

**THE APPEALS PANEL**

Established under an Agreement dated 16<sup>th</sup> October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the [REDACTED]

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

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**PRIVILEGED AND CONFIDENTIAL**

**APPEAL NUMBER:** [REDACTED]  
**CLAIM NUMBERS:** [REDACTED],  
[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 [REDACTED] (previously [REDACTED]) was born on [REDACTED] 1924 in Törökszentmiklós, Hungary. He is the son of [REDACTED] ([REDACTED]) [REDACTED] and [REDACTED] ([REDACTED]) [REDACTED]. [REDACTED] was born on [REDACTED] 1895 in Puspokladany, Hungary and died in 1944 in the Auschwitz concentration camp. [REDACTED] was born on [REDACTED] 1906 in Debrecen, Hungary, and died on 24<sup>th</sup> August 1945 in Ramlöse Brunn, Sweden after being incarcerated in the Bergen Belsen concentration camp.

The Appellant's brother [REDACTED] ([REDACTED]) [REDACTED] (previously [REDACTED]) was born on [REDACTED] 1922 and died on 11<sup>th</sup> November 1978 in Brazil. He is survived by his son, [REDACTED].

The Appellant's sister, [REDACTED], died in the Bergen Belsen concentration camp at 14 years of age.

2. The Respondent is [REDACTED] ([REDACTED]) as successor company to [REDACTED].
3. On 15<sup>th</sup> May 2000, the Appellant submitted two claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming life insurance policies issued to his parents, [REDACTED] and [REDACTED]. He named the issuing company as [REDACTED] and stated that the policies were issued in Budapest in 1930. He named himself as the beneficiary and stated that the policies were each worth \$100,000 Gold Dollars. He was not aware of any payments having resulted from the policies.

The Appellant named his nephew, [REDACTED], as another living heir.

4. The ICHEIC processed the claim forms under claim numbers [REDACTED] and [REDACTED] and submitted them to the Respondent for investigation.
5. During the course of the claims process, the Appellant submitted many and voluminous documents to support his claim, some of them in Hungarian and translated into Portuguese and again translated into English. These included:
  - a) Biographical documentation regarding his family and the history of the claim.

In a letter dated 26<sup>th</sup> March 2003 he states (translation):

*"We, [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) were already aware in 1944 of the existence of the INSURANCE POLICIES, paid until the end of 1944 to the company of [REDACTED]...In April 1944, we were called up to serve in the army, taking with us our LIFE INSURANCE POLICIES terminated because days earlier, our PARENTS were taken to the GHETTO, from where they were deported to the Concentration Camp in POLAND.*

*The LIFE INSURANCE POLICIES belonged to [REDACTED] ([REDACTED]) [REDACTED], confiscated with other belongings in the concentration camp in BUCHENWALD-GERMANY upon his arrival...*

*We waited until 1948, when we left HUNGARY to seek our family, seeking the INSURANCE COMPANY [REDACTED]-LIFE INSURANCE in BUDAPEST to*

*obtain second copies of the POLICIES but they refused to deliver them without a power of attorney...*

*The INSURANCE POLICIES of my PARENTS were for an amount of 100,000 American gold dollars, both for my FATHER and for my MOTHER, with their CHILDREN benefiting in the event of their death.*

*From BRAZIL, WE MADE CONTACT with the INSURANCE COMPANY, [REDACTED], but they demanded the DEATH CERTIFICATES of my PARENTS, INFORMING us that the POLICIES were paid until 1944 and that in the event of their death, we would have to present the DEATH CERTIFICATES of each one.*

*We waited to obtain information on my PARENTS, and in 1962, learned that [REDACTED] abandoned its HEADQUARTERS in BUDAPEST but had a reinsurer, [REDACTED] MUNCHEN GERMANY.*

*Due to a lack of knowledge, we filed a case in the BRAZILIAN COURTS against the HEADQUARTERS of [REDACTED], [REDACTED], RIO DE JANEIRO BRANCH, in order to receive the value of the POLICIES, which again requested the DEATH CERTIFICATES, which we did not have, although they recognised in a telegram that [REDACTED] and [REDACTED] were former INSUREES of their BRANCH [REDACTED] and the [REDACTED], and as we know did not represent an obligation for the HUNGARIAN government.”*

- b) Documentation relating to the Brazilian court proceeding in the 1980s, including what appears to be an asset inventory (undated) listing five life insurance policies with [REDACTED] for [REDACTED] (\$100,000 Gold Dollars); [REDACTED] (\$100,000 Gold Dollars); [REDACTED] (\$50,000 Gold Dollars); [REDACTED] (\$50,000 Gold Dollars) and [REDACTED] (\$50,000 Gold Dollars).
- c) A telex from [REDACTED] to a Brazilian court dated 30<sup>th</sup> May 1978 which states (translation):

*“[With] reference [to] your telex 29 May addressed Foreign Organisation [concerning the] request [of the] Civil Court [in the] proceedings [brought by the] heirs [of] [REDACTED] and [REDACTED], formerly insured [by] [REDACTED]. This company, our subsidiary, was nationalised like all the Hungarian Insurance Companies, [both] domestic and foreign, and all its assets and liabilities [were] assumed by the [REDACTED] Budapest in its capacity as solely responsible for the portfolio of our former directorate and of [REDACTED].”*

- d) Two letters dated 2<sup>nd</sup> August 1969 and 30<sup>th</sup> August 1983 from the Hungarian State Insurance Company to [REDACTED]. The latter provides background on the Hungarian currency conversion of 1946 which rendered the policies valueless and states (translation):

*“Your parents had life insurance with [REDACTED], with [REDACTED], respectively, taken out in the 1930s. There are no policy documents and we do not know the value of the insurance.”*

- e) The Appellant’s letter to the ICHEIC dated 18<sup>th</sup> January 2001 which states (translation):

*“In March 1978 we received a death certificate for my mother [REDACTED] and I contacted [REDACTED] with regard to the payment of life insurance to the value*

*of 100,000 gold dollars, which was the value of the policy. It seems that [REDACTED] had abandoned Hungary around 1950, but it is clear that its obligations still exist because in 1952 it opened another company with the same name together with the [REDACTED] – the new name is [REDACTED].”*

- f) Letters dated 26<sup>th</sup> and 28<sup>th</sup> March 2003 which assert that [REDACTED] acknowledged in its telex dated 30<sup>th</sup> May 1978 that [REDACTED] and [REDACTED] were ex-insureds of [REDACTED]. The letters highlight that the claim has not been decided to date, although it was submitted on 24<sup>th</sup> October 2001.
6. On 11<sup>th</sup> March 2002, the Appellant forwarded copies of witness statements to the ICHEIC, which were submitted during the legal proceedings instituted against [REDACTED]’ subsidiary in Brazil. He did not submit the decision of the Brazilian court. Relevant extracts from the submitted witness statements are set out below:

[REDACTED]

*“I the undersigned [REDACTED], Brazilian, married, trader...in the presence of two witnesses, hereby RECTIFY what I [said] in the SUPPORTING PROCEEDINGS on the 5 (fifth) of September 1980 in the 21<sup>st</sup> Civil Jurisdiction in the City of Rio de Janeiro...  
...in the ALBRECHT QUARTER of the City of BUDAPEST [...] I met [REDACTED] in the month of November 1944. [REDACTED] escaped from the rear of the ALBRECHT QUARTER, near the JEWISH HOSPITAL he asked me to keep his rucksack for him until his return because he was going to visit his brother [REDACTED]...[he] showed me the contents of the rucksack where he had CLOTHING – DOCUMENTS – Bank Deposits of the [REDACTED] family – calling my attention to a LIFE INSURANCE policy to the value of 100 (ONE HUNDRED) dollars gold in the name of his mother [REDACTED] ([REDACTED]) in favour of the 3 (three) children, in the event of her death, he explained to me that he also had the same life insurance to the same value with regard to his father Mr. [REDACTED] in favour of his 3 children, taken out through the firm [REDACTED], but the main shareholder was a foreign company – ITALIAN, in the hands of his brother [REDACTED]...”*

*On the 25<sup>th</sup> of December 1944 we were unloaded at BUCHENWALD CONCENTRATION CAMP – Germany, [REDACTED] was also unloaded, having adopted the name [REDACTED]. ... I returned his RUCKSACK to him with its contents, including the SAID LIFE INSURANCE POLICY of his mother’s...I saw that the soldiers of the GERMAN SS took all my clothes and those of others including the RUCKSACK, including the documents and the SAID LIFE INSURANCE POLICY, and as far as I know they never returned anything to us after liberation...São Paulo, 06 July 1983...(signed) [REDACTED].”*

[REDACTED]

*“I the undersigned, [REDACTED], Czech, jeweller...hereby RECTIFY my testimony given in the HEARING room of the CIVIL JURISDICTION no. 21, on the 5 September 1980...in the legal proceedings of the PRECAUTIONARY MEASURE instituted by [REDACTED] and OTHERS against the [REDACTED] [REDACTED]...”*

*I affirm that in the City of BUDAPEST in HUNGARY in the year 1943 I met with Mr. [REDACTED] in the KELETI Restaurant where he made an appointment with me...in order to collect the sum that I owed [him]. On this occasion he explained the need to collect this money because he had to pay a certain sum to pay for the Life Insurance policy with [REDACTED], and to prove the truth [of this] he showed me the LIFE INSURANCE [policy] on brown coloured paper to the value of 100 (ONE HUNDRED)*

*THOUSAND DOLLARS GOLD with regard to his [own] person, in favour of his family, I mean, his 3 (THREE) children in the event of his death. I asked what the advantage was in taking out life insurance in DOLLARS gold, he answered me that this [was] a universal currency, with reference to the 1930s, when he took it out with the guarantee of an Italian firm which was the main shareholder of this Company, by which he referred to [REDACTED], and he offered to introduce me to the Directors if I too happened to intend to take out LIFE INSURANCE. After asking him [about] the situation of his wife Mrs [REDACTED], he answered me that SHE also had the same type of insurance [policy] as he did with [REDACTED] in favour of their children to the same value of 100 (ONE HUNDRED) thousand DOLLARS GOLD but I do not remember [him] having shown me his wife's LIFE INSURANCE [POLICY]...Magé 04 July 1983...(signed)[REDACTED]."*

[REDACTED]

*"I the undersigned [REDACTED], naturalized Brazilian...hereby RECTIFY...the following clarifications with reference to the STATEMENT made earlier in the Records room of the 21<sup>st</sup> Civil Jurisdiction, where I was SUMMONED to give evidence as SUPPORTING TESTIMONY in the proceedings indicated by Mr. [REDACTED] which he is instituting...against the company [[REDACTED]]..."*

*I personally knew Mr. [REDACTED], currently with the adopted name [REDACTED], it was he who came to our home to collect the steel safe that [REDACTED] left with us for safekeeping because he was persecuted by the NAZI GERMANS as an ISRAELITE by birth, the aim was to hand over the safe to any person of his ([REDACTED]) FAMILY, containing jewellery, cash and two LIFE INSURANCE POLICIES taken out with the firm [REDACTED] ([REDACTED] LIFE INSURANCE) in the City of Budapest...[I] handed over the steel safe to Mr. [REDACTED] after the Christmas period 1944...Rio de Janeiro, 20 October 1981 (signed) [REDACTED]."*

[REDACTED]

*"I, [REDACTED], naturalised Argentinean...freely declare that I knew the [REDACTED] family of Törökszentmiklós, whose members were: [REDACTED] and [REDACTED] and their three children [REDACTED] ([REDACTED]) [REDACTED], [REDACTED] and [REDACTED]...[the] economic situation of the [REDACTED] family was that they were very well-off, including making several trips abroad each year...I remember that Mr. [REDACTED] insistently urged my father to take out life insurance similar to that which he had for 100.00 (sic) US dollars gold. I also remember that he came to our house on several occasions in the company of Mr. Miklos Fekete, the local representative of the [REDACTED] Insurance Company...where Mr. [REDACTED] and his wife had their abovementioned life insurance in favour of the three children. With regard to this, I remember that at the request of Mrs. [REDACTED], at the beginning of 1944, I made the corresponding premium payment in Budapest...at Sas ucca 10 the head office of the [REDACTED] company, and I sent a receipt for the payment to Mrs. [REDACTED] by post...I know that all the [REDACTED] family's property was confiscated by the Hungarian and German authorities in compliance with the orders of the anti-Semitic laws, without compensation whatsoever...Buenos Aires, 28 October 1981 (signed) [REDACTED]."*

7. [REDACTED] declined the claims on 17<sup>th</sup> March 2003 stating:

*"We have carefully examined the information that you provided. We have also carried out a search of all the information available to us that could support your claim. However, our documentation is limited because the archives relating to policies issued in Eastern Europe were held locally and are no longer in our possession."*

*Unfortunately, we have to inform you that, based on the information you provided and our search, no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found, and we are therefore declining your claims.”*

At the end of the letter, the Respondent informed the Appellant of his right to appeal the decision to the Appeals Panel within 120 days of receipt of the letter.

8. Throughout 2003 and 2004, the Appellant continued to correspond with the ICHEIC regarding his claims. In an email dated 28<sup>th</sup> November 2004 he mentioned that he never received the Respondent’s decision letter of 17<sup>th</sup> March 2003. ICHEIC then forwarded him a copy of this letter, which was received on 21<sup>st</sup> January 2005.
9. The Appellant appealed the decision by submitting an Appeal Form dated 9<sup>th</sup> June 2005, which was received by the Appeals Office on 20<sup>th</sup> June 2005. This stated:

*“[REDACTED], lawfully confirms that he received a copy from the [REDACTED]-[REDACTED] group, sent to me by the ICHEIC only in 2005, after complaint of non-receipt of the previous decision, with appeal forms. ... The insurance of life, in the values of 100,000.00 (hundred tausends) Gold US dollar, had been made in the company [REDACTED] in Budapest, for both, for [3] childrens, [REDACTED] was branch office – [REDACTED] ([REDACTED])...In the Brazilian court on 30/5/1978, a telegram, [REDACTED] recognised that [REDACTED] and [REDACTED] were former insurees of [REDACTED]...”.*

In an attached letter, the Appellant reiterated that his father was a very successful and wealthy businessman who *“was obliged to contract life insurance, and together with his wife, [REDACTED] who accompanied her husband at times on the [business] trip, contracted a life insurance policy with the insurance company [REDACTED] in Budapest for 100,000.00 gold dollars on behalf of their children – named [REDACTED], [REDACTED], [REDACTED] – both alive until 1944.”*

The Appellant confirmed in this letter that he first received [REDACTED]’ decision letter when it was sent to him by the ICHEIC on 21<sup>st</sup> January 2005. He enclosed, among other documents, a copy of the fax cover letter (undated) sent by the ICHEIC with the decision letter.

10. [REDACTED] responded to the appeal on 5<sup>th</sup> August 2005 stating:

*“On a preliminary basis, we would respectfully submit to the Appeals Panel’s attention that the Appellant’s allegation, according to which he would have received our final decision only on January 21, 2005, is disproved by the attached piece of evidence, which shows how such a letter was regularly received at the Appellant’s residence in March 2003.*

*Furthermore, even considering the alleged date of receipt mentioned by the Appellant, more than 120 days would have elapsed before the Appeal Form was submitted (on June 9, 2005).*

*In both cases, no explanation or justification is provided for the delay, which puts seriously at risk the targets of certainty and finality of the ICHEIC claims process.*

*Therefore, we respectfully request to the Appeals Panel the immediate dismissal of this appeal on a preliminary basis.”*

[REDACTED] enclosed with this letter a copy of the postal receipt dated 20<sup>th</sup> March 2003. This indicates that the decision letter was received in Rio de Janeiro on 26<sup>th</sup> March 2003, although the signature on the receipt is different to that of the Appellant.

11. The Appellant responded to this letter on 17 and 19<sup>th</sup> August 2005 confirming that he did not receive the decision letter in March 2003, and asserting that the signature on the receipt was a forgery.
12. On 26<sup>th</sup> September 2005, the Appeals Office wrote to the parties on behalf of the Panel Member requesting that:
  - a) the Appellant provide reasons for his belief that the postal receipt was forged, and why he did not submit the appeal until June 2005 if the decision letter was received in January 2005; and
  - b) the Respondent comment on the Appellant's forgery allegation and submit any further submissions addressing the substance of the appeal.
13. The Appellant responded via fax on 3<sup>rd</sup> October 2005 and by email on 4<sup>th</sup> October 2005, reiterating that the signature on the postal receipt was that of a third party. He stated that he did not submit the appeal within 120 days because he was not aware of the appeals deadline. He received the decision letter from the ICHEIC without any accompanying instructions.
14. [REDACTED] responded to the Appeals Office on 12<sup>th</sup> October 2005 stating:

*"We have no idea of who and – particularly – why would [anyone] have allegedly forged the signature on the postal receipt on March 26, 2003. We would remark that the claimant's address mentioned in it is correct, and therefore the legal presumption that our decision letter was received on the date above by the same claimant must be kept fully valid and binding. This surprisingly late appeal should be therefore dismissed in order to protect the reliability and finality of the ICHEIC claims process (more than two full years elapsed since our final decision)...in our opinion this appeal should be dismissed on a preliminary basis even in the case that the decision letter is deemed to have reached the claimant in January 2005."*

[REDACTED] addressed the substantive issues by reiterating that it had been unable to find any evidence of a contract(s) of insurance with the [REDACTED] or [REDACTED] in its records. Regarding the Appellant's submissions it stated:

*"The ... telex dated May 30, 1978 does not contain any true evidence of a contractual relationship as its mention of Mr [REDACTED] and Mrs [REDACTED] as "former insureds [of] [REDACTED]" was simply reporting the allegations made by the heirs of the same individuals, while at that time [REDACTED] had no further information – with comparison to the ones currently available – in respect of the pre-war activities of [REDACTED], and thus they were not in a position to confirm such an allegation...."*

*As a further remark of the non-plausibility of these allegations, we would point out that the insured amounts supposed by the claimant are totally out of range and very far not only from the ICHEIC average insured sum for the Hungarian market, but also for the highest insured sums ever found for Hungary during the whole ICHEIC claims process."*

15. On 20<sup>th</sup> October 2005, the Appeals Office informed the parties that the appeal would be decided on a “*documents only*” basis unless it received a request for an oral hearing from either party within 14 days.
16. No request for an oral hearing was received from either party. The appeal proceeded on a “*documents only*” basis.
17. The Appellant wrote letters to the Appeals Office on the 18<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> November 2005 and 2<sup>nd</sup> December 2005 reiterating his arguments and submitting copies of the supporting documents.
18. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> October 2002 made by and among the Foundation “Remembrance, Responsibility and the Future”, the ICHEIC and the [REDACTED] and its Annexes, including, but not limited to, Annex E of 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 Decision is made there.

#### **THE ISSUES FOR DETERMINATION**

19. Claim numbers [REDACTED] and [REDACTED] are consolidated for the purposes of this appeal.
20. This appeal involves two issues:
  1. Whether the appeal was filed within time; and
  2. Whether the Appellant has established it is plausible, on the Relaxed Standards of Proof, that the Respondent issued a policy or policies to his parents, [REDACTED] and [REDACTED].

#### **Timeliness in filing the appeal**

21. Pursuant to section 4(3) of the Agreement, an appeal must be filed within 120 days of the decision letter being received. Appeals are regarded as timely filed when an Appeal Form, signed and dated by the Appellant, is submitted to the Appeals Office.
22. The Panel Member accepts from the signature on the postal receipt that the decision letter was received at the Appellant’s postal address by a third party in Brazil on 26<sup>th</sup> March 2003, and that the postal receipt was signed either with or without his authorisation. The Appellant’s allegation that the signature on the receipt is a forgery is not accepted in the absence of further evidence. In particular, there is no reason to believe that [REDACTED] might be responsible for a “forgery”. [REDACTED] had sent a copy of the decision letter to the ICHEIC and this copy was received by the ICHEIC around the date of the postal receipt.
23. However, the postal receipt, even if creating a certain assumption, provides no strict evidence that the letter actually came into the Appellant’s possession. There is a higher probability that the letter was only received in January 2005, as the Appellant asserts. His emails and letters to the ICHEIC throughout 2003 and 2004 clearly imply that he was not

aware that a decision letter had already been issued. On 26<sup>th</sup> March 2003 (the day when the decision letter was received according to the postal receipt) the Appellant wrote to the ICHEIC complaining about the Respondent's delay in issuing its decision. Moreover, his email to the ICHEIC dated 28<sup>th</sup> November 2004 states explicitly that he never received a decision in respect of claim numbers [REDACTED] and [REDACTED].

24. Notwithstanding this, the Respondent is correct that the Appellant was still out the 120 days timeline in submitting his appeal, even if the decision letter was only received on 21<sup>st</sup> January 2005. The Appeals Office did not receive the Appellant's Appeal Form dated 9<sup>th</sup> June 2005 until 20<sup>th</sup> June 2005.
25. The Appellant's argument that this delay was because he was not advised of his appeal rights (and, more particularly, of the 120 day deadline) when the letter was faxed to him by the ICHEIC in January 2005 is not accepted because the 120 days timeline is part of the decision letter. However, while the Respondent is correct that the 120 day filing requirement must be upheld to ensure the finality and integrity of the ICHEIC appeals process, the Panel Member considers that the appeal, nevertheless, under the specific circumstances of the case, has to be considered as timely filed. The Appellant's emails of 22<sup>nd</sup>, 23<sup>rd</sup>, 26<sup>th</sup> January and 4<sup>th</sup> June 2005 to the ICHEIC (which are all clearly within the 120 days) clearly show that he was wishing to appeal the Respondent's decision from the time the letter was received. There is nothing on file to show that the Appellant ever received a clear written response to his queries from the ICHEIC. In these circumstances (documented wish to appeal and no appropriate advice what to do when) the Panel Member holds that the appeal can be regarded as having been timely filed.

#### The existence of claimed policies

26. Section 17.2 of the Appeal Guidelines (Annex E to the Agreement) provides that in order for an Appellant to succeed in an appeal, he or she must establish, 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 1 January 1920 and 8 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 is 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.
27. In this case there is no doubt that the Appellant's parents were Holocaust victims, or that the Appellant is entitled to bring this claim as his parents' heir. He has provided ample evidence of his family's experiences during the Holocaust, as well as biographical documentation substantiating his family relationships.
28. The issue for determination relates to whether the Appellant has established that it is plausible, on the Relaxed Standards of Proof, that his parents held two life insurance policies with [REDACTED]' predecessor, [REDACTED], each valued at \$100,000 Gold Dollars.

29. On the facts, the Panel Member finds that it is indeed plausible that the Appellant's parents held some insurance with [REDACTED]. This is credible from the Appellant's repeated attempts to obtain compensation over the decades, including his attempts with his brother to approach the company prior to leaving Hungary in 1948, his enquiries to the Hungarian State Insurer in the 1960s, and the court proceedings instituted against [REDACTED]' subsidiary in Brazil in the early 1980s.
30. It is not accepted that a contractual relationship is established from the [REDACTED]' telex of 20<sup>th</sup> May 1978. As the Respondent has correctly pointed out, the statement in the telex that the Appellant's parents were former insureds of [REDACTED] could be simply a restatement of what the Appellant himself asserted in his initial enquiry. It is not conclusive evidence that [REDACTED] acknowledged that a contractual relationship existed between [REDACTED] and [REDACTED] and [REDACTED] prior to the war.
31. However, the Panel Member does not accept that it has been plausibly established that [REDACTED] issued any more than one policy to the Appellant's parents. Although the Hungarian State Insurer referred in its letter dated 30<sup>th</sup> August 1983 to insurance being held by the [REDACTED]' "...with [REDACTED], with [REDACTED], respectively" (translation), again this appears to be a mere restatement of what the Appellant himself asserted. Indeed, the Insurer prefaces this remark with the statement: "*To sum up your account:...*".
32. It is also clear from this letter that policies were not held with the companies [REDACTED] and [REDACTED] respectively, as the letter explains that [REDACTED] was the majority shareholder in [REDACTED], and thus that policies were not issued by both companies.
33. Nor are the witness statements considered to be necessarily conclusive of the existence of two policies valued at \$100,000 Gold Dollars. Admittedly they are detailed and, with the exception of [REDACTED] statement, consistent in mentioning two policies of this value. However, the alleged value of the policy(ies) is so extremely high and other details of alleged losses of the Appellant's family in masses of diamonds and other valuables as well as enormous amounts of cash money in various currencies do seem so "extravagant" that, after so many years after the events, they cannot be taken literally, also not in respect of the number of policies. Since the Appellant has not submitted the Brazilian court ruling from the 1980s there is no possibility to come to a different evaluation of the witness statements on the basis of such decision.
34. Further, the petition on file for another 3 additional life insurance policies for the children, each valued at \$50,000 Gold Dollars undermines the plausibility of the Appellant's claim for two policies. It is assumed that this document was submitted by the Appellant during the course of the Brazilian court proceedings. It is uncorroborated and conflicts with the Appellant's current claim for two policies in his parents' names only. Taken together, the Panel Member considers there to be insufficient evidence on the facts to establish any more than one policy of insurance with [REDACTED].
35. However, it is not plausible that the value of this policy was as high as the Appellant contends. Although the Appellant's parents were clearly very wealthy, as is evidenced from the witness statements and their lists of assets, the sum of \$100,000 Gold Dollars far exceeds values of policies issued in Hungary during that period, and it exceeds any Hungarian policy that has ever successfully been processed through the ICHEIC.
36. The alleged value seems even more doubtful when it is considered that the Appellant at one time claimed two policies of \$100,000 Gold Dollars each for his parents, and three other policies of \$50,000 Gold Dollars each for himself and his siblings. This amounts to

a total value of \$350,000 Gold Dollars, which is far too high to be accepted. In the absence of concrete evidence establishing the value of the policy, the Panel Member determines that it is plausibly established that [REDACTED] issued one policy to the Appellant's parents and that the value of this policy is unknown

The calculations for an award on this basis are as follows.

## **VALUATION**

37. Section 7.1 of the Valuation Guidelines (Annex D to the Agreement) provides that where a claimant has satisfied the Relaxed Standards of Proof that a policy was issued by a specific company, but the policy's value cannot be determined, the offer shall be based on a multiple of three times (3 x) the average value for policies issued in the relevant country, in this case Hungary.
38. Schedule 3 of the Valuation Guidelines provides that the average value of policies issued in Hungary in 1938 was 827 pengö. This value when multiplied by 3 results in a base value of 2,481.00 pengö.
39. The base value is then converted into US dollars in accordance with the conversion rate of US \$0.1376 set down in Step 1 of Schedule 2 for East European claims. This equates in a base value of US \$341.39.
40. In accordance with Step 2 to Schedule 2, this value is then multiplied by 11.286 to calculate value of the policy at the end of the year 2000: US \$3,852.93.
41. Interest is then applied in accordance with Step 3 to calculate the value of the policy up until the end of April 2006 (being the month two months after this award is made). These interest rates have been prescribed by the Valuation Guidelines as 5.4% for 2001 and 5% for 2002, and have, after consultation with the Contracting Parties of the Agreement, been set down by ICHEIC Memorandum as 4.75% for 2003, 5% for 2004, 5% for 2005 and 5% for 2006.
42. Interest calculated on this basis results in the following values: 2001: US \$4,060.99; 2002: US \$4,264.04; 2003: US \$4,466.58; 2004: US \$4,689.91; 2005: US \$4,924.41; up until April 2006: US \$5,006.49.
43. Therefore, it is held that US \$5,005.49 shall be awarded as compensation for one policy of unknown value issued to [REDACTED] and [REDACTED] by [REDACTED].

## **IT IS THEREFORE HELD AND DECIDED:**

1. The appeal is allowed.
2. The Respondent shall pay the Appellant US \$5,006.49 to be shared equally with his co-heir [REDACTED].

Dated this 10<sup>th</sup> day of February 2006.

[REDACTED]

London 10<sup>th</sup> day of February 2006

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Legal Adviser