pengo (extracted from various other ICHEIC claims).
 - b) ICHEIC translation of a letter written on 21st February 1977 by [REDACTED] (the [REDACTED] owned insurance company which took over all the pre-war private companies), confirming the compulsory conversion practices and the 1944 conversion rate (1 USD = 3,441 Pengo). This translation was extracted by ICHEIC in claim number [REDACTED].

THE ISSUES FOR DETERMINATION

25. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form. They are “*related appeals*” submitted by the same claimant ([REDACTED]) but relating to different policies.
26. Further, the Panel decided, also pursuant to section 14.1 of the Appeal Guidelines, for the purpose of the appeals procedure to consolidate the three appeals submitted by [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] issued its decision letters to [REDACTED] and to [REDACTED] and [REDACTED] as heirs of their father, [REDACTED], who was [REDACTED]'s late brother; the two brothers were the only heirs of [REDACTED] and [REDACTED], née [REDACTED]. All appeals, therefore, relate to the same decision letter, claims and policy numbers.
27. There is no doubt that the Appellant's father and grandfather had several insurance policies with “[REDACTED]” and “[REDACTED]” and that [REDACTED] as the son of the late [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] as children of [REDACTED]'s brother [REDACTED] are entitled to the proceeds of these policies. Further, it is not questioned that [REDACTED] and [REDACTED] and their children [REDACTED] and [REDACTED] were Holocaust victims. Therefore, the claims of the Appellants in general are within the scope of the Agreement.
28. The Respondent does not question the existence of policies as far as policies numbers [REDACTED], [REDACTED] and [REDACTED] (issued by “[REDACTED]”) and policy number [REDACTED] (or [REDACTED] or [REDACTED], issued by “[REDACTED]”) are concerned. As far as policy number [REDACTED] (issued by “[REDACTED]”) is concerned, the Respondent treats this policy as being the same policy as that with the number [REDACTED] (or [REDACTED] or [REDACTED]), because the copy of the policy the Appellant submitted with his claim form in this claim

(number [REDACTED]) is a copy of the policy number [REDACTED] (or [REDACTED] or [REDACTED]), which also was submitted in the claims procedure number [REDACTED]. The Respondent is denying the existence of a policy number [REDACTED].

29. Therefore, the first issue for determination in this appeal is whether the Appellants – as far as policy number [REDACTED] is concerned - have met their burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17, which provides that to succeed in an appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
 - 17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;
 - 17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1)(d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and
 - 17.2.3 that either the policy beneficiary or the policyholder or the insured life, who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
30. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “plausible” rather than “probable”. Where the Appellant is not able to submit any documentary evidence in support of the claim, the Appellant’s assertion must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the company.
31. The Panel has concluded that the Appellant has not met his burden of proof in that his evidence lacks the requisite authenticity and particularity. There is no corroborative evidence (such as letters or statements from third parties) to support the Appellant’s recollection of the existence of a fifth life insurance policy issued by “[REDACTED]” with the number [REDACTED]. The Appellant did not offer an explanation, why in this case – in contrast to the four cases, in which even copies of insurance policies could be provided there is no written evidence. Appellant [REDACTED], in addition, does not set out or explain the sources of his knowledge about insurance policy number [REDACTED], which purportedly has the exact same details as policy number [REDACTED], and, ultimately, he did not oppose the Respondent’s statement about the identity of claims. It seems that this claim was incorrectly processed in the claims procedure; the copies of the insurance policy, which the Appellant provided show both numbers (on one and the same insurance policy): in the box on the left hand at the top of the policy, marked with “[REDACTED]” (policy number) the number [REDACTED] (or [REDACTED] or [REDACTED]) is inserted; immediately below, but outside the box, the number [REDACTED] is added. This indicates that this policy either was given two policy numbers or the second number (outside of the box) was added later. However, there is nothing to make plausible that “[REDACTED]” issued two life insurance policies with the same terms and contents using only one insurance policy bearing two numbers for each policy.

32. The remaining issue for determination is, whether the Respondent's valuation in its decision letter of the four policies [numbers [REDACTED], [REDACTED] [REDACTED] and [REDACTED] (or [REDACTED] or [REDACTED]) = [REDACTED]] is correct.

VALUATION

33. Under the Tripartite Agreement (see para. 13 above) the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines 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. That another insurance company in a different claim according to the Appellant has made calculations, applied here, could lead to more favourable results is of no significance. The Appeals Panel is bound by the Valuation Guidelines and must decide according to the provisions stipulated therein.
34. The base value of a policy, pursuant to section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event or maturity (the policies matured 29th September 1948 and 21st July 1951 respectively).
35. The current value of a policy, pursuant to section 6 of the said Guidelines, is the base value, save possible deductions as foreseen in the Valuation Guidelines, increased by agreed country factors to allow for changes in currency, economic circumstances and interest during the years from the insured event to the present day. For policies issued in Eastern Europe, when fixing the country factors, account has also been taken by the Contracting Parties to the Agreement of the fact that insurance companies were nationalized or liquidated under the instructions of post war governments.
36. Pursuant to Section 6.2 of the Valuation Guidelines (Annex D), offers on policies in Eastern European countries generally must be made in US dollars and the current value of a policy is determined in accordance with the steps outlined in Schedule 2 of the said Guidelines. Only for policies issued in dollars and not converted into the local currency, does the base value remain in dollars.
37. If a policy was issued in a currency of another country (e.g. Swiss Francs or US Dollars) and subsequently converted into the local currency, in accordance with a law of general application, pursuant to section 7.3 of the Valuation Guidelines the current value is determined according to the rules for that country. For policies issued in Eastern Europe and not converted, the procedure in Schedule 2 from Step 2 (for East European claims) should be followed. Policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency.
38. All policies here in question have been converted into Pengö according to the decree of the Royal Hungarian Ministry of Finance Z 4050/1936 dated 26th June 1936 "*concerning the performance of obligations arising out of life assurance policies and not expressed in Pengö in Pengö*", which reads:

"Pursuant to the securing of order in the economy and credit ordered under § 2 of law 1931: XXVI and balancing the government budget and lastly under the powers granted under law 1935: IX.

§ 1 (1) *Should any contracting party perform any obligation established in foreign currency not on the gold standard under a life assurance policy taken out before this regulation entered into force, the conversion will be governed by the exchange rate at which the most recently maturing interest certificates could be redeemed which are liable under the principles of law governing the establishment of premium reserves of life assurance denominated in the same currency not on the gold standard issued in this country; that average redemption rate will be published by the [REDACTED] in the “[REDACTED]” from time to time”.*

39. This provision is a law of general application in the sense of section 7.3. of the Valuation Guidelines, which means that all insurance policies in Hungary taken out in a foreign currency were affected and not only those taken out by Holocaust victims. The Appellants, therefore, cannot successfully argue that a hard currency insurance had been intended and, therefore, present day exchange rates must be applied.
40. However, the above mentioned “average redemption rate”, as described in the 1936 decree above, was never fixed, even in post war Hungary related, in part, to the dramatic hyperinflation suffered by the Pengö. This hyperinflation reached its peak in May and June 1946 until the Forint was introduced on 23rd July 1946; it replaced the Pengö at a rate of 1 Forint equal to 400,000,000,000,000,000 Pengö. Instead of fixing the rates “from time to time” the insured amounts were placed in a revaluation fund pursuant to the Government Ruling 6400/1946 ME, § 3 and 4 (1). Pursuant to § 4 (2) of this ruling – which seems to be the only “fixing” that took place until today – the dollars should be changed in Pengö at the rate of US\$ 1,000 to 3,441 Pengö.
41. As far as the conversion of foreign currency policies is concerned the companies use a pre war exchange rate of 0.1965 to convert the US Dollar sum into Hungarian Pengö. This exchange rate corresponds to the one published by the Board of Governors of the (US) Federal Reserve System in Washington D.C. on 3rd January 1939 showing the Foreign Exchange Rates on 31st December 1938. According to this publication 1 Pengö is 19.6500 US cents and 5.09 Pengö is 1 US\$; according to the same source 1 Swiss Frank is 22.5405 US cents and 4.43646 Swiss Franks is 1 US\$. The premium receipts RAS has provided with its letter dated 9th September 2003 indicate that the rate of US\$ 1 = 5.09 Pengö was regarded as the one best reflecting the currency relation before the start of the hyperinflation.

As far as the policies issued in Swiss Francs are concerned, they must first be converted from Swiss Francs into US Dollars, then from US Dollars into Pengö and, finally, back into US Dollars on the basis of a discounted exchange rate.

42. Based on these principles principally laid down in the Valuation Guidelines and binding upon the Appeals Panel the four policies must be valued as outlined below:
- a) Claim number [REDACTED] (policy number [REDACTED])
- (i) The base value converted into Pengö through a law of general application is 636.25 Pengö (US \$ 125 x 5.09 Pengö). Since the premiums, according to the Respondent, were paid as an “una tantum premium” no deductions for unpaid premiums need be made.
- (ii) This value in Pengö corresponds pursuant 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\$ 87.548.

- (iii) Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 988.066728 by the end of 2000.
 - (iv) Pursuant 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 (2001: 5.4 %; 2002: 5 %; 2003: 4.75 %; 2004: 5.0 % plus two twelfths pursuant to the month in which the decision is made), which leads to the amount of US\$ 1,041.422331312 for 2001, US\$ 1,093.4934478776 for 2002 and US\$ 1,119.463917264693 for 2003 (based on the date of the offer, which is April 2003, plus two twelfths additional interest).
 - (v) The Respondent has made the same calculation and has, in accordance with 7.2 Valuation Guidelines offered a minimum payment of US\$ 2,000.
- b) Claim number [REDACTED] [[REDACTED] (or [REDACTED] or [REDACTED])]
- (i) The base value converted into Pengö through a law of general application is 7,126 Pengö (US \$ 1,400 x 5.09 Pengö). Since, different from the policy sub a) here no “una tantum premium” was paid deductions from the insured sum of US\$ 2,000 for unpaid premiums must be made. Given the fact that there is no proof of any premium payments, and specifically no proof of premium payments after 1945, there is no objection to the calculation of the Respondent, which, following 3.5 of the Valuation Guidelines, took as base value the “paid up” value with premium payments deemed stopped in 1945.
 - (ii) This value in Pengö corresponds, pursuant 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 a value of US\$ 980.54.
 - (iii) Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 11,066.37444 by the end of 2000.
 - (iv) Pursuant 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 (2001: 5.4 %; 2002: 5 %; 2003: 4.75 %; 2004: 5.0 % plus two twelfths pursuant to the month in which the decision is made), which leads to the amount of US\$ 11,663.95865976 for 2001, US\$ 12,247.156592748 for 2002 and US\$ 12,538.026561825765 for 2003 (based on the date of the offer, which is April 2003 plus two twelfths additional interest).
 - (v) The amount offered by [REDACTED] as far as this policy is concerned (US\$ 12,537.77) is correctly calculated as outlined above. The Panel’s calculation follows (different from [REDACTED]’s calculation) the Valuation Guidelines “step by step”, however, the results are, with minor insignificant differences the same.
- c) Claim number [REDACTED] (policy number [REDACTED])
- (i) The base value converted into Pengö through a law of general application is 890.75 Pengö (US \$ 175 x 5.09 Pengö). Since the premiums, according to the Respondent, were paid as an “una tantum premium” no deductions for unpaid premiums need be made.
 - (ii) This value in Pengö corresponds, pursuant 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 a value of US\$ 122.57.

- (iii) Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 1,383.32502 by the end of 2000.
- (iv) Pursuant 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 (2001: 5.4 %; 2002: 5 %; 2003: 4.75 %; 2004: 5.0 % plus two twelfths pursuant to the month in which the decision is made), which leads to the amounts of US\$ 1,458.02457108 for 2001, US\$ 1,530.925799634 for 2002 and US\$ 1,567.2852873753075 for 2003 (based on the date of the offer, which is April 2003 plus two twelfths additional interest).
- (v) The Respondent has made, with minimal differences, the same calculation and has, in accordance with 7.2 Valuation Guidelines, offered a minimum payment of US\$ 2,000.

d) Claim number [REDACTED] (policy number [REDACTED])

- (i) The base value converted into Pengö through a law of general application is 4,598.2458 Pengö (CHF 4,000 x 0.225405 US\$; 901.62 US\$ x 5.09 Pengö). Unlike the policies under sub a) and c), here no “una tantum premium” was paid; accordingly, deductions from the insured sum of CHF 5,000 for unpaid premiums must be made. As there is no proof of any premium payments, and, specifically, no proof of premium payments after 1945, there is no objection to the calculation of the Respondent, which, following 3.5 of the Valuation Guidelines, took as base value, the “paid up” value with premium payments deemed stopped in 1945.
- (ii) This value in Pengö corresponds, pursuant 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 a value of US\$ 632.7190428608.
- (iii) Pursuant to Step 2 of Schedule 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 7,140.8671177269888 by the end of 2000.
- (iv) Pursuant 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 (2001: 5.4 %; 2002: 5 %; 2003: 4.75 %; 2004: 5.0 % plus two twelfths pursuant to the month in which the decision is made), which leads to the amount of US\$ 7,526.4739420842461925 for 2001, US\$ 7,902.79763918845850226 for 2002 and US\$ 8,090.489083119184391688675 for 2003 (based on the date of the offer, which is April 2003 plus two twelfths additional interest).
The amount offered by [REDACTED] as far as this policy is concerned (US\$ 8,234.99) is calculated by using a more favourable exchange rate for the Swiss Frank as those shown in the charts issued by the Boards of Governors of the Federal Reserve System on 3rd January 1939. This method of calculation, while differing from [REDACTED]’s calculation, follows the Valuation Guidelines “step by step”, and the results of both calculations are the same.

43. According to the calculations set out above the Respondent must pay US\$ (2,000 + 12,538.03 + 2,000 + 8,090.49 =) 24,628.52, which corresponds, with minor differences, to the offer made by the Respondent in the appealed decision letter. However, since the Respondent in his decision letter had offered the higher amount of US\$ 24,772.76 this is, according to section 19.2 of the Appeal Guidelines, the amount to be paid by the Respondent.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 16th day of April 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member