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HOLOCAUST ERA INSURANCE RESTITUTION AFTER AIA v. GARAMENDI: WHERE DO WE GO FROM HERE?

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

SEPTEMBER 16, 2003

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HOLOCAUST ERA INSURANCE RESTITUTION AFTER AIA v. GARAMENDI: WHERE DO WE GO FROM HERE?

TUESDAY, SEPTEMBER 16, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis of Virginia, Shays, Ros-Lehtinen, Waxman, Cummings, Van Hollen, Ruppersberger, Norton, and Bell.

Also present: Representatives Foley, Schiff, and Schakowsky.

Staff present: Peter Sirh, staff director; Melissa Wojciak, deputy staff director; Keith Ausbrook, chief counsel; Randall Kaplan, counsel; Robert Borden, counsel/parliamentarian; David Marin, director of communications; Drew Crockett, professional staff member; Teresa Austin, chief clerk; Brien Beattie, deputy clerk; Allyson Blandford, office manager; Corinne Zaccagnini, chief information officer; Phil Barnett, minority chief counsel; Kristin Amerling, minority deputy chief counsel; Karen Lightfoot, minority communications director/senior policy advisor; Anna Laitin, minority communications and policy assistant; Michelle Ash, minority counsel; Earley Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Chairman TOM DAVIS. A quorum being present, the Committee on Government Reform will come to order. I want to welcome everyone to today's hearing on the status of Holocaust-era insurance restitution.

During the Holocaust, the lives of 6 million Jewish people were systematically extinguished. Countless families lost all their properties and belongings. Assets were confiscated and personal and business documents including bank records, insurance policies and investment information were destroyed.

Following the Holocaust, survivors and their families attempted to pick up the pieces of their shattered lives. When victims and their heirs attempted to collect on insurance policies, European insurance companies frequently denied their claims because records were missing. Holocaust victims and their heirs have been seeking to redeem these policies ever since.

Finally, in the late 1990's, the threat of class action lawsuits forced five insurance companies with American subsidiaries to the

negotiating table. This ultimately led to the creation of the International Commission on Holocaust-Era Insurance Claims [ICHEIC]. ICHEIC is a voluntary nonprofit organization comprised of five European insurance companies, the State of Israel, representatives of Holocaust survivors, and U.S. and European insurance regulators. The commission was formed in 1998 and established a process to address insurance claims of Holocaust victims and their heirs.

While hopes were high for the success of ICHEIC, the initial results were disappointing. On November 8, 2001, the Committee on Government Reform held a hearing to examine some of the shortcomings on the ICHEIC process. At that time very few claims were being paid. Of the claims submitted, less than 2 percent resulted in offers from insurance companies. Critics noted that missing information was a primary obstacle in the claims process. The majority of all applicants were unable to provide basic policy information, including policy numbers and the name of the insurance company holding their assets. Since the Holocaust ended almost 60 years ago, it shouldn't come as a big surprise that aging survivors and families of those that perished couldn't remember account numbers. Any claims process must account for this. Witnesses also complained that a comprehensive list of policyholders was not being developed and shared with the public by ICHEIC or anyone else. Many of the companies that issued Holocaust-era insurance policies were not cooperating in the process, with only five companies directly involved in the ICHEIC process.

To address shortcomings with the ICHEIC process, a number of States have enacted laws designed to force insurance companies to supply information about Holocaust-era policies. For example, California passed the Holocaust Victims Insurance Relief Act, which authorized the suspension of the license of any insurance company operating in the State if it failed to publish information about Holocaust-era policies.

The Supreme Court, however, struck down the California law in a narrow 5 to 4 decision on June 23, 2003. The court held that the State didn't have the right to interfere in the Federal Government's handling of foreign affairs. Since it is the policy of the U.S. Government that ICHEIC serves as the sole remedy for Holocaust-era insurance claims, the court reasoned that California's approach would undercut the President's diplomatic discretion, which in this case he has exercised to encourage insurance companies to participate in ICHEIC and voluntarily disclose information through ICHEIC.

The court's opinion left open the possibility of congressional action, and two bills have been introduced in the 108th Congress to address the issue. H.R. 1210, the Holocaust Victims Insurance Relief Act, introduced by Congressman Henry Waxman, would require insurance companies doing business in the United States to publish basic policyholder information for insurance policies in effect during the Holocaust era. Another bill, H.R. 1905, introduced by Congressman Mark Foley, would authorize States to pass laws requiring insurance companies to disclose Holocaust-era policyholder information.

With the Supreme Court's recent decision, ICHEIC is pretty much the only game in town for resolving Holocaust-era insurance claims. And this brings us to today's hearing, where we will examine whether ICHEIC is fulfilling its mission or whether congressional action is warranted.

Since the last hearing, there have been improvements. An increasing number of policyholder names have been published and agreements have been made with countries such as Germany, the Netherlands, and Belgium, to process insurance claims using ICHEIC standards. There is no doubt that progress has been made.

However, we need to ask whether these improvements are enough and whether more can be done. At a minimum, we should make sure that a comprehensive list of policyholders is developed, and that insurance companies are fully cooperating in this effort. We also need to ask whether there is more the U.S. Government can do to urge European countries and insurance companies to get involved in this process. And, finally, we are left with the question of whether the ICHEIC process is working; is it fair, efficient, transparent, and, above all, accountable?

It has been almost 60 years since the end of one of the most tragic episodes in human history. It amazes me this issue still has not been resolved. I realize that there are complicated issues, but all parties, including heads of State, ICHEIC, insurance regulators, and insurance companies need to work expeditiously and in good faith to solve this problem. There is a basic premise here, which is that every Holocaust victim who had insurance is entitled to restitution. Providing restitution for victims and their families on these policies is the very least we can do to help bring a small amount of closure to one of history's darkest hours.

I want to thank all our witnesses for appearing before the committee, and I look forward to their testimony. I ask unanimous consent that the following members be permitted to serve on the committee for the purpose of today's hearings: Congressman Mark Foley, Congresswoman Jan Schakowsky, and Congressman Adam Schiff.

Without objection, so ordered.

I also want to particularly thank my colleague and ranking member, Henry Waxman, for his dedication to this issue, which is why we are holding this hearing, and I now yield to him for his opening statement.

[The prepared statement of Chairman Tom Davis follows:]

Opening Statement
Chairman Tom Davis
Committee on Government Reform
Holocaust Era Insurance Restitution
After *AIA v. Garamendi*: Where Do We Go From Here
September 16, 2003

I would like to welcome everyone to today's hearing on the status of Holocaust-era insurance restitution.

During the Holocaust, the lives of six million Jewish people were systematically extinguished. Countless families lost all of their property and belongings. Assets were confiscated and personal and business documents including bank records, insurance policies, and investment information were destroyed.

Following the Holocaust, survivors and their families attempted to pick up the pieces of their shattered lives. When victims and their heirs attempted to collect on insurance policies, European insurance companies frequently denied their claims because records were missing. Holocaust victims and their heirs have been seeking to redeem these policies ever since.

Finally, in the late 1990s, the threat of class action lawsuits forced five insurance companies with American subsidiaries to the negotiating table. This ultimately lead to the creation of the International Commission on Holocaust Era Insurance Claims, also known as ICHEIC (I-CHECK).

ICHEIC is a voluntary non-profit organization comprised of five European insurance companies, the State of Israel, representatives of Holocaust survivors, and U.S. and European insurance regulators. The commission was formed in 1998 and established a process to address insurance claims of Holocaust victims and their heirs.

While hopes were high for the success of ICHEIC, the initial results were disappointing. On November 8, 2001, the Committee on Government Reform held a hearing to examine some of the shortcomings of the ICHEIC process. At that time, very few claims were being paid. Of the claims submitted, less than 2 percent resulted in offers from the insurance companies. Critics noted that missing information was a primary obstacle in the claims process. The majority of all applicants were unable to provide basic policy information, including policy numbers and the name of the insurance company holding their assets.

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Witnesses also complained that a comprehensive list of policyholders was not being developed and shared with the public by ICHEIC or anyone else. Many of the companies that issued Holocaust

era insurance policies were not cooperating in the process, with only five companies directly involved in the ICHEIC process.

To address shortcomings with the ICHEIC process, a number of states have enacted laws designed to force insurance companies to supply information about Holocaust era policies. For example, California passed the Holocaust Victims Insurance Relief Act, which authorized the suspension of the license of any insurance company operating in the state if it failed to publish information about Holocaust-era policies.

The U.S. Supreme Court, however, struck down the California law, in a narrow 5 to 4 decision, on June 23, 2003. The Court held that the state did not have the right to interfere in the Federal government's handling of foreign affairs. And since it is the policy of the U.S. government that ICHEIC serves as the sole remedy for Holocaust-era insurance claims, the Court reasoned that California's approach would undercut the President's diplomatic discretion, which in this case he has exercised to encourage insurance companies to participate in ICHEIC and voluntarily disclose information through ICHEIC.

The Court's opinion left open the possibility of Congressional action, and two bills have been introduced in the 108th Congress to address the issue. H.R. 1210, the "Holocaust Victims Insurance Relief Act," introduced by Congressman Henry Waxman, would require insurance companies that do business in the United States to publish

basic policyholder information for insurance policies in effect during the Holocaust era. Another bill, H.R. 1905, introduced by Congressman Mark Foley would authorize states to pass laws requiring insurance companies to disclose Holocaust era policyholder information.

With the Supreme Court's recent decision, ICHEIC is pretty much the only game in town for resolving Holocaust era insurance claims. This brings us to the today's hearing where we will examine whether ICHEIC is fulfilling its mission or whether Congressional action is necessary.

Since the last hearing, there have been improvements. An increasing number of policyholder names have been published, and agreements have been made with countries such as Germany, the Netherlands, and Belgium, to process insurance claims using ICHEIC standards. There is no doubt that progress has been made.

However, we need to ask whether these improvements are enough and whether more can be done. At a minimum, we should make sure that a comprehensive list of policyholders is developed and that insurance companies are fully cooperating in this effort. We need to also ask whether there is more that the U.S. government can do to urge European countries and insurance companies to get involved in this process. Finally, we are left with the question of whether the ICHEIC process is working -- is it fair, efficient, transparent, and above all accountable?

It has been almost 60 years since the end of one of the most tragic episodes in human history. It amazes me that this issue still hasn't been resolved. I realize that there are complicated issues, but all parties including heads of state, ICHEIC, insurance regulators, and insurance companies need to work expeditiously and in good faith to solve this problem. There's a basic premise here, which is that every Holocaust victim who had insurance is entitled to restitution. Providing restitution for victims and their families on these insurance policies is the very least we can do to help bring a small amount of closure to one of history's darkest hours.

I would like to thank all of our witnesses for appearing before the Committee, and I look forward to their testimony. I ask unanimous consent that the following Members be permitted to serve on the Committee for the purpose of today's hearing: Congressman Mark Foley, Congresswoman Jan Schakowsky, and Congressman Adam Schiff. Without objection, so ordered.

I would also like to thank Mr. Waxman for his dedication to this issue. And I now yield to him for his opening statement.

Mr. WAXMAN. Thank you, Mr. Chairman. I want to thank you for holding this hearing to examine the ongoing challenges in Holocaust insurance restitution, and I also want to acknowledge your leadership role in ensuring restitution for Holocaust survivors and their relatives.

This committee held the first congressional hearing on the International Commission on Holocaust Era Insurance Claims [ICHEIC], in November 2001. That hearing examined a number of serious problems with the ICHEIC process, including the extraordinary backlog in unresolved claims. It is nearly 2 years since that hearing and nearly 5 years since ICHEIC was established to facilitate and accelerate the payments of policies purchased by the victims of Nazi terror. Yet even today, approximately 80 percent of ICHEIC claims are still in limbo.

There are two primary problems that prevent survivors from redeeming their insurance policies. One problem we cannot do anything about: The Nazis often destroyed the records held by persons imprisoned in the concentration camps. The other problem we can address: Many of the insurance companies who issued these policies will not disclose complete lists of their policyholders. The result is a catch-22. Survivors and their relatives cannot collect on insurance policies because they cannot prove who issued the policies.

California tried to address this problem by passing the Holocaust Victims Insurance Relief Act. This law required insurance companies doing business in California to disclose the list of Holocaust-era policyholders. The chairman joined me in filing an amicus brief in support of the California law before the Supreme Court.

Unfortunately, the Bush administration opposed this law, and the Supreme Court agreed, striking down the law this summer in *AIA* v. *Garamendi.* This decision removed critical leverage that State insurance regulators tried to use to pressure the insurance companies to fulfill their obligation to publish information about Holocaust-era policies. The Supreme Court's opinion, written by Justice Souter, concluded that California's "iron-hand" approach would undercut the President's diplomatic discretion to use "kid gloves" to resolve Holocaust-era insurance cases. Well, it is time to take the gloves off.

Look at a chart of Jewish population distribution in Europe before the Holocaust and also the chart of the names that have been published through ICHEIC for each country. Germany makes up most of the names released on ICHEIC's Web site, nearly 400,000 policies identified in a country that had 585,000 Jews. Look at Poland, where 3 million Jews lived but a mere 11,225 policyholders have been listed. Or Hungary, where barely 9,155 policyholder names have been identified out of a prewar Jewish population exceeding 400,000. In Romania, where close to 1 million Jews lived, only 79 policyholders have been identified. These countries were the cradle of Jewish civilization in Europe. Clearly, these numbers demonstrate that claimants are far from having a complete list.

Congress must act to fix this terrible injustice. That is why I have introduced H.R. 1210 and Mr. Foley has introduced his legislation. My bill would require all insurance companies operating in

the United States to publish basic information about Holocaust-era policies for public dissemination through the National Archives.

At this hearing we will also need to address accountability at ICHEIC, the insurance companies, and the State Department. ICHEIC is supposed to be a public institution performing a public service, yet it has operated largely under a veil of secrecy without any accountability to its claimants or to the public. Even basic ICHEIC statistics have not been made available on a regular basis. And information about ICHEIC's administrative and operational expenses have been kept under lock and key. There is no evidence of systematic changes that will guarantee that claims are being handled by ICHEIC in a timely way with adequate followup.

Even worse, many of the insurance companies remain recalcitrant and unaccountable. ICHEIC statistics show that the claims are being rejected at a rate of 5 to 1. German claims have been idled because of the slow pace of research into whether the claims are eligible for payment. The Generali Trust Fund, an Italian company, has frequently denied claims generated from the ICHEIC Web site or matched by ICHEIC internally, without even providing an explanation that would help claimants determine whether it would be appropriate to appeal.

Likewise, the State Department should be doing more. As an observer to ICHEIC and the guarantor of the President's policy to rely upon a voluntary system of compliance, the administration must make clear to the companies that there are consequences if they fail to comply. The State Department should also play an activist role in resolving other obstacles, like the inaccessibility of state archives in Poland, Hungary and Romania that could help identify policyholders in those countries. Similarly, intervention with the French Government could help with privacy laws that have blocked the publication of French policyholder names.

Mr. Chairman, whether through legislation, oversight, diplomatic efforts, or a combination of all three, I hope this hearing will help us identify steps that can be taken by ICHEIC, its members, the State Department, and Congress to make sure that this chapter of history will not close without 100 percent effort and 100 percent accountability. Time is running out for survivors still living today.

Chairman TOM DAVIS. Mr. Waxman, thank you very much.

[The prepared statement of Hon. Henry A. Waxman follows:]

TOM DAVIS, VIRGINIA
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STATEMENT OF HENRY A. WAXMAN
COMMITTEE ON GOVERNMENT REFORM
HOLOCAUST ERA RESTITUTION
September 16, 2003

Mr. Chairman, I would like to thank you for calling this hearing to examine the ongoing challenges in Holocaust insurance restitution. I also want to acknowledge your leadership role in ensuring restitution for Holocaust survivors and their relatives.

This Committee held the first congressional hearing on the International Commission on Holocaust Era Insurance Claims (ICHEIC) in November 2001. That hearing examined a number of serious problems with the ICHEIC process, including the extraordinary backlog in unresolved claims.

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The other problem we can address: many of the insurance companies who issued these policies won't disclose complete lists of their policyholders.

The result is a Catch-22. Survivors and their relatives can't collect on their insurance policies because they can't prove who issued the policies.

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The Supreme Court's opinion, written by Justice Souter, concluded that California's "iron hand" approach would undercut the President's diplomatic discretion to use "kid gloves" to resolve Holocaust-era insurance cases.

Well, it's time to take the gloves off.

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Likewise, the State Department should be doing more. As an observer to ICHEIC, and the guarantor of the President's policy to rely upon a voluntary system of compliance, the Administration must make clear to the companies that there are consequences if they fail to comply. The State Department should also play an activist role in resolving other obstacles like the inaccessibility of state archives in Poland, Hungary, and Romania that could help identify policyholders in those countries. Similarly, intervention with the French government could help with privacy laws that have blocked the publication of French policyholder names.

Mr. Chairman, whether through legislation, oversight, diplomatic efforts, or a combination of all three, I hope this hearing will help us identify steps that can be taken by ICHEIC, its members, the State Department, and Congress to make sure that this chapter of history will not close without 100% effort and 100% accountability. Time is running out for survivors still living today

Chairman TOM DAVIS. Other Members wishing to make a statement? Ms. Ros-Lehtinen, followed by Mr. Foley.

Ms. ROS-LEHTINEN. I want to thank you, Mr. Chairman, for holding this important meeting. After so many years, we want to finally correct this historic wrong and restore to the survivors the benefits which they were denied for so long.

The subject of insurance benefits denied to Holocaust survivors is heart-wrenching. It involves the legacies of families torn apart by the Holocaust with bitter reminders that these injustices of half a century ago are unfortunately being perpetuated by insurance companies to this day. The full story of the fate of insurance policies from the Holocaust is one of utter betrayal.

Past testimonies from survivors has provided chilling accounts of insurance agents in Europe cynically selling life insurance policies to families that they knew were doomed because of the tides of war. Policy payments were demanded up front, and the agents knew in many cases that there would never be anyone left to claim the benefits.

According to documents found in the U.S. National Archives as well as those in Europe, insurance companies were found to have closed policies out and delivered the proceeds to the Nazis. These terrible events occurred during the war. The story of what happened after the war is just as bad. When the war ended, survivors struggled to rebuild their lives, trying to reacquire what little remained of their family's legacies. In some cases, survivors were told that there was no record of the policies they sought or that they needed a death certificate to prove their claim. Other survivors were told that the company had been nationalized by the Communists and there was nothing more that could be done to help them.

No matter what the excuse, the end result was the same. Survivors were abandoned and betrayed. Countless numbers of survivors are still seeking information on their policies. What is absolutely necessary for their success is a comprehensive listing of all of these policies. In the past, with other forms of stolen assets from the Holocaust, this kind of information has proven to be invaluable for the prompt and accurate identification of the assets. This situation cannot be allowed to go on any longer. Survivors are entering their twilight years and they need these funds now.

When I chaired the Subcommittee on International Economic Policy and Trade, I dealt with the issue of Holocaust-era assets and with these insurance companies. I found their practices to be cynical and deplorable. Nothing has changed. It is very unfortunate that the Supreme Court struck down the California law requiring these same disclosures by the insurance companies in return for doing business in the State. I firmly believe that each State must be allowed to establish requirements on insurance companies as a condition of doing business in that State. If States are allowed to obtain the information necessary to fulfill claims, survivors will certainly benefit, and, in the end, that is what we seek.

Far too many claimants have been arbitrarily denied their benefits by these companies. This is simply unacceptable. Holocaust survivors deserve to be treated better.

And I want to thank the constituents from my congressional district who are here today, very interested in this subject, Mr. Samuel Dubbin of Dubbin and Kravetz, and Mr. David Schaecter of World Industrial Products, and I welcome them here to this hearing.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Ileana Ros-Lehtinen follows:]

Statement of the Honorable Ileana Ros-Lehtinen
Government Reform Committee Hearing
Holocaust-Era Insurance
September 16, 2003

I want to thank the Chairman for holding this important hearing. After so many years, we want to finally correct this historic wrong and restore to the survivors, the benefits of which they were denied for so long.

The subject of insurance benefits denied to Holocaust survivors is heart wrenching. It involves the legacies of families torn apart by the Holocaust, with bitter reminders that these injustices of a half-century ago are, unfortunately, being perpetuated by insurance companies to this day.

The full story of the fate of insurance policies from the Holocaust is one of utter betrayal. Past testimony from survivors has provided chilling accounts of insurance agents in Europe cynically selling life insurance policies to families they knew were doomed because of the tide of war. Policy payments were demanded up front and the agents knew in many cases there would never be anyone left to claim the benefits.

According to documents found in the U.S. National Archives, as well as those in Europe, insurance companies were found to have closed policies out and delivered the proceeds to the Nazis.

These terrible events occurred during the war. The story of what happened after the war is just as bad. When the war ended, survivors struggled to rebuild their lives, trying to re-acquire what little remained of their families' legacy.

In some cases, survivors were told that there was no record of the policies they sought, or that they needed a death certificate to prove their claim. Other survivors were told the company had been

nationalized by the Communists and there was nothing more that could be done to help them. No matter what the excuse, the end result was the same: survivors were abandoned and betrayed.

Countless numbers of survivors are still seeking information on their policies. What is absolutely necessary for their success, is a comprehensive listing of all of these policies. In the past, with other forms of stolen assets from the Holocaust, this kind of information has proven to be invaluable for the prompt and accurate identification of the assets. This situation cannot be allowed to go on any longer. Survivors are entering their twilight years and they need these funds now.

When I chaired the Subcommittee on International Economic Policy and Trade, I dealt with the issue of Holocaust-era assets and with these insurance companies. I found their practices to be cynical and deplorable. Nothing has changed.

It is very unfortunate that the Supreme Court struck down the California law requiring these same disclosures by the insurance companies in return for doing business in the State.

I firmly believe that each State must be allowed to establish requirements on insurance companies as a condition of doing business in that State. If States are allowed to obtain the information necessary to fulfill claims, survivors will certainly benefit and in the end, that is what we seek.

Far too many claimants have been arbitrarily denied their benefits by these companies. This is simply unacceptable. Holocaust survivors deserve to be treated better.

Thank you Mr. Chairman, I look forward to the testimony of our witnesses.

Chairman TOM DAVIS. I will go to Ms. Schakowsky, then get Mr. Foley. Ms. Schakowsky.

Ms. SCHAKOWSKY. I thank you, Chairman Davis and Mr. Waxman for all the work that you and your staff have done to put this important hearing together, and I am particularly grateful to the chairman and the ranking member and the members of the committee for allowing me to participate as a former member of this committee.

I represent the Ninth Congressional District of Illinois, which includes the village of Skokie, home to one of the largest survivor populations in the country. Actually, a shrinking survivor population, because as they wait for some semblance of justice, many have died. I have closely followed and been involved in efforts to seek some justice for Holocaust survivors and the era of victims since before coming to Congress. I have sat through numerous hearings in this committee and elsewhere over the last several years and I have kept in close touch with the survivors in my district. The process has been disappointing and there has been little progress compared to the amount of work that remains to be done.

Today's hearing is timely because Congress has a duty to consider possible legislation or other actions in light of the June 2003 Supreme Court decision that struck down California's Holocaust-era insurance law. That law prompted significant action in other States and signified the great frustration many involved with the restitution process have experienced. California passed legislation because of the reprehensible behavior of insurance companies that refused to cooperate with efforts to secure the names of Holocaust-era policyholders. The law was necessary because ICHEIC was not successful enough in convincing many of those companies to own up to their responsibility in a timely manner.

I believe one necessary and logical course of action for Congress to take is passage of H.R. 1210, the Holocaust Victims Insurance Relief Act, which was introduced by Mr. Waxman. I am proud to be an original cosponsor of that legislation because it is needed in order to require insurance companies that do business in this country and which held Holocaust-era policies to release the names of those policyholders to the U.S. Government so that they can be made available to the public. Without this law, and particularly in light of the Supreme Court ruling, insurance companies will continue their shameful practice of delay. H.R. 1210 is an appropriate mechanism to force real progress on this issue for those who have been denied justice for their suffering for over 50 years.

Without access to names, survivors and victims' families have had no way to know if they qualify for compensation under the ICHEIC agreement. Numerous constituents contact me with questions, dismayed that the process has gone on for so long, depressed and angry that they are still without answers or justice. There are still some 10,000 survivors in Illinois. Over 1,000 of them have filed claims for insurance, and only a fraction of those individuals have received offers for payment. Many of my constituents lost their families, their properties, and their bank accounts during the Holocaust. Most were children at the time, and now, years later, they are elderly, often the sole representatives of their families, and reminders of our historic and moral imperative to provide the

utmost measure of justice to those who suffered at the hands of the Nazi regime.

There is no good excuse for the process to have gone on for this long. Last September, many of us participated in a similar hearing on the same subject, and I am sad to say that not much has changed since then. There are serious problems that need to be resolved and Congress has the responsibility to make sure that is done so that those who have lived to recall the Holocaust may also have some measure of dignity provided to them.

The history of this process and the behavior of these companies have demonstrated that only with the threat of financial consequences can results be achieved. Instead of sitting back and relying on the actions of States to force companies to operate as good-faith partners in the struggle to provide justice to Holocaust survivors, Congress should take the lead. Pressure needs to come from all sides. But now Congress must take action because the States may now be limited in their ability to do so as a result of the *Garamendi* decision.

The Bush administration should also reevaluate a policy that relies on a process, the ICHEIC process, that is riddled with flaws as the only mechanism for resolution of these issues. Too much time has passed, too many promises have been broken, and too many survivors have died without receiving what they deserve.

Mr. Chairman, I want to welcome our witnesses today and I look forward to hearing their testimony, to a worthwhile discussion, and, hopefully, to be followed very soon by concrete action.

Chairman TOM DAVIS. Thank you very much.

[The prepared statement of Hon. Janice D. Schakowsky follows:]

Statement of the Honorable Jan Schakowsky
Government Reform Committee Hearing Entitled,
"Holocaust Era Restitution after AIA v. Garamendi:
Where Do We Go From Here?"
September 16, 2003

Thank Mr. Chairman and Mr. Waxman for the work that you and your staff have done to put together this important hearing on the Holocaust-era insurance restitution process. I am grateful to the Chairman, the ranking member and the members of the Committee for allowing me to participate.

I represent the 9th Congressional District of Illinois, which includes the Village of Skokie-home to one of the greatest survivor populations in the country. I have closely followed and have been involved with efforts to seek some justice for Holocaust survivors and the heirs of victims since before coming to Congress. I have sat through numerous hearings in this committee and elsewhere over the last several years, and I have kept in close touch with survivors in my district. The process has been disappointing and there has been little progress compared to the amount of work that remains to be done.

Today's hearing is timely because Congress has a duty to consider possible legislative or other actions in light of the June, 2003 Supreme Court decision that struck down California's Holocaust-era insurance law. That law prompted significant action in other states and signified the great frustration many involved with the restitution process have experienced. California passed legislation because of the reprehensible behavior of insurance companies that refused to cooperate with efforts to secure the names of Holocaust-era policy holders. The law was necessary because ICHEIC was not successful enough in convincing many of those companies to own up to their responsibility in a timely manner.

I believe one necessary and logical course of action for the Congress to take is passage of H.R. 1210, the Holocaust Victims Insurance Relief Act which was introduced by Mr. Waxman. I am an original cosponsor of the legislation because it is needed in order to require insurance companies that do business in this country and which held Holocaust-era policies to release the names of those policy holders to the U.S. government so that they could be made available to the public. Without this law, and particularly in light of the Supreme Court ruling in AIA v. Garamendi, insurance companies will continue their shameful practice of delay. H.R. 1210 is an appropriate mechanism to force real progress on this issue for those who have been denied some measure of justice for their suffering for over fifty years.

Without access to names, survivors and victims' families have had no way to know if they qualify for compensation under the ICHEIC agreement. Numerous constituents contact me with questions, dismayed that the process has gone on for so long and that they are still without answers or justice. There are still some 10, 000 survivors in Illinois. Over one thousand of them have filed claims for insurance and only a

fraction of those individuals have received offers for payments. Many of my constituents lost their families, their property, and their bank accounts during the Holocaust.

Most were children at the time. Now, years later, they are senior citizens, sole representatives of their families and reminders of our historic and moral imperative to provide the utmost measure of justice to those who suffered at the hands of the Nazi regime.

There is no good excuse for the process to have gone on for this long. Last September many of us participated in a similar hearing on the same subject. I am sad to say that not much has changed since then. There are serious problems that need to be resolved and Congress has a responsibility to make sure that is done so that those who have lived to recall the Holocaust may also have some measure of justice and dignity provided to them.

The history of this process and the behavior of the companies have demonstrated that, only with the threat of financial consequences, can results be achieved. Instead of sitting back and relying on the actions of states to force companies to operate as good faith partners in the struggle to provide justice to Holocaust survivors, Congress should take the lead. Pressure needs to come from all sides. But Congress must take action because the states may now be limited in their ability to take action as a result of the Garamendi decision. The Bush Administration should also reevaluate a policy that relies on a process (ICHEIC) that is riddled with flaws as the only mechanism for resolution of these issues.

Too much time has passed, too many promises have been broken and too many survivors have passed on without receiving what they deserve.

Mr. Chairman, I want to welcome our witnesses today. I look forward to hearing their testimony and to a worthwhile discussion.

Chairman TOM DAVIS. Mr. Foley.

Mr. FOLEY. Thank you, very much, Mr. Chairman, for agreeing to host this important committee hearing. I am almost embarrassed to be sitting up here still having this conversation. If these were September 11 claimants, they would be storming the doors of this Capitol to get relief.

I had the utmost hope for ICHEIC when we talked about the foundation of this. Three percent of the claims have been answered. Three percent. Anyone ever miss their insurance premium payment by about a day? You get a notice within 3 days that they are going to cancel all your coverage. They are miraculous in coming up with records when it comes their way, when it is about their financial well-being. But when it is someone else's, you have to go to a litany of places in which to find proof you held a policy. I am outraged that people even demand this kind of verification of a policy. Insurance companies will not be forthcoming, so they are making the claimants find information they know is unavailable.

The Nazis took fillings out of people's teeth to get the gold, they stole their clothes, and they killed them. Yet they are asking their loved ones for proof positive that they may have had a claim. It is disgusting. It is absolutely reprehensible.

Enron, when we had that financial disaster in America, there was not a Member of Congress that did not want to get up on the floor and speak for hours about the corruption of the system in America. Where are the voices today on this issue? Maybe it is only because it is a few Jews that are maybe waiting to die in dignity, waiting for an answer. Maybe that is why we are not all outraged.

I am sickened to the core of my being that we have not been more responsive as a Nation to the claims of these people. We teach our kids to never forget. We teach them about the Holocaust so they will not have to hopefully witness the same atrocity in their own lifetime. Yet they got a taste of it on September 11. They got a taste of what hatred does and how it destroys other lives that get in the way of that hateful feeling inside themselves, these terrorists.

Hitler was a terrorist and he killed millions of Jews, and we are sitting here having this debate, almost perfunctory, just to satisfy some people in the audience. I don't want to just satisfy them here today, I want to satisfy their families. I want what is rightfully theirs. I want insurance companies to pay for that claim that is due those claimants, and I want these lists revealed and I want them revealed soon. I am tired of waiting.

The Supreme Court did not close the door on Congress. The Supreme Court's opinion also clearly noted that Congress has not disapproved of the Executive's policy and that it is impossible to interpret congressional silence as approval or disapproval, thereby leaving open the possibility of congressional action.

Two bills have been introduced in the 108th Congress to address this issue. Those bills can answer the Supreme Court's decision and we can empower the States to collect this data. Again, if this were about tracking terrorists, you can be sure we would give them the authority and the power to check the records to make certain

terrorists are not conspiring in States like California and Florida and Texas.

Mr. Chairman, I'd like to enter into the record the State of California Attorney General's letter to myself on the insurance policies.

[The information referred to follows:]

Record

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

July 17, 2003

Via Facsimile (202) 225-3132 and US Mail

The Honorable Mark Adam Foley
United States Senate
104 Cannon House Office Building
Washington, D.C. 20515

Re: Insurance Policies of Nazi Holocaust Victims

Dear Senator Foley:

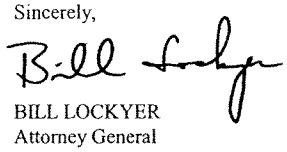
I am writing to express my strong support for your efforts, along with those of Congressman Henry A. Waxman and Senator Norm Coleman, to remedy a grave injustice: the failure of insurance companies doing business in this country to honor insurance policies issued to victims of the Nazi Holocaust.

As you may know, I filed a brief with the United States Supreme Court, that was joined by 12 other states, strongly supporting the right of California and other states to help Holocaust survivors document their insurance coverage by requiring insurance companies doing business in the state to provide basic information regarding Holocaust-era policies. In *American Insurance Association v. Garamendi*, however, a closely-divided Court held that California's insurance reporting statute interferes with the federal government's conduct of foreign relations, because it conflicts with the past and current administration's approach to the Holocaust insurance issue. That approach, unfortunately, has proved to be ineffective, to a large degree because survivors and their heirs lack the documentation needed to pursue their claims - documentation that was often destroyed in the Holocaust. Only the insurance companies have that information, yet too many still refuse to disclose it.

1300 I STREET • SUITE 1740 • SACRAMENTO, CALIFORNIA • 95814 • 916-324-5437

I support HR 1905 and other similar measures that would help address this injustice by finally requiring insurance companies to disclose vital policy information.

Sincerely,



BILL LOCKYER
Attorney General

cc: Rick Frank, Chief Assistant Attorney General
Dan Siegel, Deputy Attorney General

Mr. FOLEY. Senator Coleman in the Senate, myself, and Congressman Israel have introduced H.R. 1905. Mr. Waxman, who I commend for his leadership on this issue, we both have similar bills, we both have similar destinies, they may be somewhat different, but they are both bills that will address the underlying problems we hear of today.

I can assure you of one thing, the time for talk is over. The time for tears and mourning is long since over. We must, in this Congress, put an end to this terrible time in our history once and for all. And I pray that as we continue to debate—and again, Mr. Davis, I do thank you for keeping the dream of those who are in the audience alive that someday we may find legislation that will force these companies to come clean, to pay the claims, to do what is right, and to do it soon. Thank you.

Chairman TOM DAVIS. Thank you.

Mr. Schiff. Thanks for being with us.

Mr. SCHIFF. Mr. Chairman and ranking member I want to thank you very much for allowing me to participate in today's hearing before this committee.

In 1998, the California legislature enacted the Holocaust Victim Insurance Relief Act in order to facilitate Holocaust-era claims by California residents. As a California State senator at the time, I was proud to be involved in this process as a principal coauthor of the legislation that provided victims with the right to bring legal actions to recover on outstanding insurance claims.

Prior to World War II, millions of European Jews purchased life insurance policies with various European insurance companies as a form of savings and investment in the future. Insurance companies, however, have rejected many claims submitted by Holocaust survivors or heirs of the victims because the claimants lacked the requisite documentation, such as death certificates that had been confiscated by the Nazi regime. Some families have tried for years to obtain promised benefits, but insurance companies continue to demand that survivors produce nonexistent documents.

In 1998, the International Commission on Holocaust Era Insurance Claims was established to address the issue of unpaid insurance policies and to expedite payouts to Holocaust victims, but its record has been dismal at best. The commission has received over 900,000 claims, but has only made a few thousand settlement offers. In fact, only 35.5 percent of the pre-war insurance market participate in the commission's work.

Reports also indicate that the commission has resolved only 797 of 77,000 claims against a major Italian insurance company, and, as of a year ago, offered survivors $38 million in restitution but ran up a $40 million bill in overhead costs. Even the economists recently reported on the commission's insignificant number of settled claims, charging the commission has a strikingly poor record.

These shortfalls have forced disillusioned claimants to turn to the States for assistance in obtaining the swift justice they deserve. To continue to deny these claims would be a further injustice to these survivors and would only serve to perpetuate the acts that occurred years ago.

As we all know, the Supreme Court recently visited the issue, and I was proud to join Mr. Waxman in filing an amicus brief in

support of the California law. The court narrowly rejected the rights of States like California to require insurance companies doing business in their State to disclose information about Holocaust survivor insurance policies. The court maintained the President's preferences for Holocaust-era insurance claims to be handled by the commission, an approach that has wholly failed Holocaust victims. But as Mr. Foley points out, and I quite agree, the court also pointed out that Congress has done nothing to express disapproval of the President's policy, and in light of congressional silence, the issue of the authorization of preemption is far from clear.

I believe we ought to make it clear that Congress approves of the State's offering this opportunity to Holocaust survivors, and am proud to be a cosponsor of both Mr. Waxman's and Mr. Foley's bills, and have also drafted a bill that narrowly addresses the court's decision that speaks to the silence that the court pointed to and explicitly authorizes States to pass laws much like California's.

I want to thank again the chairman and the ranking member for all of their work on this issue and for allowing me to participate in this hearing today.

Chairman TOM DAVIS. Thank you. Thank you very much.

[The prepared statement of Hon. Adam B. Schiff follows:]

Statement of Congressman Adam B. Schiff
Government Reform Committee Hearing: Holocaust Restitution
September 16, 2003

I thank the Chairman and the Ranking Member for allowing me to participate in today's important hearing before this Committee.

In 1998, the California legislature enacted the Holocaust Victim Insurance Relief Act (HVIRA) in order to facilitate Holocaust-era insurance claims by California residents. As a California State Senator at the time, I was proud to be involved in this process as a principal co-author of the legislation that provided victims with the right to bring legal actions to recover on such outstanding insurance claims.

Prior to World War II, millions of European Jews purchased life insurance policies with various European insurance companies as a form of savings and investment for the future. Insurance companies, however, have rejected many claims submitted by Holocaust survivors or heirs of Holocaust victims because the claimants lacked the requisite documentation such as death certificates that had been confiscated by the Nazi regime.

Some families have tried for years to obtain promised benefits, but insurance companies continue to demand that the survivors produce non-existent documents. In 1998, the International Commission on Holocaust Era Insurance Claims (ICHEIC) was established to address the issue of unpaid insurance policies and to expedite payouts to Holocaust victims.

ICHEIC's record has been dismal at best. The Commission has received over 90,000 claims, but has only made a few thousand settlement offers. In fact, only 35.5 percent of the prewar European insurance market participate in ICHEIC. Reports also indicate that ICHEIC has resolved only 797 of 77,000 claims against a major Italian insurance company, and, as of a year ago, offered survivors $38.2 million in restitution but ran up $40 million in overhead costs. Even *The Economist* recently reported on the Commission's insignificant number of settled claims, charging that "ICHEIC has a strikingly poor record."

These shortfalls have forced disillusioned claimants to turn to the states for assistance in obtaining the swift justice they deserve. To continue to deny these claims would be a further injustice to these survivors and would only serve to perpetuate the horrible acts that occurred years ago.

As we all know, the Supreme Court recently visited this issue, and I was proud to join Mr. Waxman in filing an amicus brief in support of the California law. The Court, however, narrowly rejected the right of states like California to require insurance companies doing business in their state to disclose information about Holocaust survivor insurance policies. The Court maintained that the president's preference is for Holocaust-era insurance claims to be handled by the International Commission of Holocaust-Era Insurance Claims – an approach that has wholly failed Holocaust victims.

I firmly believe that states should have the authority to assist survivors of the Holocaust to recover benefits from policies lost or stolen before and during these tragic events.

Since the Supreme Court's decision, I have been working to identify what response is necessary from Congress. I am a cosponsor of both the Waxman and Foley bills addressing this issue, and I am very interested to hear from the witnesses today as I continue to determine whether additional action is needed on this issue.

Chairman TOM DAVIS. Mr. Van Hollen.

Mr. VAN HOLLEN. I want to thank you, Mr. Chairman and Mr. Waxman, for holding this hearing, and both of you and Mr. Foley for your efforts in this area.

I just want to say at the outset—because I don't want to take much time, I would like to get to the witnesses' testimony—that I look forward to all the witnesses' testimony and look forward to your answers to the question after this hearing entitled, "Holocaust Era Insurance Restitution After *AIA* v. *Garamendi:* Where Do We Go From Here?" I think you hear a lot of frustration, and I share the frustration expressed by my colleagues on this panel with the pace of developments.

I am interested in any concrete suggestions that you may have that can move the process forward and I thank you for being here. And I thank you, Mr. Chairman, for holding the hearing.

Chairman TOM DAVIS. Mr. Bell.

Mr. BELL. Mr. Chairman, I would like to thank you for calling this hearing on such an important issue facing thousands still waiting to collect what is owed to them from Holocaust-era insurance policies. I would also like to commend the ranking member for his efforts to continue the fight for justice for survivors and their families.

On June 23 of this year, the U.S. Supreme Court struck down the California law, as we have heard, the Holocaust Victims Insurance Relief Act. The decision was rightfully met with anger and disappointment from Jewish organizations and activists all across the Nation. The court opinion determined that California did not have the right to interfere in the Federal Government's handling of foreign affairs.

In 1998, it became the policy of the U.S. Government that the International Commission on Holocaust Era Insurance Claims would serve as the sole remedy for Holocaust-era insurance policies. Although the commission is charged with establishing a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust, it was revealed in a November 2001 Government Reform Committee oversight hearing that the Commission's claims approval rate was barely 1 percent.

In all fairness, the Commission has been given a monumental task. The international commission has cited the large volume of claims, difficulty of investigations, and lack of evidence as reasons for the delayed processing. This evidence is almost impossible to produce for most survivors or heirs of concentration camps or others who fled persecution, which leads many to turn to insurance companies, because only insurance companies would have that information now.

But it is appalling to think that after more than 4 years of stonewalling, delays and obstruction, German insurance companies only released 360,000 names out of a total of 8 million policies that were matched, and many continue to fail to provide a comprehensive list of policy names. These lists are critical because over 80 percent of Holocaust survivors and their heirs recall their families held policies but do not know the names of companies that issued them.

The United States has played a leading role in the international effort to right injustices of the Holocaust era, and much has been accomplished, but there is much more to be done. The administration's policy of allowing companies to voluntarily release information about insurance policies has failed miserably. It is time we act to remedy this.

Mr. Chairman, that is why I believe Congress must act swiftly to pass H.R. 1210, the Holocaust Victims Insurance Relief Act, legislation introduced by the ranking member, Mr. Waxman. This legislation would apply pressure on these companies to end their tactics of deliberately stonewalling and ensure that survivors have the necessary information to file their rightful claims. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

The gentleman from Connecticut.

Mr. SHAYS. Thank you, Mr. Chairman. Mr. Chairman, I would like to align my words with all those that have been already spoken and to say to you that I am very grateful you are holding this hearing, and, Mr. Waxman, for your pursuit of this as well. I am grateful this is bipartisan.

When I was a Peace Corps volunteer, I developed a favorite author in Leon Uris. And when you read Mila 18 and Armageddon and Exodus, you think no one could do the horrible things that were done, and yet they still continue. In listening to Mr. Foley, I know his outrage. What we have to be willing to do is to offend those that don't want to be offended. We have to be willing to confront those that don't want to be confronted; for example, our friends in Europe, who seem to be very quick at criticizing the United States over trying to end the regime of Saddam Hussein, but don't want to right a wrong that has existed for over 50 years.

I would particularly like to say that I have a deep affection for Roman Kent, who is going to be testifying, so proud he is a constituent of mine, and grateful that he has held this banner high and long for so many years. And if for no other reason than to do him right, I would like to see this happen.

Chairman TOM DAVIS. Thank you very much.

Mr. Ruppersburger.

Mr. RUPPERSBERGER. Yes, Mr. Chairman, again, thank you for the hearing and to all of our Members here who are stating their positions here today.

It is important to keep close checks on the insurance industry with respect to this issue as it relates to all the Holocaust victims. It is time, though, to be critical of the effects of the Supreme Court decision. We need to guarantee to our constituents that there are no loopholes for the insurance industry. Our goal is to guarantee that all victims of the Jewish Holocaust have fair and equal treatment with respect to their insurance claims.

Thank you.

Chairman TOM DAVIS. Thank you very much.

I think this concludes our opening statements, and we are happy to get to our first panel.

[Disruption in hearing room.]

Chairman TOM DAVIS. Excuse me.

[Disruption in hearing room.]

Chairman TOM DAVIS. Excuse me. We will move to our first witness here, Ambassador Randolph Bell, who is the special envoy for Holocaust issues.

[Disruption in hearing room.]

Chairman TOM DAVIS. Sir, we are going to ask you to sit down.

[Disruption in hearing room.]

Chairman TOM DAVIS. Ambassador Bell, I'm going to have to have him removed, I'm afraid. But, look, it is the policy of this committee that all witnesses be sworn before they give testimony. If you would rise and raise your right hand.

[Witness sworn.]

Chairman TOM DAVIS. We have a light in front of you. It will turn orange after 4 minutes and red at the end of 5 minutes. If you can sum up, your entire statement will be in the record.

Let me just remind the audience that you are guests of the committee. We are happy to have you here, but we expect you to obey the rules of the committee. If you do not observe the proper decorum, we can't have you disrupt the meeting. We will have to have you escorted out.

[Disruption in hearing room.]

Chairman TOM DAVIS. I'm afraid it is, sir.

[Disruption in hearing room.]

Chairman TOM DAVIS. Ambassador Bell, go ahead.

STATEMENT OF AMBASSADOR RANDOLPH M. BELL, SPECIAL ENVOY FOR HOLOCAUST ISSUES, U.S. DEPARTMENT OF STATE

Ambassador BELL. Thank you, Mr. Chairman. Very quickly if I may, I want to, before turning to my prepared statement, to note that today we are observing at the State Department the near end of my own 31 years working in the Foreign Service, much of which has been devoted to working on Holocaust issues. And I mention that only for one purpose, and that is to stress that our efforts have always been bipartisan I think in both branches of the government. And that is just by way of saying I worked on these issues under the previous administration also. And I would just like to note for the record that the policies I am going to explain to you today are identical to those which we pursued under the previous administration.

Mr. Chairman, ladies and gentlemen, I am honored to have been invited here to testify on a subject which so deeply concerns us all. It is my understanding that our concentration today will be on "next steps" following the recent Supreme Court decision.

As you know, I am a diplomat, not a lawyer. Though I work on legal issues quite a lot, our lawyers would certainly not want me to address Constitutional issues, and I will refrain from doing so.

If I may take the liberty, I would like to restate for my own purposes what I think we are looking at here today, which is next steps in getting as many Holocaust survivors and heirs of Holocaust victims as possible paid as quickly and as fully as possible on the basis of Holocaust-era insurance claims. I think that sums up what it is we all want to see.

Last year, when I was here, I testified on the history of our efforts to date, and made some points I would like to recall this afternoon. Following the 1998 Washington Conference on Holocaust As-

sets, the United States expressed its support for ICHEIC. I noted that at the request of the parties that signed the ICHEIC memorandum, the United States became formally an observer to the negotiating process, as we have made clear again today in your discussions. I explained how we, as observers, and many of the ICHEIC negotiating parties shared the widespread frustration of the pace of payments.

Part of the problem was that it took so long to establish a climate of trust and confidence among the negotiating parties, and that should come as no surprise, given the history and the disparate roles of the people around the negotiating table. I am pleased to note that the ICHEIC process today enjoys the full support of survivors groups, of major Jewish-American NGO's, of the Government of Israel, as well as this administration, like the previous one.

With regard to the specifics of the process for paying Holocaust survivors and heirs, I will leave these in the able hands of Chairman Eagleburger, who is scheduled to testify. Let me, however, cite at least one important achievement of recent months. On April 30, the ICHEIC parties resolved one of the key issues in the process by reaching agreement on a name-matching mechanism devised as a means of assuring that all prospective Holocaust-era insurance claims can be found and processed. This mechanism significantly augments the lists that were previously available for matching names against policies, adding to the published dissemination of names some 360,000 new entries.

Now, you combine those with the 40,000 names that the companies and archives had previously provided, and the 150,000 names that were already in the ICHEIC reservoir, and the total is 550,000. But we should recall, of course, that a name may match more than one actual insurance policy, since many people had more than one.

The names available represent the very best efforts of all the ICHEIC participants, including Yad Vashem, and of the international community generally to produce an exhaustive list of potential Jewish German insurance policyholders. The new 360,000-name list draws on many archival sources, including the 1938 German census data, which carefully listed all Jewish-German citizens, emigration statistics and local archives as well. All the available names are matched carefully against the total of more than 8 million names contained in the companies' internal files for the years 1920 through 1945. And in an earlier version of this statement there was a typographical error in that passage in my statement. The years should read 1920 through 1945.

Here I think we reach a crucial point of our inquiry. The central question we have all been looking at is, "shouldn't the companies publish all the 8 million names of its policyholders?" A variant of that has been, "shouldn't we require that, as a condition for doing business in the United States, the companies should publish all these names?" And to this question I think our answer remains "no," because requiring such an extensive publication of names will probably not get any additional claims paid. It would almost certainly stop the current mechanism for making payments.

The matching mechanism really will help identify claims. You need only enter the ICHEIC Web site, enter your grandmother's or

your great aunt's name and the process begins. There is little if anything to be gained by requiring far broader disclosure of millions of names, the vast majority of which in no way relate to the Holocaust. Through ICHEIC, insurance companies are making records available in a way that companies and governments agree will not violate European privacy laws, as other procedures would. I defer to my written statement for other technical points and statistical data on this matter.

I sum up simply by noting that we have a system which now is working much better than previously it did. Litigation is not an alternative. It would provide a very slow process which might in the end result in no payments at all. We should perfect the system that we have available. It is the only one at our disposal. Thank you.

Chairman TOM DAVIS. Well, thank you very much, Mr. Ambassador.

[The prepared statement of Ambassador Bell follows:]

Statement
by
Ambassador Randolph M. Bell
Special Envoy for Holocaust Issues
U.S. Department of State
Washington, DC

to the
U.S. House of Representatives
Committee on Government Reform
Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations

September 16, 2003

Mr. Chairman, ladies and gentlemen. I am honored to have been invited to testify today about a matter which so deeply concerns this Administration. It is my understanding that our concentration today will be on "next steps" following the recent Supreme Court decision in the Garamendi case. I am not a lawyer, and official lawyers would take a very dim view of my addressing constitutional or other doctrines, which are their purview. So, if I may take the liberty, I would restate this for my own purposes as "next steps in getting as many Holocaust survivors and heirs of Holocaust victims as possible paid as quickly and as fully as possible on the basis of Holocaust-era insurance claims." That is

perhaps long-winded, but I think it sums up what everyone in this room wants to see.

In my testimony last autumn before the House Government Reform Committee, I outlined the history of efforts to date to achieve this purpose. I made the following points:

- I recalled how, following the 1998 Washington Conference on Holocaust Assets, the United States expressed its support for the International Commission on Holocaust-Era Insurance Claims (ICHEIC).

- I noted that, at the request of the parties that signed the ICHEIC Memorandum of Understanding, the U.S. Government became formally an observer to the ICHEIC negotiations and process, but not a direct participant in it.

- I explained how we as observers and many of the ICHEIC negotiating parties shared the widespread frustration with the pace of payments on claims.

Part of the problem was that it took so long to establish a climate of trust and confidence among the participants in ICHEIC.

Ultimately, of course, this proved possible, and recently ICHEIC has been able to increase the pace of payments.

I am pleased to note that the ICHEIC process enjoys today the full support of survivors' groups, of major Jewish-American NGOs, and of the Government of Israel, as well as of the Administration.

With regard to the specifics of the process for paying Holocaust survivors and heirs, I will leave these in the able hands of Chairman Eagleburger, who I believe is also scheduled to testify today.

Let me, however, cite at least one important achievement of recent months.

On April 30, the ICHEIC parties resolved one of the key issues in the process by reaching agreement on a name-matching mechanism devised as a means of assuring that all prospective Holocaust-era insurance claims can be found and processed. This mechanism significantly augments the lists that were previously available for matching names against policies, adding to the published dissemination of names some 360,000 new entries.

Combined with the 40,000 names that companies and archives had previously provided and the 150,000 names that ICHEIC itself had made available, this new release has made possible the world-wide dissemination via ICHEIC's website of some 550,000 names. We should recall, of course, that a name may match more than one actual insurance policy, since many people had more than one.

The names available represent the very best efforts of all the ICHEIC participants, including Yad Vashem, and of the international community generally, to produce an exhaustive list of potential German Jewish insurance policy holders. The new, 360,000-name list draws on many archival sources, including the 1938 German census data, which carefully listed all Jewish German citizens, emigration statistics, and local archives.

All the available names are matched carefully against the total of more than 8 million names contained in the companies' internal files for the years 1920 through 1945.

And here we reach a crucial point of our inquiry. The central question we have all been looking at is 'Shouldn't the companies publish all the 8 million-odd names of policyholders?' A variant of that has been 'Shouldn't we require that, as a condition of doing

business in the U.S., the companies publish all the insured names for the years 1920 through 1945?' Although these widely inclusive approaches presumably seek to assure that every conceivable historical connection with events leading up to and subsumed under the Holocaust is taken into account, the practical answer to these questions is "no." That would have been the answer under the previous Administration, and it remains the answer now.

Requiring such extensive publication of names would probably not get any additional claimants paid and, indeed, would almost certainly stop the current, now much-improved process whereby claimants actually are getting paid. The matching mechanism, which enjoys full confidence and support inside and far outside the ICHEIC negotiating circle, really will help identify claims. Publishing more names won't. There is little, if anything, to be gained from requiring far broader disclosure of millions of names, the vast majority of which in no way relate to the Holocaust, whether those be the 8 million names on company lists or the tens of millions of unrelated names from the 1920-1945 period.

Through ICHEIC, insurance companies are making records available in a way that companies and governments agree will not

violate European privacy laws. Attempting to mandate far wider publication and make public large numbers of names and policies that were not Holocaust-related would derail the ICHEIC system. Because that system is an integral part of the German Foundation, "Remembrance, Responsibility, and the Future," that would in turn seriously undercut the functioning of a body which is attempting as rapidly as possible to pay out more than $5 billion dollars not only to insurance claimants, but also to forced and slave laborers and other deserving recipients. Let me reiterate. The vast majority of tens of millions of names from the 1920 to 1945 period, and the 8 million in company files, are not those of Holocaust victims.

So requiring such extensive publication is both unnecessary and counterproductive. Let me stress that we have always proceeded from the urgent premise that we want people paid while they are still alive. Mandated, large-scale publication of names would at best engender additional class-action litigation, and both the previous and current Administrations have espoused a policy of seeking redress through non-adversarial, non-judicial means. We have adopted this approach because litigation would take years to

achieve any results, if indeed it ever did so, and benefit at most a few at the expense of the many.

I believe it is important to note that ICHEIC has continually managed to introduce improvements. It has, for example, extended its deadlines for filing claims from September until the end of this year.

I think, Mr. Chairman, the best course of action is to support ICHEIC's recent achievements and improved system, and indeed to work concertedly on all fronts to make that system as effective and as universal as it possibly can be. ICHEIC is already paying an increasing number of claims.

- ICHEIC has reported that it has received about 60,000 claims and processed 54,000.

- According to ICHEIC, ICHEIC and ICHEIC insurance companies have made a total of 3,250 offers for a total of $42.5 million.

I note in this regard that the agreements with ICHEIC provide $217.5 million for its claims-based process and an

additional $195 million available for humanitarian payments. The objective of all involved is to ensure that the $217.5 million is paid out as quickly as possible. Already, $42.5 million in offers have been made, which is 20 percent of the $217.5 million available for claims. The humanitarian portion, that is the $195 million, was always intended by the parties to the ICHEIC agreement to be paid out over several years.

Thus, ICHEIC'S agreements with German companies, the Italian insurer, Generali, and with Swiss and French companies, provide a total of at least $412 million for insurance-related payments through the ICHEIC system -- and possibly also $462 million if the German Foundation's Future Fund reserve for insurance claims is drawn upon.

The figures I have just mentioned do not, of course, include the some $100 million that are being paid outside the ICHEIC context, or that will eventually become available from the settlement with Austria. The Austrian agreement provides $25 million for insurance claims. The Swiss Bank settlement allocates $50 million to pay claims via the Claims Resolution Tribunal. Dutch insurers are providing $25 million for claims, largely paid outside of the ICHEIC process.

The choice for claimants has always been between a negotiated settlement and litigation. Sticking with the negotiated settlement is far preferable to years of uncertain litigation. Without the ICEIC and related agreements, it is unlikely that such vast sums would ever flow to Holocaust survivors and heirs.

Mr. Chairman, let us work together to improve and perfect this system -- not derail it.

I thank the Committee for the opportunity to testify today. I would be happy at this point to take questions.

Chairman TOM DAVIS. Let me start the questioning.

Some of the witnesses today will testify that the publication of policyholder names is the most important resource enabling the public to participate in the Holocaust insurance claims process. My understanding is that while ICHEIC has done a good job of getting policyholder names from German insurance companies, cooperation from non-German companies and governments has not been as great. For example, one witness will testify that France has persistently refused to release hundreds of thousands of insurance records that are well over 60 years old. Would you agree we are not getting full cooperation from non-German companies and other European countries, such as Austria and France, in developing a complete list of policyholder names?

Ambassador BELL. Not at this point, Mr. Chairman, I would not. I would note that—and again you may wish to talk to Chairman Eagleburger about this—just recently there was a successful round of negotiations involving precisely French as well as Swiss companies. You must recall that the Dutch companies participate directly in the ICHEIC process, as do the Austrian companies, as does the Italian company Generali.

We could go into the very technical explanation of how a great many East European policies will be subsumed under the ICHEIC mechanism—again I defer to Chairman Eagleburger to give you technical data on that—but, no, it would not be accurate to characterize the matter as I believe you just did.

Chairman TOM DAVIS. Are you comfortable with the French cooperation at this point?

Ambassador BELL. I am comfortable that any company brought into the ICHEIC system will have to cooperate according to ICHEIC standards, and those standards involve documentary and claim settlement procedures which have been agreed to by the victims' representatives themselves. And if they have confidence in this matter, and you can turn to some of their representatives today, then those procedures, I think, merit our support.

Chairman TOM DAVIS. What can our government do to facilitate cooperation from these other companies and countries? Can we do more from a governmental point of view?

Ambassador BELL. Well, there are general means outside this as well, which I might mention. I, as the Special Envoy for Holocaust Issues, along with my colleagues from the Holocaust Museum, from a great many other walks of life, place major emphasis on archival openness in all aspects of Holocaust research, education and the diplomatic activities surrounding it; historical commissions, etc. So we are already doing a great deal in that regard. There is a great deal more we have to do.

Chairman TOM DAVIS. Let me ask this. Secretary Eagleburger is going to claim that ICHEIC researchers are unable to gain access to archives in Hungary and Romania, and that Poland may possess insurance files for several ICHEIC companies. Can the State Department play a role to help ICHEIC gain access to these files; and is there a way to bring Eastern European companies into the process?

Ambassador BELL. With regard to the first question, I personally have traveled to Budapest to urge that archival openness be im-

proved. It emanates from a law passed after the fall of the Communist regime which sought to protect all files, particularly secret police files, but a consequence of that has been to close off to Holocaust research and Holocaust claims processes that data. We have strongly urged the Hungarian Government to find a way around that. They assure us that they may well succeed in doing so.

Romania—last week, when I appeared before the Helsinki Commission to talk about property restitution issues in Romania, I made it a matter of public record that there is a great deal to be accomplished in that country, least of all—most of all, not least of all, excuse me, the opening of archives.

So I would agree that we must keep the pressure on for better archival openness there. Yes, there is more to be done, and, yes, I agree the State Department and the administration can and must and is helping.

Chairman TOM DAVIS. Mr. Waxman.

Mr. WAXMAN. Thank you, Ambassador Bell, for your testimony. Just a followup on what you just conclude here in your answers to Mr. Davis' questions. What can we do to pressure these countries to open up their archives?

Ambassador BELL. Well, there is a great deal already in place with regard to the way we conduct Holocaust diplomacy with them. The United States currently, this year, is chair of an international organization called the Task Force for Holocaust Education Remembrance and Research, and the research part of that touches directly on archives. We just chaired a meeting of that task force and we urged them——

Mr. WAXMAN. Well—excuse me.

Ambassador BELL. There is, with regard then to the conduct of our relations with that country, the embedding of that issue directly in our bilateral relationship. And we make it clear to all those countries that this matters. Obviously, there is a give-and-take in the bilateral relationship, then, which is an asset.

Mr. WAXMAN. Why wouldn't it matter if some of the German and Austrian insurance companies issued policies in those nations whose archives are not open? Are we taking the position that we are going to give them legal peace, an end to liability, for policies they may have issued in these countries when we have no knowledge whether those policies were ever paid?

You said in your testimony, and I thought it was very interesting, if we try to force the listing of the policies, you think we would get fewer claims paid rather than more claims paid. I cannot see the reasoning of that. You also said the ICHEIC process, in effect, is sufficient and is working. But so few of the claims are actually being paid. So I don't think we have a very good system, certainly not anything that has reached the result that we would want.

What can the U.S. Government say to these countries that we want to open up the archives so that we will get the names of those who are entitled to payment on those policies?

Ambassador BELL. Well, if I may address some of that very quickly, again deferring to Chairman Eagleburger. But let me very broadly note that of the 60,000 claims ICHEIC has received, I think one needs to recall 48,000 are from the Soviet Union. Of the claims that ICHEIC is processing, 80 percent are so-called

unnamed claims; that is to say, where someone simply signals that I think a relative of mine may have had a policy, and there is nothing more than that in substantiation of that assertion. So when we talk about percentages and rates of payment, we need to bear that in mind.

The reason, Congressman, that I think that forcing the publication of all the insurance company holdings from 1920 through 1945 would undercut if not completely end the current system is the same reason I alluded to last year. It would directly violate the privacy laws of those countries, and the companies and the countries have told us they would not be able to do that and would not do that. And that's just a mechanical point.

Mr. WAXMAN. Well, let me ask you a question about that. Has the State Department ever done a review of these privacy laws to make certain that the interpretation of the companies is accurate? And has the State Department ever spoken to these countries about making exception to their privacy laws for the purposes of Holocaust-era restitution?

Ambassador BELL. I can comment on that to the extent that our Foreign Service posts, when confronted with this issue, have indeed reported back to us concerning privacy laws in those countries. I do not have those reports with me, and some of the reporting has also been oral reporting. But the universal tenor of it is that if indeed you attempted to mandate the violation of those laws, the answer would be no.

Mr. WAXMAN. I didn't say "mandate." I would like to know whether our government ever tried to see whether the insurance companies' interpretations were valid.

Ambassador BELL. I am not aware of any instance in which, Congressman, for instance, whether on the basis of your bill anyone has gone to a European government and asked, would this be a basis on which you could make exemptions from your privacy law?

Mr. WAXMAN. You are talking about my bill, and I am talking about the responsibility of the U.S. Government. You seem to say that ICHEIC is a sufficient mechanism, but I don't think it——

Ambassador BELL. I have haven't said——

Mr. WAXMAN. Well, let me finish my question. I don't think it has produced a sufficient result.

Now, one of the reasons you and others have cited that they haven't gotten good results is because you can't violate these countries' privacy laws, according to the companies. Now, did my government, the United States of America, through its Foreign Service, do something to check whether that was accurate? Or have we pretty much accepted the statement and decided that basically what we want to do from a foreign policy point of view is end all of this ugly chapter and give legal peace to the insurance companies in Austria and Germany, so that for foreign policy goals and objectives we can just say the end is the end, even though many people, obviously, are going to go without getting justice done for them?

Ambassador BELL. Well, point one, it is not just what the companies have said, it is what the governments have said. Point two, I cannot, sitting here today, give you any detail about what our government has and knows about all these privacy laws. But I can

tell you we looked into them very carefully, not simply because of this connection but also because they touch on the doing of business by the United States in a great many other areas of trade and commerce.

We certainly have a very active dialog with the European Commission and European governments on this issue, and, consequently, yes, we know a lot about it.

I believe, if I understood you correctly, sir, you just implied—and if I am wrong please tell me so—that we would have sought a means to proclaim that we believed them, so that as a matter of foreign policy we can proclaim the chapter to be closed. Let me assure you that neither under the Clinton administration nor under the Bush administration has anyone that I know ever taken that perspective in this matter.

The emphasis which we have all held dear—Stuart Eizenstat and all of us who worked with him during the Clinton years, all of us working on the issue now—has been, "How can we get the greatest number of claims paid as soon as we possibly can while the victims are still alive."

Mr. WAXMAN. Well, that is certainly the objective all of us share.

Mr. Chairman, I just want to tell the Ambassador, I understand this is your retirement day.

Ambassador BELL. Yes, sir.

Mr. WAXMAN. And I want to thank you for your service. It is unfortunate that you had to come today to testify.

Ambassador BELL. It's all right.

Mr. WAXMAN. We very much appreciate your being here.

Ambassador BELL. Thank you, Congressman.

Mr. WAXMAN. Even though I must say, as you will hear from some of my colleagues, I still have some issues where you and I seem to disagree.

Ambassador BELL. Thank you, sir.

Chairman TOM DAVIS. Thank you. Mr. Foley.

Mr. FOLEY. Just briefly, if I could. You state in your opening statement that you consider this an important achievement of recent months, and that is April 30, because ICHEIC has resolved one of the key issues in the process by reaching agreement on a name-matching mechanism.

Do you really believe after 5 years that's significant?

Ambassador BELL. Yes, sir, I do, for the reason that it gets down again simply to the field of numbers. This is a set theory—I am old enough that they only invented set theory it seems to me when I was in high school and not earlier in my arithmetic courses, but I have something of a grasp of it.

It depends on how broadly you define the set of numbers. We could be talking about the set of numbers which is all the company archives between 1920 and 1945, the great preponderance of which have nothing whatever to do with the Holocaust and Holocaust victims, or we could be talking about the set of numbers which, after a great deal of careful and hard work on the part of a lot of people from very differing perspectives, constructs a mechanism in which they have confidence in which we will find the nth degree of completeness, 99 percent or whatever the degree of completeness as to the perspective claimants. It's that set that all the participants in

the ICHEIC process have been working on, and it is that set which that matching mechanism very directly addresses. It's not the wider one.

Mr. FOLEY. The State Department's position—obviously, we believe in Congress we have given authority to the States to regulate insurance for the purposes of insuring business conduct and other things within those jurisdictions. Based on the foreign nature of these companies, that is where the rub lies. How should we proceed, though, as a Congress considering now with DaimlerChrysler and other foreign corporations now doing business in the United States? Should we have any prerogative over——

Ambassador BELL. If you're asking me that as a Constitutional question, I am obviously not going to give you profound Constitutional law.

I would note that in the last two administrations, this one and the one previously, there has been a consensus that State sanctions and sanctions taken up at the State level frequently undercut the policies which administrations are pursuing, and this has arisen in areas as divergent as human rights and the conduct of various kinds of commerce as well as in this instance. I think there is a common thread there. In the ICHEIC process the State insurance commissioners participated directly and noted themselves that they accepted the obligation not to undercut the results of this process, and that's a matter of record.

I believe the chairman can address that issue, too. He has personal experience with it. It follows from the same consensus and precept.

Chairman TOM DAVIS. Mr. Van Hollen.

Mr. VAN HOLLEN. I have no questions.

Chairman TOM DAVIS. Mr. Ruppersberger.

Mr. RUPPERSBERGER. No questions.

Chairman TOM DAVIS. Ms. Schakowsky.

Ms. SCHAKOWSKY. When the State Department's analysis of the foreign relations authorization bill was submitted by the State Department to the Senate, I was really surprised to see that Section 802 of the bill would repeal a semiannual report required by Congress concerning the German Foundation and the requirement in the U.S.-German executive agreement that German insurance companies process claims by ICHEIC guidelines. I was very disturbed to see this recommendation, because I had worked with Mr. Waxman to get that reporting requirement passed, and I'm not pleased that it was struck from the bill.

But I was more shocked, however, to see that one of the justifications for this decision the State Department gave in its section-by-section analysis was that the administration does not have the authority to require ICHEIC or the claims conference to supply data needed for the report; and what I'm asking is, if you're saying that this administration, which has gone to court to defend the voluntary nature of the ICHEIC system, does not have the ability to determine whether the companies are actually complying.

Ambassador BELL. Well, Congresswoman, my office actually endeavors to provide that report. We are drafting at this juncture the next edition of it because, while that requirement exists we will do our utmost to comply with it.

Let us recall that ICHEIC is, indeed, an independent commission, and that is by design, and the American nongovernmental organizations representing victim interests wanted it to be that way as did all the other participants. And as long as it is that way, an independent commission, not an arm of the U.S. Government, it will be the case that we cannot "de jure" require that all the records and internal files of that institution be turned over to us any more than we can require that the Conference on Jewish Material Claims hand over to us its documentation.

What we must do and can do is remain as informed as we possibly can, and we must also be in touch with all of the participants continually to determine what their level of confidence and/or dissatisfaction is. And on the basis of that latter endeavor, we remain, as we were over the last few years, convinced that this is the only available course. But it is incumbent on us, the U.S. Government, to enforce the greatest degree of efficiency and the greatest degree of speed in this process as possibly we can.

Ms. SCHAKOWSKY. You know, your statement says that the ICHEIC process, the one that is in your testimony, "enjoys the full support of survivors' groups and major Jewish-American NGO's."

Ambassador BELL. Those who participated in the negotiations, yes, ma'am.

Ms. SCHAKOWSKY. When the *Garamendi* case was being considered at the Supreme Court, two survivor applicant organizations, the Simon Wiesenthal Center and the B'eth Settak Legal Aid Service, gave scathing assessments of ICHEIC failures.

Ambassador BELL. I'm sure they did. I didn't say "all." The adjective "all" is not in the sentence. I said that it enjoys the confidence of survivor organizations.

Ms. SCHAKOWSKY. I wanted to be clear, because I think the statement was meant to show that there is a broad consensus that everybody agrees. I think it's important to note.

Beyond all that, when you look at the actual outcomes, the actual results—you know, we may talk about faith in a process and everybody agrees and we are doing all we can, bottom line is so few of the survivors are getting the money. What I want to hear is a sense of urgency, and maybe you do feel that, but I want to know what we are actually going to do other than say, "you know, we have done all we can, this is the process, everybody is on-line." In the meantime, people are dying every single day, and those of us who have been to these hearings one after another are just feeling the frustration of "deja vu" all over again. As Representative Foley said, you know, we're not talking about September 11, 2001. We're talking about 50 plus years.

I'm venting here, you know, but how do we move from these hearings, from this process, to checks in the hands of the people that need them?

Ambassador BELL. Point one—if I could just go back to parts of what you addressed, ma'am—I did not wish in my statement or otherwise to imply that there's universality and support among every survivor organization. I would note, though, if you look at the major Jewish-American organizations which have expressed strong support for ICHEIC, including the American Jewish Committee—you can talk to representatives at the Conference on Jewish Mate-

rial Claims, which is a participant, World Jewish Congress and others—major organizations have expressed support for this. The survivors' organizations directly involved in the process can speak for themselves, but there was certainly more than one.

With regard to what specifically needs to and can be done, I attempted to state as clearly as I could the precept that we have to take what history has now given us as the means, it would appear to all who look at this, the sole means of getting payments out during people's lifetimes and not just perfect it but truly invest in it the energy and the resources required to make it pay.

I believe we are in a very different circumstance this year than when I sat before many of you last year. I would like all of us to listen to the statistical and other information ICHEIC representatives themselves will provide and test that thesis. But to the extent that there is unexploited opportunity, all of us are committed to doing that. All of us have the same sense of urgency that you do.

If I could just say, it's just a practical matter; if you take this away, you're going to go back to the courts. That's all you are going to be able to do. And as a matter, I think, of just ordinary legal analysis or political legal analysis, I would observe litigation benefits as the few rather than as the many. For those who can afford lawyers, it takes years; it may never succeed. We simply want to get the very best deal we can out of the non-litigious approach which both the Clinton and Bush administrations have espoused.

Ms. ROS-LEHTINEN [presiding]. Thank you very much, and we appreciate your testimony here today and—oh, Mr. Shays.

Mr. SHAYS. Thank you. We will see how long it takes.

I want to know what European country has been the most cooperative and what European country has been the least cooperative.

Ambassador BELL. On what aspect?

Mr. SHAYS. I would like to know what European country has been the most cooperative in trying to help us solve this problem and what European country has been the least cooperative.

Ambassador BELL. You're talking about those who are directly engaged in the ICHEIC process or beyond the ICHEIC process or what?

Mr. SHAYS. Beyond the ICHEIC process. Bottom line for me, you have countries that have the ability to tell their companies to solve this problem, which is simply to help disseminate information that would enable people to know if, in fact, they are covered or their loved ones were covered. What countries have been the most willing and the most eager to solve this problem so it goes away and what country has been the most reluctant and most stubborn and the most uncooperative? It's not a hard question.

Ambassador BELL. The one thing that makes it difficult, sir, and that is, as an American and I dare say even you as an American legislator, would be unable to tell us today what legal hold we have on American companies in every instance.

Mr. SHAYS. That's not even the point.

Ambassador BELL. You just said they have the ability to make them comply.

Mr. SHAYS. They have the ability to encourage, to use the bully pulpit. I mean, there are vibrations you get from people who, when

you sit down and talk with them, they say, "this person wants me to solve the problem."

Ambassador BELL. I can give you then the examples of the countries that have decided to negotiate; and those countries where governments directly were involved are, of course, Germany and Austria, where we ended up with an agreement with a $25 million carve-out to settle insurance claims. Certainly we had the good offices of the Dutch government when it came to folding the Dutch insurers into the process. Now that we have the French companies engaged, the French government has taken a positive approach, as it did to other Holocaust negotiations in which we engaged.

The other side of your question is where have there been instances where governments wouldn't engage themselves. One was, of course, Switzerland where the government did not become engaged.

Mr. SHAYS. And where they had an individual who stepped forward saying records are being destroyed and he's being ostracized.

Ambassador BELL. The positive stories are those where the governments have become directly engaged in negotiations, and the ones where governments have not chosen to become directly engaged are the other side of the ledger.

Mr. SHAYS. And the last question, we're talking about not large awards, correct?

Ambassador BELL. There are minima, my Latin teacher would have said, on the payments, which are, if I remember correctly, $4,000 for a Holocaust victim, $3,000 for another claimant. Those are minimum payments; there's no maximum. The claims, through the agreed adjudication process——

Mr. SHAYS. What have the average awards been?

Ambassador BELL. I defer to Chairman Eagleburger on that. He can give you fresh data.

My knowledge of it is that you can find an average along the level of about $1,200 at this juncture, but that's because the process has taken into account even all the little marriage dowry policies, the really small ones that people even under the relaxed standards of proof have put forward. So that's brought the average down.

Mr. SHAYS. Is it your sense that the companies think in the end they are going to have to pay out a fortune or are they fighting this for other reasons?

Ambassador BELL. My honest opinion, sir, is there are these amounts that have been devised for the settlement of claims; and they are fully at peace with all of those amounts being exhausted, including up through the humanitarian fund which ultimately would be devoted to insurance purposes. And the total for the claims process under ICHEIC is $217.5 million.

Mr. SHAYS. I know we don't have the ability to make anybody do anything, but we do have the ability to push the envelope and we do have the ability to offend people and risk offending them, and I just hope that we are pushing real hard.

Ambassador BELL. Of course.

Mr. SHAYS. Thank you.

Ms. ROS-LEHTINEN. Thank you.

I'd like to note that anyone who has further questions would be advised to send them in writing, and I hope that you could respond as quickly as possible.

Ambassador BELL. As rapidly and quickly as I can.

Ms. ROS-LEHTINEN. Thank you, Ambassador.

We now move to our second panel of witnesses.

Our second panel includes the Honorable Lawrence Eagleburger, the former Secretary of State, who is the chairman of the International Commission on Holocaust Era Insurance Claims.

Next, we will hear from Gregory Serio, Superintendent of the New York State Insurance Department. Mr. Serio also serves as the chairman of the International Holocaust Commission Task Force of the National Association of Insurance Commissioners.

After Mr. Serio, we have Gideon Taylor, who is the executive vice-president of the Conference of Jewish Material Claims Against Germany.

Rounding out this panel, Mr. Roman Kent, who is a Holocaust survivor and serves as chairman of the American Gathering of Holocaust Survivors.

We thank all of you for being here today, and once we get settled we will recognize the Honorable Secretary of State, Lawrence Eagleburger.

As you know, gentlemen, it is the policy of this committee that all witnesses be sworn in before they testify. Please rise and raise your right hands.

[Witnesses sworn.]

Ms. ROS-LEHTINEN. In order to allow more time for questions and discussions, please limit your testimony to 5 minutes. All written statements will be made a part of the record. Thank you very much.

Secretary Eagleburger.

STATEMENTS OF LAWRENCE S. EAGLEBURGER, CHAIRMAN, INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS; GREGORY V. SERIO, SUPERINTENDENT, NEW YORK STATE INSURANCE DEPARTMENT, CHAIRMAN, INTERNATIONAL HOLOCAUST COMMISSION TASK FORCE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; GIDEON TAYLOR, EXECUTIVE VICE-PRESIDENT, CONFERENCE OF JEWISH MATERIAL CLAIMS AGAINST GERMANY; AND ROMAN KENT, CHAIRMAN, AMERICAN GATHERING OF HOLOCAUST SURVIVORS

Mr. EAGLEBURGER. It is the normal practice, I know, to say when you testify like this how pleased you are to appear before a committee. I never did that when I was in government because I didn't feel it was wise to lie to a committee when I started out. So I hope you will understand if I don't do it now.

I thought what I would do is, I will try to do this as briefly as I can, and I will try to do it in 5 minutes. And do I assume we're going to go through the whole list before we go to the questions?

As chairman of the International Commission on Holocaust Era Insurance Claims, I have been entrusted to help establish and run an organization capable of resolving unpaid Holocaust era insurance claims. This attempt to bring a measure of justice to Holo-

caust victims decades after the events—on the basis of incomplete and nonexistent records and in the face of hostility and resistance—has no precedent. I undertook this job because I believe profoundly in the mission of this organization, to help those who have for so long been denied recourse to address their claims and who have for much too long been denied justice.

What I would do, Madam Chairman, is try very briefly to address the questions posed by a letter that was written to me by the committee chairman, that is, the status of ICHEIC administration of claims, progress there on the number of claims processed, the status of ICHEIC success in acquiring lists of policyholders from participating insurance companies, the extent to which insurance companies have cooperated with ICHEIC, and benefits of using the ICHEIC process to administer the claims.

I'm not going to spend any time on our history and things of that sort. We can go into those in the questions and so forth.

In brief, with regard to the benefits of using the ICHEIC process to administer claims, let me try to make these points very quickly.

First of all, in using ICHEIC, it is of no cost to the claimants. Unlike litigation, there's no cost—there are no lawyers and there's no proceeds of policy payments. There's nothing paid to the lawyers.

There is an independent appeals process for most ICHEIC entities. And where that is not possible, and there are a few cases, there is a secondary review where there's not an independent appeal process. And I will explain that more as we go into the discussion.

There are very relaxed standards of proof. They substantially reduce the amount and quality of the evidence required to support a claim. And claims can be submitted that do not name a particular insurance company. ICHEIC companies will check and in a separate system, ICHEIC may provide humanitarian payments. There's an opportunity for where we cannot identify a company at the end of the day.

Finally, archival research projects used to provide ICHEIC claimants with additional evidence to support their claim are very much a part of the ICHEIC process. An effort to pair ICHEIC claims with additional supporting documentation for submission to the ICHEIC member companies and organizations, that is the matching process, also is a part of the ICHEIC system.

Second question, the extent to which insurance companies have cooperated: Generally speaking, they have become much more cooperative than was the case in the early days. We still have contentious issues and there are contentious times with each of the companies and with all member groups as we're negotiating settlement agreements. But, nevertheless, we focus very much more on getting claims processed as quickly, effectively and fairly as possible. The difficult times in the past are, to a great degree now, behind us. We have learned through sometimes difficult negotiations how best to gain cooperation as necessary from all parties to keep the process moving forward to completion.

Now as to the status of claims administration and progress on the number of claims processed and so forth, some progress has been made since we last met. But the number of claims processed

and decided is nowhere near where we need to be, given the age and the need of the claimant population. We have worked hard over the past year to revise the system of claims administration so that I can now promise you that we have turned the corner and in the coming year we will see significant improvement in the number of claims decided. As of now, we have received and we have heard any number of statistics today so far. Let me try to give you ours, and I think they are correct.

ICHEIC has received 61,336 claims which fall within our jurisdiction. And I'll try to explain the jurisdiction if it is necessary, but we have received 61,336 claims. Total offers made using ICHEIC valuation guidelines is 3,268, for a total value of $46,950,000. Let me repeat those statistics: 61,336 claims. Offers made through using the ICHEIC guidelines, 3,268, for a total of $46,950,000.

I cannot tell you exactly how many of those offers have been accepted. There is no way at this point to tell you that because there is such a lag time between the time of the offer and the time when we will be told the offer has been accepted. The reason for this being that, from the time the offer is made until the time it is received by the claimant—and in some cases there will be an appeal so that by the time we know that the offer has been accepted—there is often a fairly substantial lag time. And at this stage I cannot tell you precisely how many have been done.

Ms. ROS-LEHTINEN. Mr. Secretary, I apologize, but we are sticking to our 5 minute rule, so if you could wrap it up.

Mr. EAGLEBURGER. May I have 1 more minute?

Ms. ROS-LEHTINEN. Yes, sir.

Mr. EAGLEBURGER. And it is the minute you will love the least because I will comment briefly on why I think—and I know this will not be agreed upon by anybody up there—but why I think the two bills before you, though I understand the purposes for them are clearly to help the survivors, I think that they in fact will work in precisely the opposite direction. Because the difference between those bills and the ICHEIC approach is, we have tried to approach it from the bottom up, that is, to identify where the Jewish Holocaust victims are and to work in that direction, where these bills will simply produce—I won't say millions of names—names with no identification as to whether they are Jewish Holocaust victims or not. And I simply cannot understand in that process how you will then identify Jewish Holocaust victims from that process without some system that you will have to impose with checks to see whether the companies who have provided these names "in toto" and then begin to figure out which ones are Jewish and which ones are not.

And I could go on, but, obviously, since I don't have time, I will stop there except to say to you, much as I understand the purpose of these bills, and they may have been important at some earlier time, I do not now understand how they solve the problem. All they do is produce some millions of names without any identification as to whether they are Jewish Holocaust victims or not. I don't know what kind of policing system you have thereafter and where in fact

the claimant goes to make his claim and then how you force the company to pay the claim if they deny it.

And I'll end at that, Madam Chair.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Secretary.

[The prepared statement of Mr. Eagleburger follows:]

Statement of
The Honorable Lawrence S. Eagleburger
Chairman, International Commission on Holocaust Era Insurance Claims

before the

U.S. House of Representatives

Committee on Government Reform

September 16, 2003

INTRODUCTION

As Chairman of the International Commission on Holocaust Era Insurance Claims ("ICHEIC" or "the Commission"), I have been entrusted to help establish and run an organization capable of resolving unpaid Holocaust era insurance claims. This attempt to bring a measure of justice to Holocaust victims decades after the events -- on the basis of incomplete or nonexistent records and in the face of hostility and resistance -- has no precedent. I undertook this job because I believe profoundly in the mission of this organization. I wanted to use my experience to help those who have for so long been denied recourse to address their claims and who have for far too long been denied justice. My tenure as Secretary of State capped an over thirty-year career with the U.S. Department of State spent trying to make a difference for my country in understanding and dealing with complex and difficult international issues. Administering ICHEIC has been among the most challenging assignments of my career.

I want to address at the top of this statement the questions raised in your letter requesting my presence at the hearing. As with most matters ICHEIC related, the reality is a bit more complicated than a yes or no answer to the points you have mentioned, but let me start on a general note in addressing your questions and then go into more detail later herein.

First, I am a strong believer that ICHEIC offers the best available route to ensuring payment of claims to Holocaust era victims and their heirs. There are any number of difficulties and challenges with this process, which we will discuss, but I must characterize it either as the best available option or, in the words of Winston Churchill about democracy as a political system, "the worst form of government, except for all others that have been tried from time to time...."

Second, the insurance companies that are Members of ICHEIC (and which signed the Memorandum of Understanding founding the Commission), and those that are affiliated through ICHEIC's work with the German Foundation and the German Insurance Association have, generally speaking, been cooperative. Now that the last of the settlement agreements with companies have been completed, we are all focused on getting claims processed as quickly, effectively, and fairly as possible. We have learned a great deal through our sometimes difficult negotiations about how to best gain the cooperation necessary from all parties in an effort to move forward.

Third, while there has been some progress in the number of claims processed since last we met, the numbers are nowhere near where they need to be. This said, we have worked diligently over the past year to revise our system of claims administration, which is based primarily in London and with a contractor outside of London. I now have the ability to commit to a significant increase in the numbers of claims processed over the coming year. Currently, our budget anticipates the completion of all claims processing by the close of December 2004, with a general contingency for a carryover should the process continue through 2005. However, due to the fact that we have extended the filing deadline twice since we prepared this budget in an effort to allow claimants additional

time to file claims, (the last extending the deadline through December 2003), we are re-evaluating what a reasonable goal should be for the completion of all claims and appeals processing. We will be meeting with companies and others through September and October to determine what is needed to bring the claims process to a close with all claims having been reviewed and decided by the end of 2005 or shortly thereafter should the target date shift due to the extended deadline.

In terms of straight statistics, as of September 5, 2003 ICHEIC has received approximately 54,000 claims that fall within ICHEIC's jurisdictional purview and are now being processed by the companies. ICHEIC has received approximately 32,000 additional inquiries that fall outside its jurisdictional scope. Finally, some 6,000 claims have recently been received and are still in the initial processing stage. In terms of compensation, ICHEIC has made approximately 2,600 offers for a total value of $35 million. An additional (approximate) 650 offers, totaling approximately $7.5 million, have been made by ICHEIC companies on claims submitted directly to the companies (not through ICHEIC) but using ICHEIC valuation guidelines, resulting in a total offer amount of approximately $42.5 million.

Finally, you have asked about ICHEIC's success in "acquiring lists of policyholders from participating insurance companies." We have been largely successful in this effort, particularly with insurance companies in Germany – where the largest percentage of the overall population tended to be insured. I am concerned that by measuring our success by the total number of policy holder names companies have released – rather than by the number of likely Holocaust victim policyholder names – you are focusing in the wrong area, if you indeed share our objective of maximizing the matches between policyholders and uncompensated Holocaust victim policies. On this latter point, I am confident, with a few countries being the exceptions for which I will provide explanation and request for assistance, that in fact ICHEIC's website does contain the vast majority of possible Jewish policyholder names of those who might have had held policies in European insurance companies during the Holocaust era.

I will address each of these issues in greater detail but first want to provide some context for framing our discussion.

BACKGROUND

ICHEIC was established in 1998 following negotiations among European insurance companies and U.S. insurance regulators, as well as representatives of international Jewish and survivor organizations and the State of Israel. The resulting Memorandum of Understanding ("MOU") – signed on August 25, 1998, by six European insurance companies (Allianz, AXA, Basler Leben, Generali, Zurich Financial Services, and Winterthur Leben) – created ICHEIC and charged it with establishing a just process to collect and facilitate the signatory companies' processing of insurance claims from the Holocaust period.[1] Signatory companies agreed to process claims according to ICHEIC

[1] Basler Leben resigned from ICHEIC shortly after signing the MOU.

guidelines, which were subsequently negotiated and established by consensus among the ICHEIC membership. Individuals negotiating on behalf of the companies as well as those negotiating on behalf of the claimants (insurance regulators and representatives of international Jewish organizations) became ICHEIC Members, Alternates or Observers and all have a voice in the organization. To date, ICHEIC has received approximately $465 million, which includes funding from six MOU insurance companies (including Basler Leben), settlement agreements with the five MOU companies, and the German Foundation and German Insurance Association. These funds are earmarked for (a) the payment of ICHEIC claims, (b) humanitarian purposes, and (c) operating expenses.

ICHEIC was the first organization ever to offer Holocaust survivors and their heirs an avenue other than litigation to pursue a claim against an insurance company at no cost. The Commission was created as a means of addressing the gaps and shortfalls of postwar compensation programs of the 1950s and 1960s and was intended to provide an opportunity for thousands of Holocaust survivors and their heirs to submit claims for the first time. ICHEIC and the MOU companies assumed the responsibility of redressing contractual obligations on 60-odd year-old policies for which the statute of limitations had most certainly expired but for which the overriding moral responsibility remained. In an effort to find as many claimants as possible, ICHEIC undertook a worldwide outreach program to seek out Holocaust survivors and their heirs believed to have had policies or whose heirs might have been insured.

To assist claimants, ICHEIC launched a research initiative to investigate archives and create databases that could improve claimants' chances of having a valid claim established – all done for the claimant at no cost. In addition, ICHEIC established a thorough claims process involving a difficult and complex valuation process. In short, we did everything we could possibly think of to help potential claimants, all without cost to them. As a result of these efforts, ICHEIC has received insurance claims from survivors of the Holocaust and the heirs of Holocaust victims and has been able to distribute most of these claims to the appropriate insurance companies and organizations throughout Europe.

ICHEIC has established a claims and valuation process with relaxed standards of proof to identify, settle, and pay individual claims. These guidelines for valuing claims and relaxed standards of proof for determining the validity of these claims were developed and accepted by all ICHEIC Members: representatives of Jewish and survivor organizations, state regulators, and insurance companies. The ICHEIC Member companies do not independently determine the validity and value of claims. Relaxed standards of proof were developed because Holocaust-era claimants could not possibly have the typical proof demanded by insurance companies before these companies would even consider paying a claim. Our relaxed standards recognize this fact and substantially reduce the amount and quality of the evidence required to support a claim.

ICHEIC is responsible for sending claims to the appropriate processing companies/entities and is committed to ensuring that (1) claims that name a company are sent to the named company and are reviewed there; (2) claims that do not name a

company are checked against all available company databases, for companies which did business in the country where the claimant lived; and (3) offers or denials on ICHEIC claims are determined in accordance with ICHEIC guidelines.

ICHEIC's two offices in Washington, DC and London have a combined staff of 20 whose primary responsibility is to drive the claims process by facilitating the transfer of claims to the companies, tracking their progress, and verifying the resulting decisions against ICHEIC guidelines. These activities are done in close consultation with ICHEIC Members, Alternates and Observers to ensure that their views and concerns are considered at all levels throughout the process.

ICHEIC distributes figures on a bi-monthly basis to U.S. insurance commissioners around the country as well as to international Jewish groups in a systematic outreach effort so as to keep claimants' representatives aware of progress on claims processing. In addition, a quarterly report, which includes statistics, on the Commission's progress is posted on the ICHEIC website. ICHEIC also meets and reports on a quarterly basis to the National Association of Insurance Commissioners Holocaust Issues Task Force, several of whose members are also Members of ICHEIC.

Although initially limited to the MOU signatory companies, ICHEIC has greatly expanded its scope in an effort to coordinate potentially duplicative activities. ICHEIC has done this by establishing partnerships with additional companies and national and local industry, governmental and Jewish organizations that are responsible for resolving Holocaust-era claims in their respective countries. As a result of these efforts Holocaust survivors and their heirs who have claims on non-MOU European insurance companies also have the opportunity to have their claims processed and reviewed in accordance with ICHEIC rules and guidelines.[2]

The MOU and the additional agreements reached and partnerships formed provide the structure of the ICHEIC claims process, ICHEIC's operating funds and the funds from which claimants are paid.

Agreements with ICHEIC Member Companies

Generali

In November 2000, ICHEIC and representatives of the World Jewish Restitution Organization signed an Agreement with Italian insurer Assicurazioni Generali S.p.A ("Generali"), a signatory of the MOU. Generali agreed to provide to ICHEIC $100 million plus interest for the settlement of all claims and humanitarian payments related to Generali's Holocaust-era insurance claims. This amount was in addition to funds Generali already had committed under the MOU. In April 2001, ICHEIC signed an agreement with the Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust ("GTF"), to implement the earlier accord with

[2] Both the Sjoa Foundation and the Buysse Commission calculate policies' current values using a multiplier lower than established by the ICHEIC Valuation Guidelines.

Generali. The GTF agreed to process and make payment on all valid Holocaust-era insurance claims against Generali and its subsidiaries that were received through the ICHEIC (except for those claims against Generali's subsidiaries in Germany and the Netherlands, which are processed in accordance with other agreements as described below). The GTF is bound by the Agreement to evaluate all Generali claims using the ICHEIC Standards of Proof and other ICHEIC rules and guidelines, in accordance with Israeli law.

AXA, Winterthur, Zurich

In April 2003, representatives from AXA, Winterthur and Zurich (collectively referred to as "AWZ") along with representatives from ICHEIC, Jewish and survivor organizations, and the State of Israel established the terms of an agreement related to the processing of ICHEIC claims by those three companies. The AWZ Agreement, signed in July 2003, added $17.5 million to the funds available to ICHEIC for claims payments and humanitarian initiatives.

Agreements with Other Organizations

Germany: "Remembrance, Responsibility and Future" Foundation and the German Insurance Association

The United States and the Federal Republic of Germany signed an agreement in July 2000 concerning the creation under German law of the "Remembrance, Responsibility and Future" Foundation ("German Foundation"). In the agreement between the two governments, it was established that insurance claims that came within the scope of the current ICHEIC claims handling procedures and were made against German insurance companies would be processed by the companies and the German Insurance Association ("GDV") on the basis of such procedures and any additional claims handling procedures that were agreed among ICHEIC, the German Foundation and the GDV.

The insurance portion of the German law establishing the Foundation provided for €281.211 million (DM 550 million) to be transferred to the ICHEIC, of which €102.259 million (DM 200 million) is for the payment of valid insurance claims and up to a maximum of $30 million for ICHEIC operating expenses and €178.952 million (DM 350 million) for humanitarian purposes. Any portion of the €102.259 million (DM 200 million) not needed for claims and operating expenses will be available for additional humanitarian spending. In the event that the €102.259 million (DM 200 million) should prove insufficient to pay all valid claims, the Foundation will provide up to a further €25.565 million (DM 100 million).

In October 2002, ICHEIC signed an Agreement with the German Foundation and the GDV ("German Foundation Agreement") on the processing and payment of Holocaust-era insurance claims against German companies. The Foundation transferred

to the ICHEIC in full the €281.211 million (DM 550 million) provided under the German law on October 17, 2002.

The Netherlands: Sjoa Foundation

In May 2000, the Dutch *Stichting Individuele Verzekeringsaanspraken Sjoa* ("Sjoa Foundation") signed the ICHEIC MOU on behalf of insurance companies in the Netherlands and agreed to adopt ICHEIC standards in evaluating claims against Dutch companies. In addition, the Sjoa Foundation agreed to provide to ICHEIC 750 names of individuals insured during the Holocaust. These names have since been published on the ICHEIC website. The Sjoa Foundation applies its own valuation standards, which are broadly consistent with ICHEIC's guidelines, and has established its own appeals process.

Belgium: The Buysse Commission

In July 2003 ICHEIC reached agreement with the Indemnification Commission for the Belgian Jewish Community's Assets, which were Plundered, Surrendered or Abandoned During the Second World War ("Buysse Commission") on the handling of ICHEIC claims. This agreement enables all ICHEIC claims that name a Belgian company, including claims on MOU companies and any unnamed claims stating Belgium as the country of issue, to be examined and, if valid, paid by the Buysse Commission.

Austria: General Settlement Fund

The General Settlement Fund for Victims of National Socialism ("GSF") was established in Austria in early 2001. The Austrian government and Austrian companies together provided $210 million for various categories of restitution, $25 million of which was earmarked specifically for payments on insurance policies. Under its claims-based process, the GSF will consider payments for losses or damages for a variety of assets, including insurance policies. Claimants must show proof or convincing evidence of ownership of property, or entitlement to a property, that has not already been finally decided by the Austrian courts. Where claimants receive a negative decision by the Claims Committee, they can file an appeal for a new decision or review in the GSF's separate but parallel equity-based process.

ICHEIC has been negotiating with the GSF for an arrangement which would allow ICHEIC claims (on Austrian companies or where the claimant believes the policy claimed was issued in Austria) to be settled along similar lines as under the ICHEIC process. Although the filing period for the GSF ended in May 2003, the arrangement should provide for the transfer of ICHEIC claims after this date.

France: Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force during the Occupation ("CIVS")

ICHEIC is working to finalize an arrangement with the Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force during the Occupation ("CIVS"). The contemplated arrangement would permit individuals to submit claims to designated Jewish organizations in France which, with assistance from ICHEIC, would work to match claims with French insurance companies' policyholder lists or payments into blocked accounts. If a match is found, and the claim is valid, the company in question will pay on the claim.

Audits

The ICHEIC audit process is carried out in two stages by internationally recognized accounting firms. Stage 1 of the audits examines the companies' systems and procedures that are set up to comply with ICHEIC Audit Standards. Stage 2 examines each company's handling of claims.

First stage audits must be complete before companies may issue final decisions on claims which have named the company or claims which did not originally name the company but for which the company found a match. A claimant must receive a final decision before he/she can appeal such decision.

The ICHEIC companies that have been declared audit compliant in Stage 1 are: Allianz-RAS, AGF Belgium (owned by AGF, Allianz's French subsidiary), AXA, Generali for east European branches, and Zurich.

Appeals

The ICHEIC claims process provides ICHEIC claimants the opportunity to appeal a company's decision in certain instances. Claimants will have a right of appeal to the Commission's Appeals Process if they 1) named Allianz, AXA, Zurich or Winterthur, or 2) any of their subsidiaries, or 3) were unable to name one of those companies but ICHEIC found a matching record which indicates the company may have issued a policy, or 4) named another German insurance company or if the German insurance company found a matching record which indicates it may have issued a policy.

There are two independent and impartial appeals bodies that rule appeals within the ICHEIC's Appeals Process:

- The ICHEIC Appeals Tribunal, which will consider appeals on decisions from all member companies, with the exception of Generali, and German MOU company decisions dated after October 16, 2002 (see Appeals Panel below). ICHEIC established the ICHEIC Appeals Tribunal to provide claimants an avenue through which they can appeal decisions on named company claims or matched unnamed company claims, at no cost to them. The Tribunal determines appeals in accordance with established Rules of Procedure and is comprised of a President, a Vice President and independent Arbitrators.

- The Appeals Panel, established under ICHEIC's Agreement with the German Foundation and German Insurance Association, which will consider appeals on decisions from German insurance companies, including member companies, dated on or after October 16, 2002. The Appeals Panel consists of three members, one of whom is appointed as Chairman. The Appeals Panel determines appeals presented to it in accordance with the Appeals Guidelines, which are Annex E to the German Foundation Agreement.

Either the ICHEIC Appeals Tribunal or the Appeals Panel independently and impartially determines all ICHEIC appeals. This is intended as a guarantee that decisions made by the Tribunal or Panel are impartial and in accordance with the rules and guidelines set out for each.

Distinct from those appeals decided through the ICHEIC Appeals Tribunal or Appeals Panel, under the terms of the Implementing Organization Agreement with the Generali Trust Fund, GTF claimants have the right to a second review on their decision. This process is separate from the Appeals Process established by ICHEIC. Additionally, the Sjoa Foundation and Buysse Commissions have separate review processes.

ICHEIC's MISSION AND BENEFITS OF THE ICHEIC CLAIMS PROCESS

As I have reiterated to my staff and members of ICHEIC since the Commission's inception, our mission is and will continue to be to resolve unpaid Holocaust-era insurance claims by establishing a claims and valuation process with relaxed standards of proof to identify, settle, and pay individual claims. In light of our mission and in response to your original question concerning the benefits of using the ICHEIC process to administer claims, I should point out in more detail the benefits of the ICHEIC process in comparison to alternate claims adjudication systems/processes.

First, the ICHEIC claims process is provided at no cost to ICHEIC claimants and has an independent appeals process in place through which claimants can appeal decisions made by ICHEIC Member companies, also at no cost to the claimants. (As noted above, there are certain claims that may not go through the ICHEIC appeals systems.)

Second, ICHEIC's relaxed standards of proof help make the Commission the most effective route for compensation on insurance claims for Holocaust victims and their heirs. Our relaxed standards recognize that Holocaust era claimants could not possibly have the typical proof demanded by insurance companies (or that might be demanded in a courtroom to prove contractual obligations) and substantially reduce the amount and quality of the evidence required to support a claim.

A third benefit of ICHEIC as a claims administrator is that the Commission allows claimants to submit claims that do not name a particular insurance company to the ICHEIC for processing. ICHEIC has developed a system which checks these claims

against the archives of all existing companies that did business in the country (and have since not been liquidated or nationalized). This system provides claimants with an opportunity to have their claims checked against a wide range of archives, thus increasing the potential for them to receive payment. These claimants would not otherwise have the ability to access information from such a broad array of sources. To date, approximately 600 claimants who submitted their claims through ICHEIC and who did not name a company on their claim form have been paid approximately $8 million through the ICHEIC claims process.

I want to highlight, in particular, a fourth benefit of ICHEIC as a claims administrator. The Commission initiated a comprehensive archival research project to investigate and record information from Holocaust-era archives around the world in 1999 and has used this information to provide ICHEIC claimants with additional evidence to support their claims. The Commission has established a process by which archival information is matched against the ICHEIC claimant database in order to pair ICHEIC claims with additional supportive documentation for submission to the ICHEIC Member companies and organizations. Through this technically sophisticated process, ICHEIC claims are also matched against company policyholder lists, a benefit which will be described in more detail later in this statement.

PROGRESS OVER THE PAST 22 MONTHS

Last time we met, ICHEIC faced a number of challenges in finalizing agreements that concerned claims processing and humanitarian monies. If you recall, in November 2001, the Dutch Sjoa Foundation had signed the ICHEIC MOU, and we had reached a settlement agreement only with Generali among the original MOU companies, but we did not yet have the Implementing Organization Agreement with the GTF in place. We were far from completing negotiations with the German Insurance Association ("GDV") and the German Foundation, "Remembrance, Responsibility and Future" or with ICHEIC Member companies AXA, Winterthur and Zurich. In addition, ICHEIC had not yet finalized arrangements with the Buysse Commission concerning the handling of Belgian claims.

To be candid, the time and energy needed to negotiate various settlement agreements took away from the attention that needed to be focused on ICHEIC's claims administration role. The ICHEIC Valuation Guidelines were in a continual drafting stage, making decisions difficult for companies and claimants alike as the Guidelines were fine-tuned following their initial development and application. Many ICHEIC claimants and regulators were dissatisfied with companies' application of these Guidelines. There also was a great deal of understandable frustration all around at the pace and quality of consideration of these claims, with responsibility for these failings shared among all ICHEIC parties.

Over the past 22 months, ICHEIC has accomplished much. Our accomplishments include:

Increase in Offers: Last time we met, approximately 800 offers had been made on claims submitted to ICHEIC and approximately 150 offers had been made by companies directly using ICHEIC Valuation Guidelines, totaling offers worth approximately $11 million. In the past 22 months, there have been approximately 1800 additional offers on claims submitted directly to the Commission ($30 million) and 500 additional offers on claims sent directly to companies ($5.5 million). In brief, since the last hearing, an additional $35.5 million has been distributed to Holocaust survivors and their heirs using ICHEIC Guidelines.

Implementing Agreement with the GTF: The Commission finalized an implementing agreement with the Generali Trust Fund (GTF) in April 2001, which represented a shift in the processing of claims made against Generali from the company in Trieste, Italy, to the GTF in Jerusalem.

Agreement with the German Foundation/GDV: After signing an Agreement with the GDV and German Foundation in October 2002, ICHEIC has started ensuring that the GDV makes payments to claimants (which ICHEIC then reimburses from the German Foundation claims funds). The German Foundation Agreement commits all German GDV member companies in operation from 1920-1945 to (1) process, (2) investigate and (3) award or deny (in compliance with ICHEIC rules and guidelines) Holocaust-era insurance claims as defined by ICHEIC and in the Agreement in accordance with agreed standards and guidelines.[3] To date, 129 payments totaling $1.1 million have been made to ICHEIC claimants by the GDV.

Progress in Implementation of the Agreement with the German Foundation and the German Insurance Association: Since the signing of the trilateral Agreement on October 16, 2002, the German Insurance Association ("GDV") has worked steadily to process the approximately 10,000 claims against German insurance companies that have been filed to date through ICHEIC. In accordance with the Agreement, all claims are being processed regardless of whether the claimant has provided the name of an insurance company or specific details on a policy.

Of the nearly 10,000 claims that have been transferred by ICHEIC to the GDV, 6,995 do not name a specific company. These "unnamed" claims are currently under investigation by all relevant German insurance companies (approximately 70) that had existing portfolios prior to 1945. It is expected that the investigation on 2,002 of these "unnamed" claims will be complete by the end of October 2003, and that the work on the remaining claims will be complete by the end of the year. All "unnamed" claims that are identified by a company to possibly have issued a relevant policy will be treated as a "named" claim, the procedures for which are described below.

ICHEIC has transferred 3,511 claims to the GDV that name a specific insurance company. In accordance with the agreed procedures, these claims are first checked by

[3] The German Foundation Agreement defines a Holocaust Era Insurance Claim as a claim relating to a life insurance policy in force between January 1, 1920 and May 8, 1945.

the German restitution archives to determine whether the particular policy might already have been compensated under the postwar compensation programs established by the Allies after 1945 and continued later by the Federal Republic of Germany. Consequently, all so-called "named" claims are first sent to a central archive (*Bundeszentralkartei,* or "BZK") in order to determine which of the 11 German state restitution archives might have handled the case. All claims must be researched manually in the BZK's 3.5 million hard copy files.

The BZK has completed research on 3,104 claims to date. The BZK found no match on 1,218 of these claims, which then were sent to the companies for a decision on whether a payment can be made. The remaining claims have been sent to the respective state restitution archives for research. While the research was already finalized in some cases, the majority of these claims still await responses from the local state restitution archives.

ICHEIC is in frequent and regular contact with the GDV and the German Foundation concerning progress made on implementation of the trilateral Agreement. As partners in this endeavor, we are committed to working together to jointly seek the expeditious resolution of claims and address unanticipated issues in an effective and timely manner, so that valid claims are paid and claimants can receive some measure of justice. The cooperation among our three organizations since the signing of the Agreement has been notable in this regard, and we are working steadfastly to achieve full and complete implementation.

That said, with regard to the speed at which the claims are being processed, all parties agree that we must actively take steps to improve the processing rate and, in particular, work to decrease the amount of time it takes for the various restitution archives to complete their work. The German Foundation and GDV are working with BZK officials to discuss possibilities to speed up the process. Furthermore, the German government demonstrated its support for this objective when the Federal Minister of Finance recently wrote to the prime ministers of all states to ask for their support and to speed up the process.

Once the research for the remaining 2,815 "named" claims is complete in the relevant restitution archives, we expect that the compensation process will further accelerate once those claims for which the BZK has not found a match will be forwarded immediately to the company for a final determination of the eligibility of the claim.

Agreement with AXA, Winterthur and Zurich: ICHEIC reached a settlement agreement with AXA, Winterthur, and Zurich (AWZ Agreement), finalized in July 2003 and triggering the release of $25 million to the Commission and lists of policyholders to be published on the ICHEIC website.

Agreement with the Buysse Commission: Negotiations with regard to claims against Belgian insurance companies were brought to a close in July 2003 when an agreement was signed between ICHEIC and the Buysse Commission. The agreement covers the processing of ICHEIC claims in which the claimant named a Belgium company or named

Belgium as the country in which the policy was believed to have been issued. These claims are in the process of being transferred to the Buysse Commission for determination.

Progress in Discussions with the CIVS (Drai Commission): ICHEIC is working to finalize an arrangement with the French national compensation commission (Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force during the Occupation, or "CIVS") and two French Jewish organizations. Under this arrangement, claimants and potential claimants could submit inquiries via the ICHEIC website that would then be checked against the lists held by the CIVS that contain information on policies issued by French companies that were in effect prior to and during World War II. It also would provide for ICHEIC's claims database to be checked against the list of blocked bank accounts held by the CIVS. A recent exchange of letters among ICHEIC, the French Prime Minister and a designated representative has established the basis for the arrangement, the details of which are currently under discussion.

Pending Agreement with the Austrian General Settlement Fund: Following a September 2, 2003 meeting in Vienna with representatives of the Austrian General Settlement Fund and the Austrian Government, ICHEIC is very close to completing an operational agreement with the GSF similar to that concluded in July of this year with the Buysse Commission in Belgium. The pending agreement would allow ICHEIC to transfer to the GSF claims that name an Austrian insurance company or indicate Austria as where the policy being claimed was issued. We anticipate concluding this agreement in the near future.

Final ICHEIC Valuation Guidelines: The long-negotiated ICHEIC Valuation Guidelines were finalized in November 2002, circulated to Members of the Commission and posted on the ICHEIC website. The Valuation Guidelines applied to those claims covered under the GDV/German Foundation Agreement were finalized as Annex D of the Agreement in October 2002.

Review of Company Offers and Denials: Spurred by the distribution of the final ICHEIC Valuation Guidelines and Annex D of the German Agreement, and suggested by the report of an *ad hoc* Monitoring Group convened in 2002, ICHEIC organized a review of more than 2,200 claims in the London ICHEIC office in January 2003 which covered a significant bulk of the universe of offers and well-documented denials to date and included regulator representation. In addition to flagging those decisions that were affected by the revised ICHEIC Guidelines, as well as those impacted by ICHEIC's new Agreement with the German Foundation and the GDV, the review also provided new and updated training for ICHEIC staff members to improve the review of decisions and to pinpoint areas where claims processing improvements were warranted. ICHEIC analyzed the results of the review, identified a range of issues to bring to the attention of the majority of ICHEIC Member Companies, and implemented changes in our internal operations based on what we had learned.

Verification System: The claims review highlighted a number of challenges in relation to claims processing, challenges which we are actively addressing. One of the most significant outcomes of the review was that we established an internal system by which decisions are verified. The ICHEIC claims team in London has been tasked with automatically reviewing all decision letters sent out either by the five ICHEIC MOU companies (including the Generali Trust Fund) or by any of the companies covered by our agreement with the German Foundation and GDV. When questions on decisions are identified, they will be raised directly by ICHEIC staff with the relevant companies or with the GDV. We expect full cooperation from the companies and the GDV and are certain that both entities will actively address these questions/concerns where needed in the future. We have established follow-up procedures to ensure this result.

Improved Communications: ICHEIC has worked towards improved communications with those individuals involved in and affected by the ICHEIC claims process, including U.S. regulators, representatives of Jewish organizations, insurance companies, the State of Israel, U.S. government officials and Members of Congress, press and, most importantly, ICHEIC claimants. With this goal in mind, we have developed the ICHEIC Quarterly Report to facilitate regularly scheduled communication with our constituents and have published an English version of the ICHEIC Claims Processing Guide, which is available on our website. The Guide is intended to provide claims resolution professionals, claimants, and all ICHEIC constituent members a step-by-step guide through the ICHEIC claims process. We also implemented a significant outreach effort to publicize internationally the many new policyholder names added to the ICHEIC website over the last few months and extension of the claims filing deadline to December 31, 2003. This effort included purchasing advertising in the Jewish press throughout the U.S. and the world, and our recent webcast, which is also available on the ICHEIC website.

Improved Financial Reporting: With the hiring of a Chief Financial Officer, ICHEIC has (1) developed a Lifetime Budget, as was originally tasked to ICHEIC management by the Commission Members in September 2000; (2) brought full accounting and reporting responsibility to the Washington DC office, reducing cost and providing more timely information; (3) developed budget to actual analyses on a monthly basis; with quarterly budget to actual reporting to the Financial Accounting Advisory Committee (FAAC); (4) developed regular, consistent reporting to the FAAC regarding actual financial results, at least annual revisions of the lifetime budget and review of the annual audited financial statements; (5) constituted an Investment Committee to provide professional advice with regard to investment decisions; (6) developed competitive investment environment to monitor returns of ICHEIC's investments within the narrow band of the ICHEIC Investment Guidelines; and (7) improved the reporting, transparency and information flow of financial information between ICHEIC and the Generali Trust Fund.

Progress on Statistical Reporting: Over the past six months, ICHEIC has worked cooperatively with ICHEIC Member Companies to reconcile reporting statistics as they relate to offers and denials made as well as offers accepted. ICHEIC has recently modified its statistical reporting format to more effectively and accurately portray these

figures. We hope to have the improved version accessible on the ICHEIC website shortly.

Policyholder Lists

In 1999, ICHEIC initiated the most extensive project ever conducted to investigate and record information on insurance policies from Holocaust-era archives and other sources from around the world. In addition, we also have been largely successful in acquiring lists of policyholders from participating insurance companies, which have been matched against Yad Vashem's database of Holocaust victims using the broadest possible criteria, as well as from governmental organizations in a number of countries. A recent example of these efforts was in April of this year, when ICHEIC published a list of more than 360,000 German Jewish policyholders. This resulted from an unprecedented cooperative effort involving ICHEIC, the German Insurance Association and the German Foundation.

These combined efforts have yielded substantial information regarding hundreds of thousands of insurance policies in effect prior to and during World War II. With publication on ICHEIC's website (http://www.icheic.org), this information is available to ICHEIC claimants, potentially providing them with additional evidence to support their claims. The lists on the website are searchable and help potential claimants determine if they should file, particularly if they cannot name a specific company or are just inquiring as to the possibility of a policy's existence.

A country-by-country breakdown of the policyholder names published on ICHEIC's website is as follows[4]:

Country	**Names**
Austria	21,848
Belgium	452
France	3,304
Germany	395,578
Hungary	9,155
Italy	6,095
Netherlands	1,080
Spain	8
Switzerland	226
Bulgaria	9,033
Czechoslovakia	36,907
Greece	1,013
Lithuania	263
Poland	11,225

[4] Note that names published from each country may have come from a variety of sources. A listing of the sources of the published names is attached in an Appendix.

Romania	79
Yugoslavia	9,304
Other/Unspecified[5]	13,439
Total	519,009[6]

A key element of the October 2002 agreement among ICHEIC, the GDV and the German Foundation concerned publication of a list of German Jewish policyholder. First, the parties worked to compile a list of German Jewish residents from numerous federal and state archives, which was then matched against German insurance companies' electronic policy lists. A similar exercise was conducted with Italian Jewish residents and policies issued in Italy by a major Italian insurer, RAS. In the course of this effort, ICHEIC has made possible the compilation of the most comprehensive lists of Jewish communities in Germany and Italy prior to the Holocaust. While admittedly not our primary goal, I believe this welcome side effect stands as a lasting tribute to the memory of those who suffered under Nazi persecution.

It is important to sound a cautionary note on policyholder names: Although ICHEIC has published this extensive list of Holocaust-era insurance policies, not all of them remain unpaid. Let me state that another way: just because a name appears on the ICHEIC website, it does not necessarily follow that the heir or beneficiary is entitled to payment. Many of these policies have been compensated previously through restitution programs or by the companies directly. So why have we chosen to include such policies? First, in the interest of time, ICHEIC has elected to publish names and allow the potential beneficiaries to come forth before investigating the details of the policy. Had we insisted on researching the individual fate of all these policies we would not have been able to publish any lists in a timely manner. Rather than delay the process further and risk the loss of what living memory remains, ICHEIC chose to publish. I realize that this may lead to greater expectations than we can hope to meet and would therefore ask all of you to assist us in managing our claimants (your constituents) expectations.

Lest I sound too pessimistic, however, let me also stress that these combined lists of 519,009 policyholder names, made available to ICHEIC as a result of research conducted by ICHEIC Member companies, and which have been augmented further by extensive archival research projects in independent archives in several European countries, present the most comprehensive list of Holocaust-era insurance policyholders ever assembled. Given the ravages of war, the passage of more than sixty years as well as the destruction of documents in the ordinary course of business, the compilation of this list in and of itself is a remarkable achievement. I think it worth spending some time on how ICHEIC approached this task and why I consider it significant.

ICHEIC Archival Research Project

[5] Includes 168 names from Iraq, 29 names from Libya, approximately 5,000 names from the German/Polish border areas as well as some 6,600 policyholder names from unspecified Eastern European countries.

[6] These figures represent the aggregate total of policyholder names provided by companies and located via ICHEIC's independent research. These numbers are as of September 15, 2003.

ICHEIC launched its archival research project in 1999 to investigate and record information from various archives containing Holocaust-era records, in Europe, Israel and the United States. Through its researchers, the Commission gained access to Holocaust-era record groups previously closed to examination – an achievement that was the result of perseverance and unprecedented international cooperation, all with the very worthy objective of assisting Holocaust survivors, their families and heirs in getting compensation for valid unpaid insurance policies. From the outset, this project was intended to complement the ICHEIC claims process; both the research results and the subsequent mechanisms ICHEIC developed to maximize use of the information can be considered a major success.

ICHEIC has sent researchers to investigate major archival holdings in several countries that contain information on Holocaust-era insurance records. This has resulted in a total of 97,855 policyholder names, which have been published on our website, a list of which follows:

Archival Source	**Policyholder Names**
Austria State Archives - Vienna (Research conducted by Helen Junz)	14,921
Asset Declarations & Tax Forms (Research conducted by Facts & Files)	77,517
Confiscated Italian Policies (Research conducted by Facts & Files)	236
Reich Oversight Offices (Research conducted by Risk International)	5,181
Total	97,855

I should also add that ICHEIC's research efforts are ongoing. We have outlined a plan to investigate archives in countries where we previously have been unable to gain access to historical records, most significantly Hungary and Romania. To accomplish this, some remaining roadblocks need to be removed, particularly to allow ICHEIC access to government archives, and I would like to use this opportunity to ask you to assist ICHEIC in this regard. After consulting with the United States Holocaust Memorial Museum, I have decided to go back to government officials in Hungary and Romania to request their assistance in obtaining additional information that can be matched against our claims database, all in an effort to provide claimants with additional supporting evidence. I would welcome any impetus that Members of Congress could add to these efforts to help us gain access to key archives, and my staff and I stand ready to work with you on this important issue.

Significance of ICHEIC's Archival Research

I attach such great significance to this type of research for a number of reasons. While it is not possible to determine exactly what percentage of the prewar European insurance markets are covered by ICHEIC's published lists, I firmly believe it is the only means by which we can say with any confidence that we have taken all reasonable steps to finding information that might provide further evidence to strengthen an existing ICHEIC claim or indeed compel a claimant to submit a claim, even if he or she does not possess

independent evidence that a policy existed. Based on the findings of ICHEIC's first taskforce on historical insurance matters, information compiled on a preliminary basis when we commenced our important work, I think it fair to say that ICHEIC is well on the way to having compiled the majority of currently available insurance-related data pertaining to Nazi persecutees.

Permit me to offer some background on this task force and its efforts. In late 1999, ICHEIC established a task force to review the European insurance market on a country-by-country basis, as well as the propensity of the respective Jewish populations in Europe to purchase life insurance. The task force was comprised of representatives of state insurance regulators, European insurers, ICHEIC staff, actuaries, and two external consultants. It utilized a number of statistical and historical sources, including the more authoritative publications, archives and libraries with information on Holocaust-era events. In addition, participating ICHEIC Jewish organizations and insurance companies presented their views, which were taken into account in the final Task Force report.

The task force's review of general archival resources and historical market information served as the foundation for ICHEIC's subsequent archival research project. It also clearly illustrated the vast differences between European insurance markets, such as the fact that Central and Western European insurance markets were more highly developed than most Eastern European markets.

The task force found the most comprehensive and immediately accessible historical records in Austria, where research conducted in the Austrian State Archives on ICHEIC's behalf yielded the original 1938 Austrian census of Jewish-owned assets conducted by the Nazi authorities. Moreover, these records also provided the most comprehensive subset of information about the Jewish population in this part of Europe and its propensity to hold life insurance in the prewar period. This records group contains documents filed by some 48,000 Austrian Jews who reported assets of RM 5,000 or more to the Nazi authorities. 8,810 individuals reported a total of 14,921 life insurance policies, out of a total insurance market in Austria of 1,472,000 policies (which translates to 0.22 insurance policies per capita market wide). Austria, with a total population of 6.8 million, was home to 217,250 Jews, with the vast majority resident in Vienna. According to the information contained in this record group, 4% of the total Jewish population held life insurance and 1% of all insurance policies in effect in Austria in 1938 were owned by Austrian Jews.

These records provided a remarkable snapshot of Jewish-owned assets as a whole, and particularly insurance assets, and ICHEIC research staff compiled the first components of our research database from this records group.[7] Unfortunately, not all archival records are this complete, nor do they permit an analysis for an entire nation. In addition, the task force's research made clear that not all European markets were as well developed as the Austrian or German markets.

[7] It should be noted that Austrian company records as well as smaller local archival holdings furnished a further 5000 names which have been posted on ICHEIC's website. However, some of these may well be duplicates.

Czechoslovakia, for example, with a population of 15 million, more than twice the size of Austria and home to 396,00 Czech Jews, had an insurance market only 32% the size of Austria's (0.07 policies per capita market wide as compared to 0.22). Assuming for the sake of argument that Czech Jews had the same propensity to insure as Austrian Jews, we would expect to see 1% of the total universe of life insurance policies written in Czechoslovakia to be Jewish-owned, i.e. 11,120 policies. Assuming 4% of the Czech Jewish population owned life insurance policies, we would expect 15,840 individual policyholders with 23,760 life insurance policies.

ICHEIC's archival research has discovered 12,390 policyholder names (8,198 in Slovak and 4,192 in Czech archives) and 17,531 life insurance policies (10,147 in Slovak and 7,384 in Czech archives). Given the general paucity of archival resources available, this would seem to be a very constructive starting point, particularly when combined with information on Jewish-owned assets made available to ICHEIC by the Czech government.

Unfortunately, archival sources in Poland have not been as rich in policyholder information. Poland was home to 3.3 million Polish Jews. However, historical and economic circumstances in Poland were rather different and cannot really be compared to Austria or the Czech lands. According to historical insurance market sources, the total Polish life insurance market comprised 261,000 life insurance policies. In other words, less than one out of every 100 persons was insured. This small number may seem surprising, but one must remember the historical and economic conditions of inter-war Poland. The expectation of a vast number of Jewish-owned policies, based on the heavy concentration of the Jewish population in urban areas, may well be misplaced. The historical record shows a relatively underdeveloped insurance market combined with an economic situation that, as Helen Junz phrased it, made "living at the edge of subsistence the way of life for the majority of Poles, irrespective of where they lived or their ethnic background."

As a result, ICHEIC's archival research has discovered 1,272 policyholder names and 1,452 life insurance policies which, given the general unavailability of historical records in Poland from the relevant period, would appear to be a good starting point.

Obviously archival sources vary greatly across Europe. In stark contrast to Austria, the task force was not able to locate sufficient historical insurance market information for Greece or Romania, for example, nor were our archival experts able to locate relevant documents, in part because of lack of access to Romanian archival records.

Having said that, however, I believe that ICHEIC has collected substantial information on insurance in those regions where the Nazis were most aggressive in persecuting the Jewish populations by targeting their financial assets. This has enabled us to make public the most important and comprehensive list of Holocaust-related insurance holdings ever possible and also utilize this information to assist claimants in ways previously not possible.

ICHEIC Matching Process:

In addition to acquiring policyholder information from participating insurance companies and various governmental authorities, conducting research into Holocaust-era archives and subsequently publishing the results on our website, ICHEIC also has established a process by which the information obtained through our research efforts is matched against the ICHEIC claimant database. This process links ICHEIC claims with additional supporting documentation before they are submitted to the ICHEIC Member companies and/or organizations with which we have cooperative agreements. In a similar process, ICHEIC claims are also matched against company policyholder databases. This matching system creates further opportunities for claimants to have their claims investigated. It may result in the identification of a specific policy if the claimant knows only the name of the issuing insurance company, or in the location of policies about which the claimant previously had been unaware.

This is an ongoing process. ICHEIC continues to match the information in its research database with the database of claims received, and intends to do so until all claims have been received and our archival research project has been completed. To date, ICHEIC has identified 2,900 "exact" matches, which reflect the exact spelling of family name, given name and date of birth. ICHEIC sends these "exact" matches for further review to MOU and associated companies, including companies affiliated with the GDV, and the Sjoa Foundation. Where a claimant has not been able to name a company, but the company name is in the research database, the evidence is sent to the named companies.

ICHEIC has engaged experts to help with matching names where the names are not exact but there exists a high probability that they are for the same person. Many East European and Hebrew names change across records as details are transcribed, translated or transliterated from Hebrew or Cyrillic alphabets to the Latin. Similarly, dates of birth may differ between the Hebrew, Gregorian and Julian calendars or be remembered inaccurately by heirs sixty years after the event. The matching process devised by ICHEIC allows for near matches to be compared, using a "Soundex"[8] system and expanded date comparisons (comparing dates that are close or similar), taking into account supporting details such as place of residence or birth and occupation. The work in progress is to use all supporting information to validate these matches and send them to companies. To date, ICHEIC has found approximately 3,100 such matches using the Soundex system and expanded date comparisons. Additionally, ICHEIC has identified approximately 4,500 possible matches that must be reviewed in conjunction with other information provided by the claimant. Those matches where ICHEIC is able to

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[8] Soundex is a system that uses sound-alike criteria to find names that sound similar, but are spelled differently - for example, the very common spelling difference of Kohn and Cohn, or the less common name of Szaje and Schaje.

determine a conclusive match will be sent to the companies in the same manner as other Soundex matches.

We currently are working with the MOU signatory companies and the GDV to determine appropriate procedures for ensuring that these matches are fully considered as the companies reach their decisions. ICHEIC is also working with the GDV to develop a protocol for ensuring that names matched from the website are checked for the broader information available to the German companies.

It is important to note that the matches made to date include many instances where the claimant could not name a specific company, or where ICHEIC has found a match for a company other than that which was identified by the claimant. These are policies that would largely remain unknown were it not for the ICHEIC matching process.

It has been suggested that we could capture a much larger set of matches by simply comparing our claims database against insurance companies' electronic records on the basis of names only, without using any additional qualifying criteria. In this context, I think it important to define our terminology more closely. While it is true that this type of simple comparison would indeed yield many more so-called "matches," such information would indicate nothing more than the similarity of a name or names. Although an indication of a possible match, it provides no indication of the probability of an identity match. Therefore, ICHEIC has spent considerable time and resources establishing a process that permits us to compare vast amounts of data in a more thorough and ultimately more constructive manner. Instead of reviewing thousands of "false positives," our methods permit the matching of family name, given name, and date of birth. The resulting matches are then reviewed. Although on the surface it might appear that we are reviewing fewer matches than a broad process would call for, I firmly believe we are in fact reviewing more exact matches, i.e. information that has a far higher probability of yielding a result for our claimants. This not only represents a better use of resources, it is also an example of ICHEIC's results-oriented philosophy, which I believe to be a critical underpinning of the entire process. As we all know only too well, and in the words of the late Neil Levin, former New York Superintendent of Insurance, who helped launch us on this important road, time is not our friend.

I have also heard suggestion that ICHEIC ought to search for additional matches, that is to say that we ought to dedicate resources to search for heirs to published names. I would respectfully submit that this inverts the ICHEIC process, which was always intended to be and remains a claimant driven process. Our matching process is based, as I have explained earlier, on a comparison of the research database to the claims database, as well as a comparison of the claims database to the companies' policy databases. In other words, in order for a match to be made, a claim must have been submitted to ICHEIC to start the process. Therefore we cannot by definition match policies without first receiving a claim or an inquiry, and as such do no outreach to find claimants after the fact. Instead, we have focused our energies on outreach to find claimants. By encouraging the survivor community and the heirs of Holocaust victims and survivors to review the lists that

ICHEIC has compiled and expanded upon over the years, we believe we have placed the correct emphasis on the process.

I am convinced that our results reflect this. The ICHEIC matching process has served as a valuable and reliable tool both for assisting claimants who had detailed information and lacked documentation to support their claim, and also in identifying companies where claimants had no specific previous knowledge of the policy details. Moreover, ICHEIC's extensive research efforts in conjunction with MOU signatory and non-MOU signatory companies alike has helped to define the pre-war and wartime insurance market more clearly, offering as it does a more comprehensive picture of takeover and merger activity than has been available in the past. As a result, claimants are now assured a far better chance of having their claims reviewed by the appropriate company.

Progress on Appeals: ICHEIC has seen significant progress made through its appeals process. As of August 20, 2003, a total of $197,703 in awards has been made to claimants (this is additional money awarded as a consequence of appeal). Of the 142 appeals received by this date, a total of 56 appeals have been closed: 18 found in favor of the claimant, 31 in favor of the company and in 7 cases, the claim was settled before the Arbitrator made a decision.

Strides with ICHEIC Humanitarian Funds: ICHEIC's progress on the humanitarian front includes (1) the establishment of a humanitarian claims process for those claims submitted to ICHEIC which cannot be resolved by any particular insurance company and (2) the distribution of humanitarian monies to social welfare programs which benefit Holocaust victims. I will take both of these accomplishments in turn.

(1) Humanitarian Claims Process

In accordance with section 8A of the Memorandum of Understanding which established ICHEIC, the Commission has established a humanitarian claims process by which victims of the Holocaust and their heirs will have the opportunity to receive humanitarian payments on insurance policies from the Holocaust Era that cannot be resolved by any particular insurance company.

In the package of information ICHEIC provides to claimants, it is noted, "If investigations fail to produce any further evidence of an insurance policy with a particular company, the claimant may, subject to the information provided, be eligible for a payment from a specific fund established by the Commission."

Currently, approximately 45,000 claims have been identified for processing in accordance with the MOU's section 8A. These represent claims falling within ICHEIC's jurisdictional purview in which claimants could not identify a specific insurance company and for which the matching process failed to produce a valid match with a policy.

In early 2002, ICHEIC issued a Request for Proposal for the processing of these claims. ICHEIC received four bids and ultimately awarded the contract to the Claims

Conference. The Claims Conference, ICHEIC and an independent supervisor, former National Security Advisor Samuel R. Berger, are currently working to develop a system by which these claims will be evaluated. We expect a process to be finalized and criteria decided upon over the coming months. The actual processing of these claims is expected to be substantially complete within the next nine months.

(2) Humanitarian Programs

In the last 22 months, ICHEIC has canvassed the humanitarian community to hear as many voices as possible with regard to the greater Jewish communities' and U.S. insurance regulators' views about how the humanitarian funds should be spent. As a result of this consultation, ICHEIC made a 10-year commitment to fund $132 million in social welfare benefits, including home care for needy Jewish victims of Nazi persecution worldwide. The first year's commitment of $15 million has already been distributed through the Claims Conference. One hundred percent of these funds were designated from the German Foundation Humanitarian Funds.

We are exploring a small number of other worthy projects that have been presented to us, one being a volunteer service corps. The concept has been refined to focus on college age students, serving as visitors to their local Holocaust victim population. We are seeking further input as to how this program might best be implemented. To date, we have received encouragement and support from a wide array of communities with whom we have explored this concept. It is a marriage of service to the Holocaust victim population and educational opportunities for the participants about the Holocaust and its destructive impact. It should also serve to strengthen Jewish identity and leadership in the college age population by providing the chance to serve supported by training and educational opportunities. Our hope is to present, at the very least, a proposal for a pilot study of this concept and perhaps other humanitarian program proposals to the full ICHEIC board at our annual meeting in October of this year.

All organizations that have a mandate to allocate humanitarian funds received from various restitution programs struggle with the proper balance of funding welfare programs for needy Nazi victims versus programs which goals are Holocaust remembrance, education or strengthening Jewish identity through exposure to the rich history and tradition of the Jewish culture, particularly that of the European Jews in the early 1900's. After much discussion and consideration, I have concluded that it is best to address the merits of each humanitarian program as presented, instead of a formulaic approach for the distribution of funds to social welfare versus other Holocaust related causes.

That being said, most of the funds available for humanitarian purposes will be reserved for the benefit of needy Holocaust victims worldwide. It is my view, however, that allocating some amount of the funds available to support the strengthening of Jewish culture and heritage in recognition that the Nazis attempted to eradicate Jewish culture as well as the Jewish people, is a legitimate way of memorializing those Holocaust victims who did not survive.

Financial Results/Budgets: Over the past year, ICHEIC has made great strides in improved financial reporting, accountability and transparency. Detailed budgetary information has been made available to the full ICHEIC (including Board members, alternates and observers), U.S. regulators and many Jewish organizations and is now posted on the ICHEIC website. The ICHEIC Finance Committee receives quarterly Budget vs. Actual results with detail explanations for variances.

ICHEIC management has also analyzed various elements of cost in an effort to reduce administrative expenses while improving performance. A notable example is the appeals process, which was being developed as an outsourced function. During 2003, a plan was developed to bring the appeals function into the London office, thereby saving about $3 million, or about one-half the original appeals budget.

ICHEIC has benefited from recent currency exchange fluctuations between the Euro and US dollar. This is the pleasant outcome of having received the German Foundation/GDV settlement funds in Euro. Since most of ICHEIC's obligations for claims, expenses and humanitarian programs are denominated in US dollars, ICHEIC converted a significant portion of the funds to US dollars at various rates, resulting in realized exchange gains of $22 million (when compared to the exchange rate in October 2002 when the funds were received). If these funds are not needed for claims payments or operating expenses, this represents additional funds that will be available for humanitarian purposes.

Unfortunately, the lifetime estimated cost of ICHEIC will be high. The process has proven complicated and laborious, resulting in a system that is more costly and has lasted longer than any of us would have imagined. Because the ICHEIC mandate is to provide restitution for unresolved insurance claims of Holocaust victims (thus satisfying a contractual obligation) as opposed to a subjectively determined humanitarian payment like, for example, the slave labor program, the process is decidedly more complex and involved. This was particularly true at the front end of the process, in which many meetings occurred and much discussion was held regarding relaxed standards of proof, processing issues and valuation guidelines.

In 1999 alone, there were eight full ICHEIC meetings with anywhere from 49 to 83 in attendance at each. In addition to these full ICHEIC meetings, there were many meetings of the various subcommittees, including Executive Oversight, Valuation and Outreach. ICHEIC was required to pay the travel and meeting costs for many participants of these meetings, as well as provide translators.

All of this, and the fact that a major outreach program was developed in anticipation of an extremely high number and value of claims (which has not materialized to the extent anticipated) contributed to high costs, particularly in earlier years, when ICHEIC was developing the process.

On a positive note, intense negotiations with the MOU companies, and the German Foundation and German Insurance Association has resulted in ICHEIC receiving a total of about $465 million in funding and/or settlements. When added to the approximate $35

million in foreign currency exchange gains and interest income, ICHEIC has received a total of about $500 million for claims payments, humanitarian purposes and operating expenses.

Expenses incurred life to date through 2002 total $56 million, and are budgeted to total $85-95 million by the time the process is compete. When compared to total funds received by ICHEIC, the lifetime operating expenses are expected to equal about 17-19% of total funds received. The remainder of the funds will have gone toward direct claims payments, humanitarian payments, or other humanitarian purposes.

FUTURE PRIORITIES

As previously highlighted, the number of offers has increased nearly three-fold over the past 22 months. Under no analysis however will I assert that ICHEIC has processed the number of claims that we should have at this point. Given the age, frailty, and need of many of our claimants, it is imperative that we move more quickly in getting these claims decided.

Despite our progress over the past 22 months, we have been faced with a number of challenges on the claims processing front. We are working to address each of these obstacles as we focus on ensuring that every ICHEIC claim receives a fair evaluation in the most efficient and effective manner possible.

I recognize that we have necessarily laid strong emphasis in the past on establishing a system to handle ICHEIC claims and guidelines by which these claims could be evaluated. We have accomplished this goal and have shifted our focus to ensuring that claims already in the ICHEIC system are now processed as quickly and efficiently as possible, while at the same time being evaluated in accordance with ICHEIC guidelines. Our priorities over the next year include:

- ***Ensuring companies have everything needed to process claims:*** With several new claims-team members in place, we will accelerate our efforts to work with companies to ensure they receive requested information and documents in a timely fashion so as to ensure that claims can be processed by these companies as quickly as possible.

- ***Continued Verification:*** We are committed to continuing our verification efforts with the aim of ensuring that companies are issuing decisions on claims that are in accordance with ICHEIC guidelines. In this light, we are also dedicated to working cooperatively with companies to ensure that problems are corrected and misunderstandings resolved in a timely fashion.

- ***Ongoing reconciliation efforts:*** As discussed previously, ICHEIC will continue to work with companies to reconcile claim specific information. The Commission intends to further break down the categorization of claims that are currently being

processed in order to better ascertain where they are in the processing stage. This will allow us to communicate more detailed information on claims to both claimants and their representatives.

- ***Finalizing the majority of ICHEIC audits:*** As companies are unable to finalize offers and/or denials (providing claimants the opportunity for appeal) until their audits are complete, a key priority is ensuring a rapid audit closeout process in the coming months. We anticipate reaching Stage 1 compliance by late autumn with respect to Allianz Leben, Vereinte[9], AGF (Allianz's French subsidiary), and Winterthur. Further work remains with regard to Generali's west European operations and its east European subsidiaries in order to bring them into full compliance.

- ***Finalizing list publication and focus on matching:*** ICHEIC is working to ensure that all available lists are published by the end of this month so that all potential ICHEIC claimants will have the opportunity and time necessary to search those lists and to submit a claim to the Commission. We are also committed to investing more in internal matching procedures in an effort to ensure that additional claimants receive payment. I recognize that these matching efforts will require significant follow-up with companies involved in the ICHEIC process. This will be a priority for the claims team.

- ***Working with companies/GTF to increase the speed of processing (in particular – larger companies with an extensive number of claims):*** As we look to the back end of the claims process, ICHEIC intends to work with the companies to ensure that sufficient resources are available to speedily process claims.

- ***Continued improvements in communication:*** In an attempt to provide claimants a more user-friendly forum in which to download claim forms and walk through the ICHEIC claims process, ICHEIC intends to launch a new website in the coming month. ICHEIC will continue to utilize the website to make available information to potential claimants, regulators, Jewish groups, Congress, and all other interested parties.

WHERE CONGRESS CAN HELP

In our attempts to increase the speed and efficiency of the claims process, we have come across a number of challenges where we would like Congress to help. These include:

Improving the rate by which GDV companies are able to process claims

As I stated previously, we are working to improve the rate by which claims covered under ICHEIC's agreement with the German Foundation and the GDV are processed.

[9] acquired by Allianz in 1998

Given current bottlenecks within some of the state restitution archives in Germany, we believe the voice of Congress could provide a useful catalyst for accelerated action by the archives.

Through ICHEIC's agreement with the German Foundation and GDV and given the level of compensation through German federal compensation programs following the Holocaust, claims on German companies must be checked against local restitution archives to ensure that there was not previous compensation, before a claim can be processed and/or paid by a German company. This process can, at times, significantly delay the processing of certain claims. According to ICHEIC's agreement with the German Foundation/GDV, if a claim was compensated through a federal compensation program, it is ineligible for payment under the ICHEIC claims process.

Restitution archives in the German states of North-Rhine-Westphalia, Hamburg, Baden-Wuerttemberg, Saarland and Bremen have been supportive and cooperative since the beginning of the process and have provided the necessary information free of charge. The German states of Lower Saxony, Berlin and Schleswig-Holstein are cooperating or have recently declared their cooperation after repeated intervention by the GDV and the Foundation with the states' prime ministers (i.e., governors). However, the same intervention with the prime ministers of Bavaria, Hesse and Rhineland-Palatinate has not resulted in the desired cooperation thus far. Bavaria and Hesse are requiring a separate consent declaration from each single claimant to research in their archives, rather than accepting the consent declaration given to ICHEIC when claimants filed their claims. Rhineland-Palatinate is requesting fees to provide the necessary information and is the only German state to do so.

I respectfully request Congress to assist ICHEIC in urging the prime ministers of Bavaria, Hesse and Rhineland-Palatinate to consent to cooperate with the Foundation and the GDV without placing unnecessary burden on claimants or adding to the cost of the process by requesting fees for the required services. My staff and I are ready to coordinate with you on this important issue.

Greater cooperation from the Governments of Romania and Hungary for archival information

Previously, ICHEIC researchers were unable to gain access to key archival records in Hungary and Romania, countries likely to contain important information relative to insurance policies owned by members of the Jewish community prior to and during the Holocaust. Part of this region – specifically northern Transylvania – that is now within the territory of Romania was once part of Hungary. As the region was part of the Austro-Hungarian empire, and that Austrian Jews were known to have had a high propensity to own life insurance relative to the rest of the population, we have strong reason to believe that gaining access to these archives would provide us with crucial information on life insurance policies in existence in those countries during the Holocaust period.

In the interest of providing ICHEIC claimants with every possible opportunity to have their claims supported by as much evidence as possible, I have decided to go back to Hungarian and Romanian officials, this time at a high political level, to press for their cooperation.

I also would request the assistance of the Congress in making appropriate requests of the our Administration on this issue, to encourage the appropriate officials at The White House and the Department of State to intervene directly with the leaders of Hungary and Romania. It is my view that the requests we are making are important beyond gaining access to historical documents. The aspiring democracies of Hungary and Romania must know that among the burdens and benefits of a democratic society is a requirement for honest and unflinching examination of past and present activities of government. When governments carry out or condone anti-Semitism, racism, or ethnic hatred, sunshine and transparency are among the best antidotes to correct these grievous historical wrongs. As long as they continue to deny access to the historical truth, Hungarian and Romanian government officials will not reach their aspirations for a democratic society; they will remain mired in the history of their predecessors who operated in secrecy and deceit. We in the United States, as their ally in NATO and a strong supporter of their membership in other regional and international bodies, have a duty to hold them to the standards to which we hold ourselves.

I urge the Members of this Committee and your fellow Members of Congress to assist claimants in their search for justice and truth – justice that has been too long denied, and the truth that has been hidden for far too long – to join me in urging Hungarian and Romanian officials to open their archives to researchers.

Working with the Polish Government to obtain policyholder lists

I have recently been informed that the Polish government may have Polish policy files for several ICHEIC companies. I am in the process of verifying this information. If, in fact, the Polish government does have such files, I would welcome your assistance, through making requests to Administration officials or directly to the Government of Poland, to obtain these documents so that we might use them in our investigation/evaluation of ICHEIC claims.

CONCLUSION

In conclusion, I thank you for the opportunity to appear before you and explain what we have been doing, what we still need to do, and in what areas we would ask for your assistance, to help us carry out and complete our mission: providing Holocaust victims and their heirs recourse to receiving payment on previously uncompensated Holocaust-era insurance claims. I look forward to responding to any questions you may have.

Appendix

Sources of Policyholder Names on ICHEIC's Website

Germany (German Insurance Association)	363,232
Allianz/RAS	5,691
AXA	191
Generali	45,152
Winterthur	73
Zurich	1,068
Total from MOU Companies	52,175
Belgium (Buysse Commission)	217
Czech Republic (Ministry of Finance)	207
Israel (Ministry of Finance)	250
Netherlands (Association of Insurers in the Netherlands)	759
Total from Governmental Sources	1,433
Austria State Archives - Vienna (Research conducted by Helen Junz)	14,921
Asset Declarations & Tax Forms (Research conducted by Facts & Files)	77,517
Confiscated Italian Policies (Research conducted by Facts & Files)	236
Reich Oversight Offices (Reesearch conducted by Risk International)	5,181
Total from Archival Research	97,855
Non-ICHEIC Companies	4,314
Total	519,009

Ms. ROS-LEHTINEN. Mr. Gregory Serio, superintendent of the New York State Insurance Department.

Mr. SERIO. Good afternoon, Madam Chairman, Mr. Waxman and members of the committee. My name is Greg Serio, the Superintendent of Insurance for the State of New York and Chair of the National Association of Insurance Commissioners' International Holocaust Commission Task Force.

I come before you today not just as a representative of my fellow commissioners who have taken the issue of settling Holocaust era insurance claims as a most important and time-sensitive priority, but also as a successor to the visionary Glenn Pomeroy and Neil Levin who, as insurance regulators in the late 1990's, recognized the injustice of justice delayed and did something about it.

The matter of Holocaust survivors and their heirs being ignored or worse goes beyond party lines, religious lines and geographic lines as an issue that should be and is a national priority, aided much by the cornerstones laid by Commissioners Levin and Pomeroy. In fact, if we look back to the early working groups and the task forces of the NAIC to the formation of ICHEIC, the six criteria spelled out in the initial memorandum of understanding provides the basis for review of the work of ICHEIC now several years later.

The initiative culminating in the creation of ICHEIC and the various international agreements framing the Holocaust claims process had as its objectives: establishing the process to investigate claims, consulting with European government officials and insurance industry representatives, establishing an international commission to manage a claims process, establishing a just mechanism for compensation for the restitution of claims, exempting from State regulatory action those insurers who participate in the process, and establishing a fund to provide humanitarian relief.

To measure progress against these targeted objectives it is indisputable that much has been accomplished already. The point of analysis then should be to evaluate how well each has been achieved and whether our mutual constituencies, the Holocaust survivors and their heirs worldwide, how well they have been served.

One thing is certain, though, regardless of the outcome of this analysis: the foundation, structure and essential working elements of the claims restitution program is sound, and any effort to reinvent the program or process could well lead to a further delay in our ultimate and just cause which is compensating the Holocaust victims and returning to them what is rightly theirs.

There's no question that for various reasons the ICHEIC mechanism stumbled out of the gate in the early going. The enormity of the task, the uniqueness of the construct, the unknown dimension of the challenges, and other internal and external forces at work all contributed to some rough going and, in turn, some well-deserved criticism directed at ICHEIC. To belabor these points, however, would be to distract from the improvements made in the internal staff structure, the addition of significant outside resources, the resolution of certain outstanding negotiations to where ICHEIC has agreements with all the companies, and, perhaps for the first time, the appreciation for the reality that evidence of insurance policies and other assets are quite literally tucked away in virtually

every nook and cranny in Western and Eastern Europe and that the claims process from investigation to adjudication has to be built to reflect that reality.

Many of the improvements have come at the behest of the five insurance commissioners from New York, Pennsylvania, California, Illinois, and Florida who sit as members of ICHEIC, joined with the two dozen other commissioners from Washington State, Texas and other States where there are Holocaust survivors. Insurance commissioners are on the front lines in managing the claims and expectations of the Holocaust survivors and their families and so have a significant stake in making certain that the structures and processes deliver the only acceptable and prudent deliverable, that being justice. We use these original objectives as our touchstones and concrete results as the benchmarks of the effectiveness of ICHEIC. We also have helped to apply our resources from the State level to assist ICHEIC claims operations which, through the redeployment of personnel items from administrative and executive positions to claims processing jobs in Europe, through the retention of other outside advisors to direct the coordination of claims investigations here and abroad, and through the commitment of resources from the States of California, New York, Washington and others, ICHEIC is in a vastly improved position at this time. The progress that we believe ICHEIC is making to date, together with faster attention to new issues that arise, will be the focus of greater oversight by the NAIC and the commissioners that serve on the Holocaust task force.

Since I became chairman of the task force in January of this year, I and my colleagues have worked to forge a more meaningful review of ICHEIC activity, including leveraging technology and the offices of the 50 State insurance commissioners to expedite the sharing of information to claimants and to ease their way through the claims process. The Commissioners, Commissioners Koken, Kridler, Garamendi, Gallagher, and others, myself included, are asking the tough questions in pressing for better action sooner and offering the States as conduits to the claimant community.

Given the passage of time and delay that has been realized, maintaining strict focus on the claim settlement process and the unearthing of information from files long forgotten or previously undiscovered are paramount. Well-intentioned actions that are borne of care, concern and frustration may not be best suited if they give any sense that we are rethinking our approach. If any action is to be taken by the Congress, it should be directed at assisting these activities and proving the track we are on, rather than attempting to create a parallel track. Mr. Waxman in his opening comments may have appropriately established the scope. With respect to possible remedies, regulatory, administrative and diplomatic avenues should be considered along with any legislative action that may be contemplated. I thank the committee for its time and attention.

Ms. ROS-LEHTINEN. Thank you very much. Thank you for your comments.

[The prepared statement of Mr. Serio follows:]

TESTIMONY OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

BEFORE THE
HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON GOVERNMENT REFORM

TO REVIEW THE STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VICTIMS AND THEIR HEIRS

SEPTEMBER 16, 2003

GREGORY V. SERIO
NEW YORK SUPERINTENDENT OF INSURANCE
CHAIR, NAIC INTERNATIONAL HOLOCAUST COMMISSION TASK FORCE

Testimony of New York Superintendent of Insurance Gregory V. Serio
House Committee on Government Reform
September 16, 2003

Good afternoon, Mr. Chairman. As the chair of the National Association of Insurance Commissioners' International Holocaust Commission Task Force and as the Superintendent of Insurance of the State of New York, the state with the largest Holocaust survivor population, I would like to thank you, Representative Waxman, and the Committee on Government Reform for inviting me today to speak on this very important matter.

The Role of the National Association of Insurance Commissioners

I would like to take this opportunity to speak today in my capacity as Chair of the National Association Insurance Commissioners' International Holocaust Commission Task Force and as the New York Superintendent of Insurance. The National Association of Insurance Commissioners (NAIC) has been in the forefront of efforts to ensure a just resolution of Holocaust victims' unresolved legitimate claims for assets lost during the Holocaust. The issue of unpaid insurance policies of Holocaust victims has been an on-going priority of the NAIC for the past seven years and the Commissioners comprising the NAIC stand committed to aggressively driving the claims resolution process until every Holocaust survivor and their families have been justly compensated. Time, however, is most definitely not our friend. As the Holocaust survivor population has aged and perhaps, more importantly, have awaited justice for more than fifty years, it is our moral duty and our stated objective to ensure full and final claim settlement and provide the relief that the survivors and their families deserve.

In September of 1997, the NAIC, under the leadership of its past president and North Dakota Commissioner of Insurance Glenn Pomeroy and former New York Superintendent of Insurance Neil D. Levin, established a Holocaust Insurance Issues Working Group to examine this issue and to make a recommendation as to the appropriate role for the NAIC and state insurance departments in helping Holocaust victims, survivors and their heirs resolve claims arising out of insurance policies issued during the Holocaust era.

The NAIC Working Group included regulators from 27 states. It conducted 6 hearings in 1997 and early 1998 throughout the country at which approximately 1200 people provided personal accounts of insurance policies purchased by them or their families during the Holocaust era and which remained unpaid. The Working Group also looked at the progress of several state insurance departments, including New York and California, that were encouraging potential claimants to provide information that might help facilitate claims payments and were storing this information in databases. Commissioners also questioned and took testimony from representatives of several of the largest European insurance companies that have been identified in this matter.

In April 1998, Superintendent Levin, the Commissioner of California, four European insurance companies (Allianz, AXA-UAP, Zurich and Generali), as well as the World Jewish Restitution Organization, the World Jewish Congress and the Conference of Jewish Material Claims Against Germany, gathered in the offices of the New York State Insurance Department and entered into a Memorandum of Intent that set out six criteria for the resolution of these unpaid insurance claims.

These criteria were: (1) establishment of a process to investigate the insurance claims of Holocaust survivors; (2) consultation with European government officials and the insurance industry about this problem; (3) establishment of an international commission comprised of governmental authorities, insurers and world Jewish organizations; (4) establishment of a just mechanism for resolution of unpaid claims; (5) exemption from state regulatory actions and legislation for insurers participating in the process and efforts to resolve all litigation against these insurers; and (6) establishment of a fund to provide humanitarian relief to Holocaust survivors.

Immediately following this historic event, the NAIC established the International Holocaust Commission Task Force (NAIC Task Force) to succeed the NAIC Working Group. Commissioner Pomeroy of North Dakota was appointed Chair, and Superintendent Levin, Vice-Chair. The goal of the NAIC Task Force was to work with European insurance regulators, European insurers and Holocaust survivors to establish the international commission contemplated in the Memorandum of Intent to facilitate claims payments to Holocaust victims, survivors and their heirs.

Negotiations among the NAIC Task Force, the European insurance companies and the Jewish groups continued throughout the summer of 1998. The NAIC Task Force also met with European insurance regulators from France, Germany, Italy, Austria and Switzerland in an effort to enlist their support for the international commission.

These negotiations resulted in the execution of a Memorandum of Understanding on August 13, 1998 by Zurich and the members of the NAIC Task Force. This was followed shortly by execution of the Memorandum of Understanding by Allianz, AZA-UAP, Basler, Winterthur and Generali. I should add that the Swiss company Basler,

though an original MOU signatory, pulled out of the International Commission shortly after its inception. The Memorandum of Understanding was also signed by the World Jewish Restitution Organization, the Conference of Jewish Material Claims against Germany and 49 insurance commissioners of the United States. As you are aware, the International Commission on Holocaust Era Insurance Claims (International Commission) is chaired by former U.S. Secretary of State Lawrence Eagleburger and staffed by a group of dedicated people intent on ensuring resolution of unpaid holocaust insurance policies.

The Memorandum of Understanding established the International Commission to investigate and resolve unpaid insurance claims of Holocaust victims, survivors and their heirs. The original members of the International Commission consisted of three United States Insurance Commissioners (including Superintendent Levin), three representatives from the State of Israel and international Jewish and survivor organizations, and six representatives from European insurance companies and European insurance regulators. Allianz, AXA-UAP, Generali, Winterthur and Zurich were the insurance companies that are members of the International Commission. Since its formation, additional representatives from the State of Israel and international Jewish organizations, as well as representatives from other foreign governments have joined either as members or observers. The Dutch Association of Insurers and the German Insurance Association have also signed the Memorandum of Understanding and become members of the International Commission.

The current American regulators, in addition to New York, who are participants in the International Commission, are California Commissioner John Garamendi, Florida

Commissioner Tom Gallagher, Illinois Director Tony Clark and Pennsylvania Commissioner Diane Koken. State commissioners have sought to act collectively through the NAIC and the International Commission in order to seek timely and uniform solutions to the problems presented by Holocaust era insurance issues. It is in everyone's best interest -- regulators, claimants and companies -- to have these issues handled efficiently in order to achieve swift resolution of these issues.

The International Commission has established a uniform procedure to investigate and resolve all unpaid insurance claims. On February 15, 2000, the International Commission launched an extensive worldwide outreach program and commenced its claims resolution process. The outreach program was launched with a press conference in Washington, D.C. Press conferences were also held in Budapest, Hungary, Tel Aviv, Israel, Buenos Aires, Argentina and San Paulo, Brazil. Other countries launching their media outreach at that time included: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Chile, Czech Republic, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Moldavia, Netherlands, Poland, Romania, Slovakia, South Africa, Sweden, Switzerland, Ukraine, United Kingdom, Uruguay and Venezuela. The outreach program includes the establishment of call centers by which claimants can call a toll-free number 24 hours a day to request claim forms and to ask any questions they may have. To date, the call centers had received over 405,473 calls and distributed 109,617 claim packets. In addition, the International Commission has established a website -- www-icheic.org. The website has received 519,013 hits and 43,663 claim forms have been downloaded. To date, the International Commission had received approximately 92,000 inquiries, 32,000 of which are outside the International Commission's jurisdiction. The

original deadline for filing claims was February 15, 2002. This deadline was recently extended until December 31, 2003 to allow the International Commission sufficient time to publish additional names of policyholders on its website and give adequate time for the public to review the lists.

The goal of the claims resolution process is to handle insurance claims of Holocaust victims, survivors, and their heirs in an expeditious and fair manner. The process is free of charge to claimants and uses relaxed standards of proof that acknowledge the passage of time and the practical difficulties of locating relevant documents. As part of the claims resolution process, the International Commission has adopted valuation guidelines that take into account the fact that the insurance policies at issue originated in many different currencies, companies and countries. The valuation procedures also account for the issues of devaluation of local currencies, nationalization, inflation and interest. Lastly, for claimants who disagree with the final determination of their claim, the process also includes an appeals process.

The New York State Holocaust Claims Processing Office (New York Claims Office) has turned more than 2,280 insurance claims over to the International Commission for processing. In total, there have been over 3,250 offers valuing approximately $42.5 million made to Holocaust survivors and their heirs through the processes of the International Commission. Acknowledging the low number of claims resolved and under significant pressure from its insurance commissioner members, in early 2003, the International Commission, in conjunction with the NAIC Task Force, conducted a review of the offers as well as denials on well-documented claims issued by the companies through 2002. This review identified areas where improvements in claims

processing by the International Commission and the companies were warranted. In consultation with the companies affected, the International Commission established new procedures to ensure that necessary adjustments to the process be made promptly to ensure claimants benefit from these improvements with a minimum of delay. More recently, this review was extended to encompass all offers and denials on well-documented claims made by the companies to date.

The NAIC Task Force and the member states of the International Commission continue to work actively with the International Commission to resolve all issues relating to claims processing. In 2003, as a result of an agreement reached with the German Government in which the Association of German Insurers joined the International Commission, German insurance companies began making payments on Holocaust era insurance claims in accordance with all of the practices and procedures of the International Commission. The Dutch Association of Insurers has also been making payments in accordance with all of the practices of the International Commission.

The International Commission has also undertaken an audit process in which the participating insurance companies have agreed to provide full access to all of their relevant records, books and archives to independent auditing firms. The NAIC Task Force and the member states of the International Commission are committed to close supervision of this audit process to assure its effectiveness. The International Commission also retained a well-known and respected consultant to explore external archives for evidence of Holocaust era insurance claims. Research has been undertaken or is ongoing in the archives in Germany, Austria, Poland, Czech Republic, Hungary,

Romania, Greece, Ukraine, Slovakia and the Baltic States and this research has been used to provide claimants with additional evidence to support their claims.

In April 2000, the International Commission first published names of policyholders of Holocaust era insurance policies and has updated it several times since. These names were obtained from the member companies of the International Commission and from research conducted by the International Commission's consultant in independent outside archives in Europe. In total, nearly 520,000 names have now been published on the website. The member companies of the International Commission will contribute over 12,000 new names of policyholders over the next 1 to 2 months. The majority of these names will be provided from portfolios covering Eastern Europe, Italy and Switzerland.

The website has recorded approximately 430,000 searches by claimants and others. It is our belief that the International Commission website contains the vast majority of Jewish policyholder names of those who might have held policies written by European insurance companies before 1945 that can be compiled given the passage of more than 60 years since the Holocaust.

The International Commission also established a humanitarian fund designed to assist Holocaust survivors and other Holocaust-related humanitarian purposes. As part of the agreement with the Association of German Insurers and the European insurers, the companies contributed a substantial amount to the humanitarian fund of the International Commission. In early 2003, the International Commission began distribution of humanitarian funds by allocating $132 million to social welfare organizations aiding survivors worldwide. The International Commission is also planning to distribute funds

to claimants who have not identified the company against which they have a claim and is considering programs for future distribution of humanitarian funds.

The Role of New York State

A number of states have established Holocaust era claims offices or have staff specifically designated to assist Holocaust victims recover assets. I offer the experience of New York as an example of what legislatures and regulators around the country have done in this regard.

In 1997, following New York State's investigation of Holocaust assets held by the Swiss banks, Governor George E. Pataki and Superintendent of Insurance Levin began to examine the issue of unpaid insurance policies issued to Holocaust victims. In September 1997, Governor Pataki established the New York Claims Office.[1] The New York Claims Office was designed to assist Holocaust victims, survivors and their heirs in their attempts to recover Holocaust era assets deposited in European banks, to recover monies never paid in connection with insurance policies issued by European insurance companies and to recover art works that were lost, stolen or looted in the war period. The New York Claims Office was created to be an advocate for claimants by helping alleviate any cost and bureaucratic hardships they might encounter in trying to pursue their claims on their own, as well as to bring leverage to negotiations with the banks and insurance companies through the aggregation of claims.

The New York Claims Office offers its services free of charge to claimants worldwide. To date, the New York Claims Office has received 4,120 inquiries concerning insurance policies from 29 countries and 45 states (1,419 inquiries from New

York State residents). A total of 2,279 insurance claims have been filed covering 4,700 policies (635 claims from New York State residents). The New York Claims Office has been working with insurance companies and appropriate European regulatory insurance authorities to resolve these claims since 1997 and has assisted the International Commission since inception. This challenging task encompasses working with documents in multiple foreign languages and the laws of several counties. The New York Claims Office has a staff of highly trained Claims Specialists available to assist claimants in resolving their claims. The New York Claims Office offers assistance in eight languages (Czech, French, German, Italian, Polish, Russian, Spanish and Ukrainian), in addition to English.

At the same time, the New York State Legislature also became deeply concerned about allegations that certain insurers doing business in New York, either directly or through affiliates, failed to honor their commitments under insurance policies issued during the World War II era. Although such policies were issued outside of New York, New York is home to one of the largest Holocaust survivor populations in the United States. The Legislature determined that this state has a clear and substantial interest in ensuring that justice is effected for New York citizens.

As a result, the Legislature passed Governor Pataki's Program Legislation, which became law on July 8, 1998. Chapter 259 of the Laws of 1998 added Article 27, the "Holocaust Victims Insurance Act of 1998," to the New York Insurance Law (the Act). The Act requires New York State insurers that are affiliated with insurers that did business in areas under Nazi influence during the Holocaust era to file annual reports and

[1] The New York State Holocaust Claims Processing Office is located at One State Street, New York, NY 10004, in the Offices of the New York State Banking Department. The New York Claims Office has a toll

to resolve all unpaid insurance policies issued to Holocaust victims. Most importantly, the Act encourages such insurers to participate in the International Commission in order to reach a just and expeditious resolution of this issue.

The Holocaust Victims Insurance Act of 1998 has bolstered the work of the New York Claims Office and the International Commission. The Act principally provides that: (a) insurers doing business in New York shall promptly investigate and resolve claims they receive from individuals they know or should know are Holocaust victims or heirs; and (b) insurers affected by the Act shall submit reports to the Superintendent annually beginning January 30, 1999 and for the next ten years providing information regarding whether the insurer or any affiliate could possibly be expected to have issued an insurance policy to a Holocaust victim, between January 1, 1920 and December 31, 1945 and how the insurer has resolved any unpaid insurance policies issued to Holocaust victims.

While the Act establishes an important framework by which New York can assist in the resolution of unpaid insurance policies held by Holocaust victims, survivors, and their heirs, the Act also acknowledges the global context of the issue, involving, as it does, Holocaust victims, survivors and their heirs, insurers and regulators in several different countries and jurisdictions. Thus, the Act provides that insurers' reporting requirements under the Act may be waived periodically by the Superintendent if the insurer is meaningfully participating in the International Commission.

This discretionary authority granted to the Superintendent was and continues to be a significant incentive to the insurance companies that are doing business in New York to

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free number 1-800-695-3318 and its website is located at www.claims.state.ny.us.

participate in the International Commission to resolve insurance claims of Holocaust victims, survivors and heirs in an expeditious and equitable fashion.

As you evaluate the progress of the International Commission in its efforts to achieve a measure of justice for Holocaust insurance claimants and consider whether federal legislation is warranted, I believe it is important to take note that the International Commission is the first and only organization of its kind formed to serve as a mechanism for resolving claims on unpaid Holocaust era insurance policies. This means the commission has, starting from scratch, addressed a multitude of complex issues, both with regard to evaluation claims and claims processes. This has been far from simple and the initial execution has been far from perfect.

The International Commission has addressed many of the early challenges and some of the initial missteps by establishing and publicizing by means of an extensive and comprehensive outreach effort, a claim process accessible to claimants all over the world who speak a variety of languages. Claims, often with incomplete and nonexistent records, are evaluated in accordance with International Commission's relaxed standard of proof and valuation guidelines. These guidelines take into account the variety of currencies and types of policies as well as the manner they were lost, including blocked accounts and the realities of the post-war economic history of Europe, and the nationalization of company assets by the postwar Communist regimes. For claimants who feel their claims have been misjudged, the International Commission has also created an appeals process. Finally, the International Commission's work researching and compiling the names of pre-war policyholders has resulted in extensive lists of policyholders accessible to the public via the Internet.

With this in mind, the state regulators involved in the International Commission have endeavored to speak uniformly and consistently in order to resolve all unpaid insurance claims as quickly as possible. The International Commission distributes claims figures on a bi-monthly basis to the Commissioners in order for us to monitor progress on claims processing. This information, together with quarterly statistics from the International Commission, is posted to the NAIC website for Commissioners to track the progress of the claims of their constituents. Relevant information on the distribution of the humanitarian funds has also been posted to the NAIC website so that Commissioners are informed as to the funds reaching survivors in their states. In addition, representatives of the International Commission meet and report on recent developments on a quarterly basis to the NAIC Task Force and monthly conference calls have been scheduled. The NAIC Task Force and the member states of the International Commission continue to believe that the International Commission, particularly with its revamped organization and the addition of important outside advisors, is still the best available way to ultimately ensure payment of claims to Holocaust era victims and their heirs at no cost and with relaxed standards of proof. Now that all agreements with the companies have been completed, the International Commission is focused on resolving all claims that have been filed and processed as expeditiously as possible. The NAIC Task Force is actively working with the International Commission to resolve all outstanding claims and ensure that companies are complying with the guidelines of the International Commission.

Thank you for the opportunity to speak to you today.

Ms. ROS-LEHTINEN. We will hear from Mr. Gideon Taylor, the executive vice president of the Conference of Jewish Material Claims Against Germany.

Thank you, Mr. Taylor.

Mr. TAYLOR. Thank you for giving me this opportunity to testify before you today. The holding of this hearing clearly reflects your commitment to the pursuit of justice for Holocaust survivors and their heirs, which has long been an important value held by the U.S. Government and by so many of you individually. We understand the frustration felt by so many members of the committee. All of us involved in this tortuous process feel the same frustration.

Let me open by acknowledging the tremendous efforts that Lawrence Eagleburger, as chairman of ICHEIC, has made on behalf of claimants and Holocaust survivors. His dedication and commitment have, despite the huge challenges, frustrations and difficulties, brought great progress on an issue that has for over 50 years seen only obfuscation and denial. The question is not whether ICHEIC is perfect; the question is whether the alternatives can or would have brought faster or better relief.

First, let me comment on the focus of ICHEIC.

The ICHEIC has directed most of its efforts in three main areas: Notification of the ICHEIC to claimants and informing potential claimants that they may have a claim through the publication of lists. ICHEIC launched an extensive media campaign in February 2000, and with the recent incorporation of additional names, ICHEIC has again placed advertisements worldwide to ensure that potential applicants are aware of the process.

Assisting claimants in achieving a positive resolution of their claims by establishing relaxed standards of proof and a fair evaluation system, conducting research to assist claimants by finding proof of their claims in governmental archives and establishing procedures to assist in the identification of positive claims through effective matching techniques.

ICHEIC has spent significant funds on conducting research in governmental archives. In this regard, the matching of names is, we believe, critical to identifying valid claimants. The matching system must take into account all relevant factors to be comprehensive, and variations and inaccuracies of names should not disqualify a claim. For example, an individual with the name of Schwartz may seek to prove ownership of a policy. The name of Schwartz may have significant spelling differences. How these claims are matched and identified will, we believe, have a significant impact on the number of claims that can be paid. Verification of those decisions of the companies was instituted to ensure that the claimants have trust in the system. It comprises three components: ICHEIC internally monitors the responses of the companies, independent audits into processes of the companies are conducted and an independent appeals system has been established.

In addition, monitoring: ICHEIC recently established a policy of reviewing all company decisions. We believe this is vital. While we applaud this development, we believe it is important that ICHEIC now goes back and ensures that past decisions of companies also be reviewed. Cooperation from the companies will be essential in this regard. Audit: The first stage audit looked at systems of the

companies. The second stage of the audit will, however, be critical. It will consist of a sample of the claims processed by each company and will verify whether the company is complying with ICHEIC rules. Appeals: The number of appeals has not been large. However, we believe the appeals system will enhance the process.

I would also like to mention some of the problems encountered to date. Despite the best of our efforts, there have been significant problems in the processing of claims. The main problems are consequences of delays in the processing and difficulty in establishing and proving claims. First, delays in company processing: The system established by ICHEIC is dependent on the company's processing the claims. Many of the companies did not dedicate sufficiently qualified staff to the processing. Clearly, it is not adequate that more than 3 years into the process a large number of the claims have not been processed by the companies. We believe it is necessary that companies have adequate staff in order that the process can be concluded without further delay. Second, delays at indemnification archives: Many of the claims on policies issued in Germany must be checked in archives to see if a prior payment was made. Unfortunately, we have seen claims in which companies have waited for a long time for an answer, the burden of which falls upon the claimants. Third, there have been issues of data protection, and we hope that some kind of mechanism can be developed and will be developed to overcome the problems in this regard. Fourth, lack of information: Claimants generally have no documents and little detailed knowledge of the assets of their parents. A combination of limited information on the part of claimants and incomplete records of the insurance company have led to a situation in which it is extremely difficult to process successful claims. Fifth, nonmember companies: Many companies have not joined ICHEIC because they do little or no business in the United States. Further action is necessary in this regard. Unfortunately, many companies that issued policies no longer exist.

Finally, I would like to make a few comments on the current situation. At present, over 3,000 claims have received offers, as you have heard. However, I hope this number will be increased for the following reasons. Many companies that have good records still have a significant number of claims to process, and speeding up that process is clearly a high priority. Second, the ICHEIC Web site now has a total of over 500,000 policyholder names. It is expected, as a result of recent agreement with three companies, additional names will be published; and we hope and believe that this will result in further successful claims. And, finally, a protocol and system for matching of names, we believe, will be significant and is a high priority to finalize and to implement.

Although about $40 million has been offered to claimants, it is vital to note that agreements with insurance companies have generated almost half a billion dollars. This will be used to pay claims on Holocaust era insurance directly from companies to claimants; to make ICHEIC humanitarian payments to certain claimants who cannot name an insurance company and whose claims are not found by the matching process but have some anecdotal evidence; and for projects such as the provision of home care, medical assistance and food that will assist Holocaust victims living in dark con-

ditions in 31 countries across the world, including here in the United States. Since insurance was common in Jewish families throughout Europe, it is highly likely that families of these needy Holocaust victims probably had insurance, but either the victims do not know the policies, they could not be found or perhaps the victim is too frail to even apply. It is about achieving a measure of rough justice.

Of course, the Holocaust era restitution process is too little, too late. All Holocaust restitution is too little, too late. There is still much to do, and we will continue to pursue the effort on behalf of survivors of the Holocaust.

Ms. ROS-LEHTINEN. Thank you. Thank you very much.

[The prepared statement of Mr. Taylor follows:]

TESTIMONY OF GIDEON TAYLOR
TO THE GOVERNMENT REFORM COMMITTEE MEETING
HOUSE OF REPRESENTATIVES
CONGRESS OF THE UNITED STATES
STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VICTIMS AND HEIRS

16 September 2003

Thank you for giving me this opportunity to testify before you today. The holding of this hearing clearly reflects your commitment to the pursuit of justice for Holocaust survivors and their heirs, which has long been an important value held by the US Government.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in 1998 with the aim of making payments to Holocaust survivors and their heirs for unpaid holocaust era insurance policies. We are already five years into the process and I would like to reflect upon some of the achievements as well as the areas of difficulty. Let me open by acknowledging the tremendous efforts that Lawrence Eagleburger, as Chairman of ICHEIC, has made on behalf of claimants and Holocaust survivors. His dedication and commitment have, despite the huge challenges, brought great progress in an issue that for over 50 years has seen only obfuscation and denial.

1. Focus of ICHEIC efforts

Firstly, let me comment on the focus of ICHEIC.

The International Commission has directed most of its efforts in main three areas:

Notification of the ICHEIC process to claimants and informing potential claimants that they may have a claim through the publication of lists. ICHEIC launched an extensive

media campaign in February 2000 and with the recent incorporation of potentially hundreds of thousands of names of unpaid Holocaust era insurance policies, ICHEIC again placed advertisements worldwide to ensure that potential applicants were aware of the process. Efforts to ensure that companies provide lists of unpaid policyholders had been the cornerstone of many of the recent agreements. A total of over 500,000 names of policy holders are now available on the ICHEIC website.

Assisting claimants in achieving a positive resolution of their claims by establishing relaxed standards of proof and a fair valuation system, conducting research to assist claimants by finding proof of their claims in governmental archives and establishing procedures to assist in the identification of positive claims through effective matching techniques. ICHEIC has to date spent significant funds on conducting research in governmental archives. For example, Jews in Austria had to give the Nazis a list of their property in April 1938 – just after the Anschluss. Researchers paid by ICHEIC scoured approximately 50,000 Jewish Property Declarations in the Austrian State Archives for mention of insurance and the results were placed on the website.

ICHEIC also was unique in developing a protocol for the matching of names. For example an applicant might note that his grandfather, Max Schwartz was born in Lodz in September 1904. The insurance company will look in its records for proof of the policy but there are numerous spellings of "Schwartz" and of "Lodz" and the date of birth could easily be incorrect (for example, is the applicant using the American date or European date ? ; perhaps the grandfather told the authorities a different date of birth to avoid military conscription, was the Gregorian calendar used, etc.? – the search must take into account all these factors to be comprehensive and certain variations and inaccuracies should not disqualify a claim). The Chairman has issued a protocol to all companies and it is vital that all companies follow the protocol. This is indispensable to ensure that claims are paid.

Verification of the decisions of the companies was instituted to ensure that the claimants have trust in the system. It comprises three components: (i) ICHEIC internally monitors

the responses of the companies (ii) independent audits into processes of the companies are conducted and (ii) an independent appeals system has been established.

(i) *Monitoring:* ICHEIC recently established a policy of reviewing all company decisions. We believe this is vital. Whilst we applaud this development, we believe that it is important that ICHEIC now goes back and ensures that past decisions of companies, also be reviewed. Cooperation from the companies will be essential in this regard.

(ii) *Audit*: The first stage audit looked at the systems adopted by each of the companies – did the relevant company list all their subsidiaries?, had the company searched for and found all relevant archives?, what databasing had that particular company undertaken? was the company work flowchart consistent with ICHEIC rules? Compliance has been achieved by most of the companies so far. The second stage of the audit will however be critical. It will consist of a sample of the claims processed by each company and will verify whether the company is complying with ICHEIC rules.

(iii) *Appeals:* The number of appeals has not been large – some could not commence until the audit was complete. However, the appeals judges are highly respected members of the international community and we anticipate that the appeal system will be comprehensive and will enhance the process.

2. Problems Encountered to Date

Secondly, I would like to mention some of the problems encountered to date.

Despite the best efforts of all, there have been problems in the processing of claims. The main problems are a consequence of delays in the processing and difficulty in establishing and proving claims.

Delays in Company Processing

The system established by ICHEIC has been dependent upon the companies processing the claims. Many of the companies did not dedicate sufficiently qualified staff to the processing. In particular, the monitoring to date indicates that in some cases there are insufficient staff that can thoroughly understand the rules established by ICHEIC. It is to be hoped that the newly published ICHEIC processing guide will assist the companies in more efficiently processing claims. Clearly it is not adequate that more than 3 years into the process a large number of the claims have not been processed by the companies. We believe that it is necessary that the companies hire additional staff in order that the process can be concluded without further delay.

Delays at Indemnification Archives

In addition, many of the claims on policies issued in Germany must be checked in the German Indemnification archives to see if a prior payment on the policy was made within the framework of the Federal Indemnification Law (BEG). If a prior payment was made on the claim in the 1950s, then the company does not have to pay the claim within the ICHEIC process. Unfortunately, we have seen claims in which companies have waited for a long time for an answer from the BEG – which is a great burden for the claimants.

Data Protection Difficulties

The publication of lists has in many instances been hindered by Data Protection laws in Europe. For example, although lists of unpaid policies may be available in France and Belgium, a complex system has to be established in order that publication does not breach relevant laws. ICHEIC has been recently studying this issue in depth and we look forward to the development of creative mechanisms to overcome the difficulty.

Lack of Information

Claimants generally have no documents and have very little detailed knowledge of the assets of their parents. Very few cases are documented or able to name a company. A combination of limited information on the part of claimants and incomplete records of the insurance company has led to a situation in which it is extremely difficult to process successful claims – even with relaxed standards of proof.

Could the system have been better and cheaper? Perhaps. But it is important to note that the vast majority of expenses of ICHEIC were used for processes that assist claimants or to process claims. Each claim obtained by ICHEIC must be sent to the relevant company and if no company is mentioned, sent to each company. There must be a call center to answer calls from claimants. A decision was made to undertake research in Government archives to locate the names of potential unpaid Holocaust era insurance policies. A decision was also made to monitor claims, conduct an audit and have independent appeals. Each one of these items is costly. ICHEIC is not at all unique – the Swiss Bank settlement has also incurred significant costs with an audit costing hundreds of millions of dollars. All these costs reflect the difficulty of trying to verify and reconstruct something that is 60 years old, where documents are scarce – if they exist at all – and where it is sometimes unclear whether all the parties to the process are equally committed to resolving these issues.

3. Current Situation.

Finally, I would like to make a few comments on the current situation.

At present over 3,000 claims have received offers totaling $40 million. However, it is hoped that this number will increase due to the following factors:

a) Many companies that have good records, particularly Generali, still have a significant number of claims to process.

b) In recent months over 360,000 names for potentially unpaid Holocaust era insurance policies issued in Germany were published as were an additional 12,000 names of unpaid Generali policies. This brings us to a total of over 500,000 policy holder names. It is anticipated that as a result of the April agreement with Winterthur, AXA and Zurich, additional names will be published – these should result in further successful claims.

c) ICHEIC recently established a uniform protocol for the matching of claims with company lists and adoption of this protocol should increase the number of successful claims.

Although about $40 million has been offered to claimants, it is vital to note that agreements with insurance companies have generated almost half a billion dollars (this is primarily the combined amount of the insurance component of the German Foundation Agreement, the agreement with the Generali, the agreement with the Winterthur, AXA and Zurich companies and the provision in the Austrian General Settlement Fund).

This almost half a billion dollars will be used to pay claims on unpaid Holocaust era insurance directly from the companies to the claimants, to make ICHEIC humanitarian payments to certain claimants who cannot name an insurance company and whose claims are not found by the matching process but have sufficient anecdotal evidence (8A1 claims) and for projects such as the provision of homecare, medical assistance and food that will assist Holocaust victims living in dire conditions in 31 countries across the world including here in the United States. Since insurance was common in Jewish families throughout Europe, it is highly likely that the families of many of these needy Holocaust victims probably had insurance but either the victims do not know of the policies, they could not be found or perhaps the victim is too frail to even apply. It is achieving a measure of rough justice.

Of course the Holocaust era insurance restitution process is too little, too late. All Holocaust restitution is too little, too late. There is still much to do and we must and will continue to pursue the effort for a small measure of justice for survivors of the Holocaust and their heirs.

Ms. ROS-LEHTINEN. We will round out the panel with Mr. Roman Kent, who is a Holocaust survivor serving as the chairman of the American Gathering of Holocaust Survivors.

Mr. SHAYS. From Stamford, CT.

Mr. KENT. Thank you very much for inviting me to this hearing; and thank you very much, Chris, for saying a few kind words about me. I don't know whether I deserve it or not, but I will take it at face value.

I heard here a lot of statements, and I would like to mention to you that I am here right now testifying maybe in a dual capacity, both as a survivor and a member of the Commission as well as a U.S. taxpayer and citizen, and I think the views which you will hear from me right now are based on the above.

The views I am going to express are really based on some of the things I heard here; and I was disturbed, to put it mildly. I am here not to disprove what I heard, but I am here rather to tell you what I do know. Long ago, when I went to school here, I studied Mark Twain; and he said that there are three kinds of lies: There is a lie, a big lie and then there are statistics. Statistics was knowing the totality, is knowing exactly what it is. It is a big lie.

Now the second thing which I heard also here is—how should I say it—an attack on ICHEIC, as if ICHEIC would be the criminal, as if ICHEIC didn't do anything. We did not take under consideration what ICHEIC did accomplish. And I am not here only to say what ICHEIC accomplished. God as my witness, they made a lot of mistakes. But, on the other hand, ICHEIC undertook something that was never done before. So in making a judgment, we have to take the good and the bad things.

And let's say what ICHEIC did accomplish. ICHEIC accomplished things which were completely against the arts for a normal person to accomplish. They had to deal with the largest companies in Europe, with the Generalis, with the Allianz, with the AIA, and they each one have a different kind of aim. They have different characteristics, they have different valuation systems. But they had one thing in common: They really did not want to pay any claims. That was one common ground for them.

ICHEIC accomplished by taking all these diversified views and they have created, yes, an imperfect system to evaluate the views—the insurance to provide a certain system in the chaos which was created by the companies due to the unpaid policies.

We have to realize that when we are talking about, "yes, let's just force the people to get the list," it took us years—years—to get the list from the Allianz, for example. And the German Foundation was instigated not to give any list, but we finally achieved it; we have over 500,000 names.

But now let's consider what the names will do by themselves. The names by themselves would only give us an heir, if he survived, or if his members of family survived. Very few of us survived; very few of the family members survived. So the list would only give us a small percentage of claimants. Thus, the companies would be left with all the unclaimed money in their own coffer.

ICHEIC accomplished that we were able to receive, like Gideon said, about $500 million already. So we have money not only to pay

for the actual heirs, but we also have money to do what you people are talking about, the humanitarian justice for the survivors.

Let's say we cannot have in this world—and you in the Congress know better than anyone else—there is nothing on this Earth like perfect justice. We can have relative justice, and I think the relative justice is being accomplished by a system of voluntary—voluntary, but it was a push, it was a push. And you people in the Congress, you are part of the U.S. Government, and you could give the voluntary push to us, to ICHEIC. We welcome it, I welcome it; I would love to have a push. Because of this direct push to the aims which we want to accomplish, we could achieve much, much more. I know, Lady Chairwoman, you want to cut me, but let me tell you the following issue.

I had a meeting a few years ago with Dr. Breuer, who is the chairman of the Deutsch Bank, and he told me very simply—it was a very private meeting, and he told me the following. He said, "Mr. Kent, look, we can fight the survivors in the court for the next 20 years. So what? It will cost, $2, $3, $5 million a year, and we have good lawyers. But what will this accomplish? If we can achieve a voluntary settlement, we can do it faster."

This is what I am asking you; give us the help, we need your help. And let the Congress issue a statement, a sense of Congress that they are supporting us. That would be the biggest help you can give us.

Thank you for giving me the extra minute.

Ms. ROS-LEHTINEN. Thank you so much. That is only because you are Congressman Shays' constituent.

Secretary Eagleburger, you have expressed your opinion regarding the two bills put forth on this issue. Do you not believe, however, that the companies could do more with the threat of sanctions to achieve this purpose?

Mr. EAGLEBURGER. No, I shouldn't have answered both questions with a no. Yes, the companies—within limits, the companies could do more. I don't deny that. They have been—I have to do—answer this in pieces, I think. The companies could do more. They are still too slow sometimes—many times—and there's no question they could speed up their process. I can only say this, however, in the sense that, in comparison with the way they used to act, they are substantially better, but they still need to do better than they have. But they are doing better than they did.

Ms. ROS-LEHTINEN. Don't you think pressure and the threat of sanctions has caused them to be better—or certainly goodwill?

Mr. EAGLEBURGER. Certainly the experience of the last few years has caused them to do better, and the threat of sanctions at an earlier stage at least certainly made them do better.

I will say to you—and this is something that my dear friend, the constituent from Connecticut—a point he made, and I would say it again. Part of the reason for the doing better, believe it or not, I think is because over the course of the years that we have dealt with these people, the fact that we have dealt with them for so long has also, I think, convinced them by dealing with us instead of fighting us all the time has led to some progress.

So, yes, certainly the threat of sanctions in the earlier stages and, frankly, my threatening to go public on a number of occasions

with their problems has made a difference, but also the experience with working with us has helped some. So I think there is more the companies can do. I also think there is real room for help from the Congress. I do not think, however, that to try to sanction them at this stage would help at all. I will give you an example, however, where we desperately need help.

In the agreement with the German Foundation, many of the German insurance companies that are now encompassed in our agreement are in a number of different German states and a number of the claims have to go through the insurance administrators in those states. They are organized in many cases the same way we are in the United States in terms of regulations being handled by the states. And the ponderousness, to the degree to which the state regulators and the state insurance institutions move in handling and checking their records is wondrous to behold. If there is any way that the Congress could help us to encourage the state insurance regulators and regulations in those German states to speed up the process, it would make a tremendous difference. This is a classic example in the German case of the fact that the insurance industry is not controlled from the center and a number of the German state insurance regulators are less than enthused with this system that we have developed and some of the processes are slowed down because of that.

So I have gone off from your question a bit, but it is an area where we find real trouble and where there could be some encouragement from the Congress. But to get back to your question, the companies are doing better than they have in the past. They still are not totally cooperative and, on occasion, we have real trouble, but we have been able to find our way through most of that. I do not think at this stage that legislated sanctions would help.

Ms. ROS-LEHTINEN. Thank you, Mr. Secretary; and just one more question. How relaxed are the standards for survivors to make claims? What burden of proof rests on the survivors? What burdens rests on the companies? Is it equal? Is it more one than the other?

Mr. EAGLEBURGER. It's hard for me to give you a specific answer on that and maybe to say my expert on insurance can help me out here. We have substantially relaxed the standards of proof, very substantially, to the great discomfort of the insurance companies. But when it gets into an explanation of how they are—how much they are relaxed, all I can say is I don't think there's any insurance company in this country or any other country, as far as that's concerned, that would feel comfortable with the relaxed standards, but let me ask him to be more specific.

Mr. SERIO. The ICHEIC process doesn't require much more than showing the existence of a policy at some point in time. I think as the way the process has been set up we've tried to create a combination of both handling specific claims as well as handling almost an aggregated type of approach to the humanitarian funds, and I think between those two ways of approaching it we have been able to provide a relaxed standard through nothing more than the existence of a policy as well as the large and more aggregate approach to compensation through the humanitarian funds.

Mr. EAGLEBURGER. If I could, I have to—I've been corrected by my brains behind me here. In the earlier problems I mentioned

with the German states, it is their archives we need access to more than anything else. It's not their insurance regulators so much as it is access to the state archives; and our biggest problems there are Bavaria, Hesse and the Rhineland Palatinate. So if there's any way we can get any assistance from the Congress or a sense of Congress or something that suggests that these German states could be more cooperative, it would be a help.

Ms. ROS-LEHTINEN. Thank you, Mr. Secretary.

Mr. Waxman.

Mr. WAXMAN. Thank you very much.

Secretary Eagleburger, one of the main problems, as I see it, is that the companies are not publishing a complete list of the names of the Holocaust era insurance policyholders. Let me get basic facts straight. How many names of policyholders have been published by the companies?

Mr. EAGLEBURGER. By the companies? Do we know that at all?

The best—I guess this would be the answer to your question. We have 520,000 names on our Web site, and those are names that have come from the companies, but—I am trying to be careful here because you have specifically mentioned companies, and what I am trying to be careful about here is whether these have all come from the companies or whether any of them have come from our independent research. What I am trying to get here is the specific answer to his question.

In terms of the sources of policyholder names on ICHEIC's Web site, the German Insurance Association provided 363,232, and that includes—do you want to go by company?

Mr. WAXMAN. I think your answer is, overall, 520,000. My second question is, how many Holocaust-era insurance policies did these companies actually have? How big is the universe of the actual policies that were issued?

Mr. EAGLEBURGER. I can't answer the question other than to say, so far as we know, given the fact that some of these will be duplicates of more than one policy to a specific person, as far as we know, that's the universe we know about.

Mr. WAXMAN. Well, the charts that I displayed earlier indicate to me that there are likely to be many names that haven't been disclosed. In Poland there were 3 million Jews but 11,000 policies listed. Surely there are many more Jewish families with insurance policies. The only country that seems to have an adequate collection of names is Germany, where 400,000 names have been listed with a population of 585,000 Jews. So there is a larger universe of insurance policies we are not getting to, and failure to get those names of the insured is putting survivors and their heirs in a "catch-22." What can ICHEIC do to increase the number of names that are being disclosed?

Mr. EAGLEBURGER. Let me give you some of our statistics.

For example, on the German numbers, there were 8 million policyholder names, which included both Jewish and non-Jewish names. ICHEIC matched 8 million policyholders names against the list of German Holocaust victims.

If you want a country where the statistics were elegantly kept, it is Germany. They listed every single German—Jewish Holocaust victim. They would not have called them that. They had an ele-

gantly complete list of the Jews who were victims of the Holocaust, and we came up—with that matching, we came up with 360,000 names.

What I am trying to get at here, if we have confidence in our statistics anywhere, it is on the—that we have 360,000 Jewish Holocaust victims out—that is insured victims in Germany. And I have to keep coming back and underline that word insured. There clearly were more German-Jewish victims than that. But insured victims: 360,000.

Mr. WAXMAN. Excuse me for interrupting. We both acknowledge that Germany had better statistics, but I'm sure you would also agree that we look at Poland.

Mr. EAGLEBURGER. I'm coming to that. I'm coming to that.

Mr. WAXMAN. Well, I have a problem, because my time is going to run out.

Mr. EAGLEBURGER. Well, I'm sorry, but I can't answer your questions other than to answer—if I take too long, I will be glad to give you all of these figures in writing, if you wish.

Mr. SHAYS [presiding]. Here is what we're going to do, if the gentleman will suspend. I am going to give the gentleman another 5 minutes, because there are not that many of us here, and that way we can pursue the questions.

Mr. WAXMAN. I think that's fair, because I don't want to cutoff the Secretary. So I want him to proceed.

Mr. EAGLEBURGER. All right. Let me see, I have my notes here on Poland. Just 1 minute. Where is it? No, it's here somewhere because I just had it. Here it is.

The total market in insurance at the time in Poland, Jewish and non-Jewish, was 261,000. Of that total of 261,000, 11,225 is the number of Holocaust victims whose policies we have published.

As my written statement notes, we would look for your assistance in supplementing our effort with the Polish Government as well as with the Governments of Hungary and Romania.

As a comparison point, the total number of Jewish professionals in Poland in 1929 was 45,000. That's lawyers, doctors and industrialists. Our assumption is that the total number of Jewish insured would be somewhere above the 11,225 we have listed, but certainly not more than the 45,000. Now, that is not to say that nonprofessional Jews wouldn't insure. It is to say, however, that on the basis of what we have been able to establish over the last 4 years, it is highly unlikely that many of them would.

So I am saying our Polish statistics are by no means complete and we are trying to get more information, but it is probable that, at the most, we will find—as we continue the process, we will find less than, let's say less than 50,000, and we now have 11,225 names. We are continuing the process of trying to get more on that.

Mr. WAXMAN. Mr. Secretary, I appreciate that, but if in Poland, Hungary, and Romania we don't have the full list——

Mr. EAGLEBURGER. That's right, we don't.

Mr. WAXMAN [continuing]. Then the people who have relatives that came from those countries are in a "catch-22." They can't file a claim, even through ICHEIC, without knowing if there's a policy.

Mr. EAGLEBURGER. Congressman, you are absolutely correct.

Mr. WAXMAN. Let me finish.

So then the question is, what can be done to increase the numbers of names that are being disclosed? One is, what can ICHEIC do? We have laid out a different proposal.

Mr. EAGLEBURGER. Well, do they have names? Excuse me, go ahead.

Mr. WAXMAN. Yeah, I think it would be nice to let me finish, because then you can answer.

Mr. EAGLEBURGER. Go ahead.

Mr. WAXMAN. We want to get the names disclosed and to require it. Then they could go through ICHEIC. I don't see it as an alternative to ICHEIC. We want to get the names out so they can go through ICHEIC.

What can you do, what can we do, to get those names if the companies are refusing to disclose them, especially in light of the fact that, at the end of this year, there's a deadline, and those people who can't come in and establish a claim are going to be out of luck and the funds will not go to those people who deserve it?

Mr. EAGLEBURGER. First of all, if they have a name, in other words, they are not simply searching to see if they can find a name—if they have a name, they can go ahead and file a claim, even if they do not have a company. That then produces—forces us to go through our matching process to see what we can find out. And if it comes into one of our companies, we will go ahead and try to match the claim, even if it's in Romania or wherever it is.

This is not a total answer to your question; it is a beginning. But they can go ahead and file a claim, and we will see what we can find out. Beyond which, we are continuing to try to get better access in Hungary and in Poland—in Hungary and Romania. And it has been difficult, but we have not stopped our attempts, and we are going through the State Department and we are going to continue to try to get into them, and in Poland as well. But he can go ahead and file his claim.

But as Mr. Serio has pointed out to me, one of the problems you're going to face is that most of the policies that were issued in Poland, particularly, were by companies that are no longer in existence. That does not solve any of our problems.

Mr. WAXMAN. And there is nothing we can do about that. But those companies that are in existence, I believe, ought to be required to disclose the names.

As I understand, the matching that you do is based on the lists of Yad Vashem, which is 3 million of the 6 million Jews that were killed. We don't have all the names even of those people who have died in the Holocaust, but we ought to require those companies that are still around to disclose these names. Do you disagree with that?

Mr. EAGLEBURGER. No, I don't disagree. The question is, to come back to my point, if you have people who already have a name and they want to see if there's anything in our records they should file a claim. In terms of our being able to get into the three countries to get more names—in the Polish case get more names, and in the other two cases to get some names—we're going to continue to try, and we will, I think, in the end, succeed. But the point at this stage is, in answer to your specific question, as of right now, if they

have a name, they should file a claim, and we will run it through our system to see if we have any match at all.

Mr. WAXMAN. Thank you, Mr. Chairman. I know the time is up and we will have a subsequent round.

Mr. SHAYS. We definitely will. We don't have many opportunities like this, and there are not many Members, so we can make sure all our questions are answered.

At this time the Chair will recognize Mr. Foley.

Mr. FOLEY. Thank you very much.

Mr. Secretary, please understand, I know this is not a paid job; you are doing this to try to——

Mr. EAGLEBURGER. No, I'm not getting paid.

Mr. FOLEY. I understand that, and we, hopefully, are not being argumentative, but it is a sensitive subject.

Mr. EAGLEBURGER. I have learned that, Congressman. I have really learned that it is a sensitive subject.

Mr. FOLEY. Well, thank you for serving in this capacity. I want to make sure everybody understands: I think Mr. Waxman and I, both of our bills, try to reaffirm a longstanding right that Congress gave to the States to broadly regulate the insurance industry. So I don't think we are creating any new body of law here. We're trying to be consistent with what we see as the rights of States in order to ensure that those who are doing business in their States are complying with all other responsibilities for corporate citizenship. We also don't, in our bill, H.R. 1905, usurp the process, the goals or the activities of ICHEIC; I want to underscore that. And there has been good progress, without question, but it is, in our opinion, taking a bit too long.

Professor Bazyler included with his testimony some examples of insurance claims that are still pending in the ICHEIC process. In one example, a claim is still pending despite the fact the claim was filed in 2000 and included the name of the insurance company and the policy numbers. In another example, a claim was denied based on insufficient documentation, despite the fact the insurance company identified the policies.

I would just hope, Mr. Secretary, you would followup on some of those cases supplied by Professor Bazyler and report back to the committee on how they were resolved.

Mr. EAGLEBURGER. If you or somebody will give me those cases, I will assure you I will get you an answer within 2 weeks, at least that we are following up, and see what I can find out. I will be glad to do that.

Mr. FOLEY. Thank you.

Mr. EAGLEBURGER. In fact, if I may, one of the problems we have had is, there is lack of understanding. Well, first of all, we have screwed up. I'm sorry, that's the wrong word. We have messed up sometimes, there's no question about that. And in those cases, I would like very much to find out any information I can. In a number of the cases, however, people don't understand that companies have disappeared and/or that it's a policy that was written by a company that is outside our jurisdiction.

Anyway, my only point is, there's great misunderstanding all along the line. And when we can find out these cases, I will be glad—if you can find somebody to give them to us, I promise you

an answer within a very short period of time, even if the answer is, we are still looking into it.

Mr. FOLEY. Thank you, Mr. Secretary.

Mr. Serio, you are with the National Association of Insurance Commissioners, I understand. Can you give me an idea when you expect, having served on this tribunal, to have all the valid claims paid to the ones that are now standing, that are valid? What year do you expect payments to be made? Do you have a timeframe?

Mr. SERIO. I would have to go back and work with the ICHEIC folks. I will put it this way, and I think this is a position held by my colleagues, as well as myself.

What we are trying to do is to use our positions as members of ICHEIC to help change the process so that the process can be moved as expeditiously as possible. Expediting that, I think, has been one of the weaknesses of ICHEIC in the past. And I think the steps that ICHEIC has taken to put more claims people on the ground with a capable manager in London to investigate those claims and adjudicate those claims, I think, is a big step in the right direction. And that is a step that had not been there previously.

The mechanism has been changed, which is a positive thing, and I am hoping—and I guess I could concur with what the Secretary said in terms of, that you will see a lot more action coming this year now that these steps are in place, rather than the last couple of years where we were trying to do five different things at the same time—negotiate settlements, get the process in place, put people on the ground in Europe, and to a certain extent, not even knowing where to look at those points, because suddenly we would find out there was a cadre of policies in Poland and elsewhere.

But I think now that both the intelligence, in terms of where the claims might be and, more to the point, the fact that this isn't just what you might call the "traditional insurance industry" as the only focal point of this process but rather the "extinct insurance community," those companies that did not survive, changeovers after the war, did not survive the years after the war, and where they kind of fell off the radar screen. I think that is what ICHEIC really needed to get in place what I think now is in place.

Mr. FOLEY. So as a regulator you are starting to see the infrastructure finally following along with the design of the panel?

Mr. SERIO. Yes. And this is overdue, there is no question about it. But the infrastructure is now there. And the infrastructure is important in another way, and that's this: From the State level, in terms of working with the claimants who will approach the insurance commissioners and say, "I have an issue," or, "I have a claim," or, "I think I have a claim," to better expedite claimant information to ICHEIC is also important.

One of the things we have been doing at the NAIC this year is to try to expedite claimant information into ICHEIC and to set up a process of tracking those claims. One of the things that has been happening is this: There has been a lot of inefficiency in the process up to this point. Some claimants call their insurance commissioners, and those are the folks we know. Some claimants call ICHEIC directly, and those are the claimants they know. But we haven't really put that information together. So for the first time

we have actually created a spread sheet, and we are working on it at the ICHEIC to coordinate claims with the ICHEIC so that we are not counting people three times and then missing counting people on the other hand. I think that has been a crucial part of this.

One reason the insurance commissioners were a part of this is not because it was just created with the impetus of Commissioner Pomeroy and Superintendent Levin and the others, but because we, on the ground level, really have some of the best intelligence from the bottom up, as the Secretary described. And I think by assisting the process from the bottom up, as well as keeping the pressure from the top down, which I think the committee has told us before is a process that has been going on all along—and, in fact, as the first Deputy Superintendent in New York, serving under Superintendent Levin, I sat through many very contentious sessions with the insurance community where they were bristling at these notions, but where they did come around to understanding that their cooperation in ICHEIC was an important matter for us and, frankly, an important matter for them.

Mr. EAGLEBURGER. By the way, I should make the point that Superintendent Levin, who had moved on to another job, was killed in the September 11 event in New York. It was a great loss.

Mr. KENT. If I may add just a couple of points here, which the Secretary mentioned, that some of the problem with the slowness of the claim is also due—particularly in the German case, is that they want to check if the claim was not paid already under what they call BEG payments, and they have a very slow process doing it. So they are delaying us in handling the claim.

And the second thing which—I want to give credit to the State regulators, that they were indeed extremely helpful in two areas. No. 1, during the negotiation they were helping us in the pressure point to accomplish certain things from the insurance companies, and right now, also, they are helping in developing the system which never existed before to do something more expeditiously.

Mr. FOLEY. Mr. Serio, have they ever ventured an estimate of what the present-day value of these aggregate policies are worth, with interest earnings and all; what we may have roughly out on the table as far as when companies took in premiums, what they would be worth in terms of present value?

Mr. EAGLEBURGER. Not as far as I know.

Mr. SERIO. I don't think we've done a present value calculation of those policies.

Mr. FOLEY. Do we have a value of the day, say, the war? Is there any kind of number out there?

Mr. SERIO. I'm not sure. I suppose some of the policies were relatively small, some of the policies were large, depending upon the purchaser.

Mr. EAGLEBURGER. I don't know.

Mr. SERIO. I'm sure that will come out as the portrait is expanded in terms of the claimant community that we have and in terms of the types of policies that we have. We haven't done that. And, frankly, I think one of the things we've been trying to do, and I guess from the Commissioners' perspective is, we have been trying to assist, if not push at the appropriate times, the process

issue. And I think some of those facts you are asking for, Congressman, will come out as that process starts to yield some benefit.

Mr. FOLEY. Thank you.

Thank you, Mr. Chairman.

Mr. SHAYS. I have some questions I would like to ask.

It seems to me that if you could take in premiums and not pay out benefits, you'd do pretty well, and ultimately, that's what a number of insurance companies did. And it really wasn't brought to my attention in a such a graphic way until the gentleman in a Swiss bank or insurance company, I'm not sure which, talked about records being destroyed. To me, it was like a wake-up call and a real kind of indication that we were not getting cooperation; and some attempts to just ignore this problem and pocket the money had gone on for years and years and years. Then, when the individual made it public, he was condemned as somehow being anti-Swiss. Frankly, that speaks volumes for the attitude among many Swiss people, which is regrettable.

My question is a reaction to what Secretary Eagleburger said when he said, "Well, what's the point"—and I hope I'm saying it correctly—"what's the point of printing out such a vast list?" With banks, if they have savings accounts and nobody claims them, they have to print that. And people see it and they say, my gosh, someone in their family was actually one of the people named.

So my question, Mr. Kent, and then Mr. Taylor, and we will go right down the line, what conceivably is wrong, conceptually wrong with—if you had beneficiaries who weren't paid benefits, what's wrong with noting those names? Maybe it's not even a family member, but it's a neighbor who says, I knew that person and that person, and so on. I don't see the problem. It seems like a no-brainer. Print the names of all the policyholders and then go from there. Mr. Kent, what's wrong with that?

Mr. KENT. I have no problem at all with having the list of names. As a matter of fact, we were fighting for 4 years to get the list of names.

Mr. SHAYS. So you have no problem with that?

Mr. KENT. We were fighting to get the list of names for three reasons. One reason is for the reason which you mention. The second reason was for the history, because the Germans said there was no insurance meant for the Jews. They had hardly any insurance. For the history it was important to show that, yes, there were people that had hundreds of thousands of insurances. And the third thing is also that, to me, it's like you mentioned, the insurance companies created the most cynical business structure. The insurance company actually is based on trust, not for today, but for tomorrow, for 10 years from now, for 20 years from now. Suddenly, they already had 50 years of not paying the policyholder. They considered it their own money. They didn't want to pay it anymore.

Mr. SHAYS. So your bottom line is, you have no problem with the list being printed?

Mr. KENT. I have no problem. But I will say to you that from the experience I have seen, even if I print a lot more names, and I want to print as many as I can, 85 percent of the Jews who were killed, so that the people will not be able to claim the insurance because they are no more alive and their family is no more alive.

So unless we will force the companies to have the total agreement how much we estimate there was in insurance in force and ask for the money, so there will be money for humanitarian purposes for others.

Mr. SHAYS. Very helpful. Thank you very much.

Mr. TAYLOR. Mr. Chairman, I think it is a no-brainer. I think it is critical that lists are published; that is, being, as you have heard, a central piece for the negotiations most recently with the German Foundation, and the priority of getting lists has been one that has been pushed by ICHEIC since the beginning of ICHEIC.

I think the question is simply, what's the best way to get the most number of names that are going to help the maximum number of people as quickly as possible without creating an unwieldy system that's going to include hundreds of thousands or millions of names of people who weren't Holocaust victims, for whom policies were already paid, without having a system to try to handle them? What ICHEIC has tried to do is try to find ways. They are not finished, and it is clear—you have heard it from the chairman—to make sure that we have the lists of those who were victims of the Holocaust as accessible and quickly as possible, not something that will be dragged out for years to be accessible and available. And I think the results of 500,000 names being available is progress. It's not the end of it, and I think in some ways we will never know.

Mr. SHAYS. The problem with progress is that if there is a legal, cut deadline, and then people have attempted by legal peace, by so-called "searching their archives" and didn't make a good-faith effort to do it, but then they bought legal peace and then they have a claim now that they have reached the cutoff, then the system has worked against us.

Mr. TAYLOR. Right. I think the issue is, has ICHEIC succeeded in getting the largest number of names within the kind of timeframe that is not going to drag on for years; and I think ICHEIC has done that. I think it has a very significant number of the names available. I think there are a couple of areas where it's clearly lacking, and hopefully, those issues will be finalized very quickly.

Mr. SHAYS. I just react to this, and maybe I am way off, but maybe the fact that we have wanted to get this sooner rather than later has put us at a disadvantage. Because, frankly, we're not talking about a lot of money to any of these individuals anyway. Maybe it won't be the grandchildren, maybe it will be the great-grandchildren, but it seems to me that by giving ourselves a deadline, they are using it against us, frankly.

Mr. SERIO. I agree with Mr. Taylor's assessment. It is not really a question of list versus no list, but what list and from whom. And I think as both the Secretary has requested and I think as we have been finding, getting a complete list from those, that we don't have a current regulatory nexus to, probably has been the hardest part of this. That is probably the bigger gap we are dealing with at this point. Again, if something was fashioned that could go after those folks who don't fall under the regulatory structure, who would never have been subject to a California law to begin with, I think that's really where the focus of our mutual effort has to be at this point.

Mr. SHAYS. Mr. Eagleburger.

Mr. EAGLEBURGER. I have a lot of problems.

Mr. SHAYS. Mr. Eagleburger, could you put your mic down lower, please?

Mr. EAGLEBURGER. Then I'll hit myself in the nose, but that's all right.

Mr. SHAYS. Mr. Eagleburger, you're not going to hit yourself in the nose.

Mr. EAGLEBURGER. I've done that many times, or shot myself in the foot, one or the other.

Let me explain, if I may, why I have a different view of this, and I have it for two reasons. One is, I think it is not the best way to do what I know we both are trying to do, which is to solve this question of paying claims to Holocaust survivors. But let me follow it through for a minute, if I may.

If you demand that these companies publish the lists, and let us assume they go along with that—which I think you are going to have a terrible time getting them to do, but let us assume they go along with it. I have to assume that from that you are going to be faced with lists of some millions of names; and so those are all published, and that's going to include a great many names that have nothing to do with victims of the Holocaust, and somewhere in there are going to be mixed in there the names of Holocaust victims. And how you find those is going to be an extremely difficult problem, but forget that for a moment.

First of all, as we have found out, you are going to have to find some mechanism—it is the mechanisms that follow from this that I want to point out. First of all, how are you going to know that the companies have provided you with all of their names? The only way you can be sure of that is, you are going to have to establish some form of policing system that goes to look to make sure they did it.

Second, how are you going to know, when someone makes a claim against that company, that the company gives the right kind of response to the claimant? You are going to have to have some form of audit system or some form of policing system to make sure that when they read the file, they give the right kind of response to the claimant. That's going to require some other form of auditing of what they do.

Those are just two small—they are not small, but two issues that are going to require, one way or another it seems to me, the establishment of some form of mechanism, some mechanism to follow through on how the companies deal with these problems.

And by the way, let me just say, and then I'll stop—that's all on the assumption that having dealt with some, let's say 2.5 million names, it will be more than that by a long shot, but having dealt with 2.5 million names, and with all of the claims that will come in on those 2.5 million names, most of which I suspect will be specious, how are you going to establish—what are you going to do with the claims that are made where there is, in fact, no evidence of any Holocaust involvement?

Mr. SHAYS. Before giving the floor back to Mr. Waxman for another round, since you are talking about policing, on a November 2001 hearing you testified you would institute a policing function

to ensure that ICHEIC rules and standards are followed. Can you give us an example of some of the policing policies you have implemented?

Mr. EAGLEBURGER. I couldn't hear you, sir.

Mr. SHAYS. Let me say it again. At the committee's November 2001 hearing when you came before us, you testified that you would institute a policing function to ensure that ICHEIC rules and standards are followed. Can you give us an example of some of the policing policies you have implemented?

Mr. EAGLEBURGER. Yes. We have made a number of improvements in the claims processing. For example, we have put out final valuation guidelines, which were not at the time you were talking about. We have now put those out in final form, and as Mr. Serio indicated, they are substantially less than would be required in normal circumstances. We have a means of now reviewing and have reviewed over 2,200 offers and denials where we had a team that looked at both the offers and the denials. We have established a new claims team, which is now in London under the supervision of our new London office director, and it will be looking at all claims that come in and how they are handled and at the responses to those claims. We have a system in place to check company office and denials. We have put out an extensive claims processing guide, which is now in the hands of all of the insurance companies, and lists in elegant detail how they are to handle those claims. And we have established an improved statistical system, which should make it much easier for us to answer your kinds of questions from now on. And we have also—is that enough, or do you want more?

Mr. SHAYS. That's pretty good. Do you have a few more?

Mr. EAGLEBURGER. Yes. We have established an ICHEIC quarterly report which goes out to all of the interested parties in ICHEIC, which gives a list of the things that have occurred over the course of that quarter, and it lists all of the information that's come out as a result of those other changes I have indicated. We have put out a recent Webcast to promote the new lists that are available.

Mr. SHAYS. Let me just understand, though. Is all of that what I call "policing"—or what you call "policing," is that, all of that, what I call "policing?"

Mr. EAGLEBURGER. No, it's not all of it. Most of what I suggested up here earlier is. Not all of this now. The quarterly report isn't, no. Things like the valuation guidelines, reviewing the 2,200 offers and denials, the claims team, all of that is policing, yes.

Mr. SHAYS. Let me go to Mr. Waxman. We will give you 10 minutes and we will do a 5 and then a 5.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. EAGLEBURGER. I'm having trouble hearing. I'm getting old.

Mr. WAXMAN. I haven't said anything yet.

Mr. EAGLEBURGER. Oh, all right.

Mr. WAXMAN. That can make it difficult. Mr. Eagleburger, on this last point, you testified in November 2001 you were going to have this monitoring committee to police the companies and conduct an audit to identify deficiencies in the claims process, and then there was a committee created by ICHEIC, chaired by Lord Archer, that made its report, with recommendations, in April 2002,

highlighting the need for strict oversight of the decisions made by the companies. I understand that this key recommendation was not implemented until this summer when three people were hired to handle these responsibilities. Why did it take so long to implement these key recommendations?

Mr. EAGLEBURGER. Well, in the first place, we haven't sent Lord Archer out again at all. I have to be even more direct about it. Archer hasn't gone at all, although I'm going to ask him to go soon. But principally, and I'm not sure this is an answer to your question, but what we were doing was looking at the best means—and some I have just listed to you.

Mr. WAXMAN. I'm asking about the timing.

Mr. EAGLEBURGER. I understand that, but we were looking for the best means of establishing the proper kind of policing system. And I guess the best answer to you is that in that process it took us more time to establish the kinds of policing system that satisfied me.

That's about it, isn't it? What?

We started the review of the claims cases and the training—that's right—and the training of the claims review team, we started that in January, but it was still some time—nevertheless, we started in January.

What time did you say that we began?

Mr. WAXMAN. Summer.

Mr. EAGLEBURGER. No, we started in January. But even so, it's a length of time from when I said it.

Mr. WAXMAN. My understanding at the last hearing in 2001 was that the monitoring committee would become a permanent feature, and I thought that was a good idea. I think it would go a long way to reassure the claimants and the public that real changes are taking place to improve the system.

Mr. Serio, would you agree that the monitoring committee should become a permanent feature of ICHEIC, capable of overseeing the proper limitation of its recommendations, and make its reports available to the public?

Mr. SERIO. I haven't consulted with my colleagues from the insurance regulatory community on that. In terms of the five members on ICHEIC, I think that some permanent feature is necessary and it would be appropriate.

I think one of the places we have been trying to find or focusing our work on has been on assisting ICHEIC at getting the rest of their processes squared away; as the Secretary indicated, getting the London office up and running, getting the claims folks trained and working and then bringing something of a permanent nature behind that I think would be a perfect one-two, if you would, for that.

Mr. WAXMAN. Mr. Eagleburger, do you want to comment on that?

Mr. EAGLEBURGER. Yes, I have changed my mind since that last hearing to this extent. The monitoring group will continue to operate, but it was then, and it continues to be, an ad hoc operation. And, therefore, while I agree it's a useful idea, it's not, in my mind—and one of the reasons I changed my mind—is that it is not permanent enough. And that's why I mentioned earlier here these other systems that we're setting up as well. And they, it seems to

me, will provide a much more regular review of what's going on. The monitoring group doesn't oversee operations. What it does do is report on them and lets me know when things aren't going well. But I want something that is much more a daily or weekly or monthly report on what's going on.

So the reason I changed my mind is that I wanted to institute things that were much more directly involved in watching what was going on. The monitoring group will continue, but I wanted to put in there in much more direct control these other ideas that I have suggested. And the monitoring group will continue to oversee or, rather, continue to evaluate, but it will not be in charge.

Mr. WAXMAN. Mr. Serio, considering the expertise of the National Association of Insurance Commissioners and the fundamental role of insurance regulators in enforcement, I'm interested in the role you think the NAIC should play in increasing transparency at ICHEIC and increasing oversight of the way the ICHEIC office in London and the companies handle claims. Do you have a response to that?

Mr. SERIO. Yes, and I think we have actually started that process. A couple of things that we've done since January—in fact, since March: No. 1 is that we have not only offered but we have bestowed upon ICHEIC some State assistance in terms of direct contact and direct involvement in the London operation.

One of the things that a number of States have done over the years is set up their own Holocaust claims processing offices. New York, I think, may have been the first to have set up its own separate State Holocaust Claims Processing Office. Superintendent Levin, who I believe was the Banking Superintendent at the time, and Governor Pataki set that processing office up. And what we have now done is that we have now offered the services of the New York HCPO directly to ICHEIC, and we have the HCPO staff, not one but two people, who are now regularly interacting with the London staff.

Mr. WAXMAN. Thank you very much, Mr. Serio. I appreciate your response. You think you are playing an appropriate role in the expertise of regulators?

Mr. SERIO. Exactly.

Mr. WAXMAN. I want to go in another area, because the failure to publish the names is a concern to me, but it is not the only problem with the ICHEIC process. Even when survivors are able to file claims, they are encountering all kinds of problems in dealing with the insurance companies. And one of the key components of oversight is whether the companies are researching the claims against their data base in a fair and accountable way.

One case that has been brought to my attention involves two sisters in their eighties from Los Angeles, who filed an undocumented claim in July 1999 for policies issued to their parents. In 2000, they got a response from Generali that there was no match. In June 2003, both of their parents' names showed up on the Generali policy lists finally published on the ICHEIC Web site spelled exactly as the claims form in 1999. These women have waited 4 years for no reason.

Mr. Eagleburger, what are the benchmark guidelines that companies are required to use and what is being done to make sure that they are enforced?

Mr. EAGLEBURGER. I'm not even sure I understand the question. What do you mean?

Mr. WAXMAN. You said people ought to file claims.

Mr. EAGLEBURGER. Yes.

Mr. WAXMAN. These two sisters filed a claim. They filed a claim with Generali and they were turned down. But then Generali published a list and the parents' names were on the list. These women have had to wait 4 years. I'm trying to find out whether ICHEIC is processing these and trying to check these things out.

Mr. EAGLEBURGER. Congressman, the only thing I can tell you there is that there is no question that if that is an accurate case, then somebody has made a mistake and royally messed up. But if you will give me the names, I will do what I can to find out immediately what happened and correct it. Admittedly, 4 years too late, apparently, but all I can say to you is there has apparently been a mistake made and we will have to try to correct it.

Mr. WAXMAN. Well, I will give it to you, but I also have an ICHEIC claim filed by Iga Pioro, a survivor from Los Angeles, who filed a claim with Generali in 2000 for two policies taken out by her parents worth $5,000 each. Generali rejected the claims because its records could not show that the policies were still in effect in the Holocaust era. The decision violated your rule that companies cannot reject these kinds of claims unless they supply proof that a payment was made.

Now, if ICHEIC staff had gone through every wrong denial, why hasn't Mrs. Pioro's case been resolved?

Mr. EAGLEBURGER. No, no, I indicated to you that this question of going through every denial is something we've instituted recently. I assume this one was done some time ago?

Mr. WAXMAN. This was done in 2000.

Mr. EAGLEBURGER. We have instituted this individual review since then. Again, I will be glad to take a look at the case.

Mr. WAXMAN. What can ICHEIC do to prevent the companies from giving these kinds of runarounds to survivors?

Mr. EAGLEBURGER. Well, I hope that what we have indicated to you, Congressman, on the things that we have instituted over the course of the last 6 to 9 months will in fact correct these things.

One of the things that I have indicated to you is that we have now got a system that is supposed to be going through every single one of these cases in London, and it is a system we have just set up in the last few months, last few weeks, really, and hopefully that will stop all of this.

Mr. WAXMAN. Mr. Eagleburger, from your testimony we have learned that $465 million has been contributed by the companies for the payment of individual claims with an additional $35 million from beneficial exchange rates. From Ambassador Bell's testimony we know that $217 million of that money was contributed for the payment of individual claims. Currently, ICHEIC has made $42 million worth of offers. How much money actually has been accepted by the claimants? How much money, in total, does ICHEIC

project to pay out to individual claimants during the course of the commission?

Mr. EAGLEBURGER. I indicated a little earlier, Mr. Waxman, that I can't tell you how much has now totally been accepted by those to whom it has been offered because of the time lag between the time of offering and the time of acceptance or the time of an appeal. So we are always some weeks—or months, in fact, on occasion—behind. So I do not have at this stage accurate figures on how much has been accepted.

I will be glad to give you—as soon as we can get it pulled together, give you what figures we do now have. I will be glad to send it to you, but at the moment I do not have it, and it will be some time before we can pull it all together. It is always lagging behind the real facts.

Mr. WAXMAN. Do you have any projection about how much is going to be paid for individual claimants?

Mr. EAGLEBURGER. No. I could give you a guess, but that would be all it is, and I would be very reluctant to do it because I could be way off. I can only say this to you, that on occasion I have seen figures that run to over $1 billion; and I can tell you with total confidence on the basis of what I have seen so far, it will be very much below that.

Mr. WAXMAN. Well, I guess that's my concern, that it will be very much below it because we don't have the names, people get a runaround from the companies; and I worry about all these individual claimants that should be satisfied and are not going to be paid.

Mr. EAGLEBURGER. Mr. Waxman, I just think that's the wrong judgment. I just don't think they are there. But, anyway, that's the difference between us.

Mr. WAXMAN. Thank you.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman. Just very quickly. Mr. Serio, the National Association of Insurance Commissioners [NAIC], is that how to say it?

Mr. SERIO. NAIC. We try not to pronounce it out.

Mr. SHAYS. OK. NAIC filed a brief in support of the California law that was at issue in the recent Supreme Court case. Since NAIC supported the California law, is it safe to assume there was dissatisfaction among insurance regulators with policyholder lists?

Mr. SERIO. That's stating the case mildly, Congressman. There was dissatisfaction, and the directness of the decision left little room for doubt as to where the Supreme Court stood on the question.

But there are a couple of, perhaps, glimmers of hope that I think have allowed us to refocus some of our efforts on assisting the process with direct State assistance, whether it's through the dedication of staff from our own Holocaust claims processing offices to ICHEIC, or trying to assist the claimant process. And I think that's where the State efforts have been refocused, given the conclusion of the Supreme Court.

Mr. SHAYS. Mr. Eagleburger—excuse me, Secretary Eagleburger——

Mr. EAGLEBURGER. Congressman, Mister is perfectly acceptable to me. I don't need to be reminded I'm a has-been.

Mr. SHAYS. May I say something? You deprecate yourself too much. It makes me uncomfortable.

Mr. EAGLEBURGER. That's why I do it.

Mr. SHAYS. Well, OK. Because you were an extraordinary Secretary, and you should carry that title with pride.

I just want to know if the cutoff date of December 31 can be put back a bit, given the question of a few who may not meet that cutoff date? Is that something that is potentially on the table?

Mr. EAGLEBURGER. If I say anything but, "no, sir," I won't get out of this building alive. No, sir.

Mr. SHAYS. No, sir, means it can't be extended?

Mr. EAGLEBURGER. No.

Mr. SHAYS. Mr. Kent and Mr. Taylor, we didn't ask as many questions from you. Would either of you like to make a—actually, I will say to all of you, but I will start with the two of you, is there anything you want to put on the record, briefly, before we get to the next panel?

Mr. EAGLEBURGER. Yes, I would like to.

Mr. SHAYS. I'm going to have you go last.

Mr. Kent, is there anything you would like to say?

Mr. KENT. First of all, I would like to agree with you, with the last statement you said about Secretary Eagleburger. He is not only an outstanding secretary—was—but he is an outstanding human being, and that's very important to me. And if I have learned anything during the years of being in this negotiating committee, one of my pleasures was to get to know Secretary Eagleburger.

The second thing is, as I said at the very beginning, believe me, being a survivor, I definitely want to have the thing beyond me. I do want to see that some kind of justice is being done to the survivors while we are alive, not a perfect justice, but some kind of justice. So whatever we can do—and it is my belief that the Congress can help us; that's why I say, I open my arms to any pressure that you can give us with the governments which—we still have a lot of problems, and we have problems with various governments. And this would be faster than by pressing the laws, because by pressing the laws, they will find out, they will have lawyers to counterbalance the law and fight it in courts for another 20 years.

Mr. SHAYS. OK. Thank you very much. Very thoughtful.

Mr. Taylor.

Mr. TAYLOR. Yes, I would just like to echo the comments that Mr. Kent made about Chairman Eagleburger and also to acknowledge Superintendent Serio, who has really put much time and effort and weight of authority.

One brief comment I just wanted to make was, there was reference earlier to issues of transparency and so on with regard to ICHEIC. I think it should be noted that since the last hearing there is a considerable amount of information on the ICHEIC Web site, including the budget of ICHEIC, detailed reports on what's going on with ICHEIC; and I think that point should be noted for the record. I think ICHEIC has done a lot in that regard in recent months.

Finally, I think the importance of a hearing like this and the role of this committee is to bring these issues to the attention of an in-

creasingly disinterested world. When we started this process, there was a very interested community of people involved in the issue and a very interested media and public. I think that is not the case now, or to a much lesser extent. And I think highlighting these issues and particularly the role of companies and the importance of companies processing these quickly and fairly and doing the proper matching of all these issues is very important.

Mr. SHAYS. Very nice way to close this meeting. Thank you.

Mr. SERIO. Yes, Congressman, two quick points, and it goes to the list question. I think everybody up at this dais understands the frustration of the Congress and of the committee and wanting to do something. But the concern we have is that by going back to those who have already committed to cooperating, those who have supplied the lists—and those are the ones who either we hold sway over as insurance regulators in the country or you hold sway over as businesses doing business in this country—I think there is some concern that we are going back to the same well again as opposed to expanding the scope of our review.

Also, just for the record, expanding on what Secretary Eagleburger mentioned about the review and monitoring process, working together, the New York Holocaust Claims Processing Office and ICHEIC started back in January 2002, as he indicated, the review process; we went through over 400 claims in December, preparing for the claims process as it would be operating under ICHEIC in London. And that is the kind of volume that we were doing under a test pattern, and we suspect we will be able to do significantly more than that going forward.

Thank you.

Mr. SHAYS. You get the last word, Mr. Secretary.

Mr. EAGLEBURGER. Thank you, sir.

First of all, it's really in reference to your question about extending the deadline. People need to understand they can still file a claim without naming a policy through ICHEIC's matching process, and then we have the companies that do the match themselves. So just because the deadline is coming, that doesn't mean they can't file a claim.

Mr. SHAYS. It's very important, if the deadline is not going to be extended, to make sure that people file claims.

Mr. EAGLEBURGER. File the claim. So there's that point.

And the second point I would make, sir, is that when we have a hearing like this and there's no yelling and screaming, we get a lot farther than we do, or have, on other occasions. So I just want everybody to know that I really did appreciate the way things have gone today, and I want to thank everybody involved.

Mr. SHAYS. Thank you very much, all of you.

Mr. WAXMAN. Mr. Chairman, I appreciate the responses and the way that they were given to our questions this time, particularly compared to last time, and I thank the witnesses.

All these witnesses on this panel are from ICHEIC. I regret the fact that we didn't mix up the panels, but we didn't set up the hearing that way. The next panel is going to say some things that are critical, and it would have been good to get the back-and-forth so that we could have gotten responses from ICHEIC for some of

the criticisms we are going to hear later. But I do thank these four witnesses.

Mr. SHAYS. What I think we will do in that regard is make sure that the ICHEIC folks know that we will maybe followup with a letter or two, or questions; and the record will remain open for 10 days so that we can have some good exchange.

So I thank this panel very much.

And I thank our third and final panel for its patience: Israel Arbeiter, president, American Association of Jewish Holocaust Survivors of Greater Boston; Daniel Kadden, Holocaust Survivor Advocate; and Michael Bazyler, professor of law, Whittier Law School.

I would ask all three of you to come and stand, because I am going to swear you in.

[Witnesses sworn.]

Mr. SHAYS. Note for the record all three of the witnesses have responded in the affirmative.

It is a pleasure to have you here and thank you very much. I think I am going to do it as the way I called you. Mr. Arbeiter. Take your time and get settled here.

Is there any symbolism between the empty chair there? If not, I'm going to have you move over. I'm sorry, I like to micromanage sometimes.

STATEMENTS OF ISRAEL ARBEITER, PRESIDENT, AMERICAN ASSOCIATION OF JEWISH HOLOCAUST SURVIVORS OF GREATER BOSTON, INC.; DANIEL KADDEN, Ph.D., HOLOCAUST SURVIVOR ADVOCATE; AND MICHAEL J. BAZYLER, PROFESSOR OF LAW, WHITTIER LAW SCHOOL

Mr. ARBEITER. Mr. Chairman, Congressman Waxman, distinguished members of the committee, good afternoon.

Mr. Chairman, first of all, with your permission, I would like to express my most sincere thanks to the staff of the committee for their assistance, for their help in coming here. Zahava Goldman, Drew Crockett, and Dee Kefalas, thank you very much for your help and assistance.

I am Israel Arbeiter; I'm a survivor of the Holocaust and president of the American Association of Jewish Holocaust Survivors of Greater Boston. I serve as chairman of the Advisory Committee of Hakala, a program of the Jewish Family & Children's Services in Boston, which provides emergency assistance to needy survivors. I am also a founding board member of the Holocaust Survivors Foundation-USA, a national coalition of survivor organizations. In these roles, I am in frequent contact with survivors who have filed claims for unpaid insurance policies. I appreciate the opportunity to once again address the committee both as a leader in my community and as an individual claimant.

I express my alarm over the slow pace of justice as practiced by the ICHEIC. Today, I feel like we have reached the end of the line. Twenty-two months ago, I sat in this spot and appealed to you for help in resolving this matter of great concern to so many survivors. Time, we all agreed, was of the utmost importance. I listened to the testimony that day of Chairman Eagleburger, government officials and other members of ICHEIC. They all promised quick action, a fair process where rules are enforced, where everyone gets a fair

shake. We were told to be patient, that improvements would be made, that the process would soon succeed. The frustration I felt that day has become deeper with each passing month that my fellow survivors and I are left waiting for a solution.

There are several issues I wanted to touch on today. Each of them is an important part of why survivors little or no confidence in ICHEIC at all.

No. 1, publication of names. It was certainly an achievement to see hundreds of thousands of names from German insurance companies published by ICHEIC a few months ago. It was, unfortunately, a few years late, but welcome all the same. For many survivors and families originally from Germany, it was important to see the names of loved ones come into light. Among the discoveries on the lists were the parents of one of my colleagues in Seattle, Fred Taucher, which was reported in the New York Times in May. Fred, like myself, had no documentation but had very clear memories of insurance coverage purchased by his father. His efforts to file a claim with ICHEIC originally resulted in quick denial by Allianz and other insurers. Now the list has revealed that both his parents who died in the Holocaust actually had life insurance. We will now see if the list translates into real payments for Fred and others.

While the list is important for many German-Jewish families, it is not really of any use to the vast majority of us who came from Poland and Eastern Europe. You see, the German companies didn't do business there. We are still waiting for the light to fully shine on the files of Generali, RAS and other companies that operated in the East. I know for every name Generali has agreed to release, there are many more kept hidden. Why? Because they get to make the rules about which names get published. Unfortunately, when it comes to Eastern European names, French names and many other lists, the agreement which led to German names being published does not apply.

Chairman Eagleburger says he thinks the current lists are, in his words, "virtually all the names that the companies have." How can he say this when so many of Generali's names remain purposely hidden from us? We believe that the only way to make the process work, the only way to prove to skeptical survivors that the process is honest, is to allow the publication of comprehensive lists.

No. 2, the claims process. I submitted my claim late in the year 2000, almost 3 years ago. In December of that year, I was informed by ICHEIC that they received my claim and that I would hopefully receive a response in 90 days. That was exactly 1,011 days ago. And in the whole period, I have not had one word from ICHEIC about my claim. My repeated calls to their help line have provided no new information about the status of my claim. I had decided to try again just last week. I was told that nothing could be determined about my claim until the completion of the company's audits. When I asked when these audits were to be completed, I was told the date was indefinite. Mr. Chairman, for someone who is 78 years old, this is not a comforting answer.

What has ICHEIC been doing with my claim since they received it? Are they still negotiating with the companies over how to handle claims like mine? Are they still waiting for Generali and other

companies that once did business in my native Poland to complete their investigation? Are they waiting me out? Have they lost my claim? Do they care? I have the impression that ICHEIC is still struggling to establish basic ground rules for its claims process, and this is holding up my claim and probably thousands of others. How can this honestly be called a claims process?

No. 3, claims with no company named. I read recently in the Economist magazine that ICHEIC was still trying to figure out what to do with the thousands of claims it has received that do not have documentation naming a specific company. Because the lists of names from Eastern Europe are so meager, most of us have only our sharp and painful memories to go on. I am in this category. I will repeat what I told this committee in November 2001: My father, Itzchak Arbeiter, had life insurance. I remember distinctly the insurance agents coming to my home regularly and collecting premiums from my father. I remember how my father kept the records of these payments using a booklet provided by the company. I remember how my father explained that he was thinking about the future. But after the war, I had no papers; nothing was left.

ICHEIC has been accepting claims like mine for over 3 years, and here we are, September 2003, and they haven't been able to decide how to deal with them. This is shameful. After 3 years, they should have been able to make some kind of a decision one way or another. At the very least, they could have provided an honest explanation of what is causing this holdup. I have read that the companies and other ICHEIC members feel they need to create a special system for considering claims like mine that do not have a company in order to prevent fraud. I want to ask Chairman Eagleburger, if he is still here: Because I have no documentation, is my story not believable? Am I considered a potential risk for fraud? I will tell you what fraud is. It is the ICHEIC process itself that is carrying on a deception on people like me. What good does it do to create an elaborate claims system and proclaim there are relaxed standards of proof when everyone knows from the beginning that most of us survivors have no documentation. Hitler didn't allow us to keep any documentation. What good does it do to have rules about completing claims investigations in 90 days when they don't honor them? What good does it do to have a claim process when claimants receive no word about the status for almost 3 years? I feel like I have no voice in the process and am at the mercy of the companies which control the process.

No. 4, ICHEIC Humanitarian Fund. While we wait for the claims process to somehow begin working for us, we are also reading about the efforts by Chairman Eagleburger and the ICHEIC members to distribute funds specially designed for humanitarian purposes. So far, as I understand it, ICHEIC has $162 million at its disposal. This amount may grow depending on how many claims are paid or denied. Ladies and gentlemen, I must report to you that thousands of aging survivors in this country are today facing a crisis. They lack the adequate social services to meet their needs. Thousands of survivors, alone and in poor health, depend on special services. I see this problem personally in my community in my capacity as chairman of the advisory committee reviewing emer-

gency assistance in greater Boston. The Jewish Family Service agencies everywhere are straining to meet even the minimal needs of survivors who need home care, transport, and other special services to maintain a decent quality of life. The strong consensus in my community is that until the needs of aging survivors are met, all available funds from the insurance settlements and other insurance settlements must be devoted to these needs.

The ICHEIC has been debating how to use humanitarian funds. The debate takes place behind closed doors; my voice and my community's voice is not heard. This is no way to run a humanitarian program. ICHEIC has taken on a major responsibility in this humanitarian area with the approval and support of our government. I ask you to do everything you can to require an open and transparent process for the distribution of these desperately needed resources. $162 million is a lot of money that can make a huge difference in people's lives. Let's make sure it is distributed fairly.

Let me share with you from a letter written jointly by 48 executives of Jewish Federations and Community Relations Councils in the United States to Chairman Eagleburger last March, urging all ICHEIC humanitarian funds to be directed to the care of needy survivors. I have attached the complete text of the letter to my written testimony. The letter concludes this way: "The story of the Holocaust is not yet complete. There is at least one important chapter remaining which will tell the story of how the survivors of mankind's darkest hours lived out the balance of their lives while under our care, after being extricated from the death grip of the Nazis. When you consider the distribution of funds under your control, we beg you to be guided by the very name you have chosen for the fund, humanitarian. Please help ensure that Holocaust survivors are not abandoned in their final years."

I am proud to tell you that the leadership in my community under the Jewish Federation of Greater Boston helped initiate this letter.

In conclusion, I believe you and Congress can do much to address this problem either through legislation calling for publication of comprehensive lists of Holocaust-era policies, by exposing the problem fully and honestly, demanding real oversight of ICHEIC by conducting hearings on the plight of needy survivors in our country, and through moral persuasion. Hopefully this hearing will help ICHEIC turn a new page, and that fundamental changes can be implemented. My community has a glimmer of hope that something good and decent can come out of the insurance settlement process while we are still alive to see justice done. Thank you very much.

Mr. SHAYS. Thank you Mr. Arbeiter.

[The prepared statement of Mr. Arbeiter follows:]

STATEMENT OF ISRAEL ARBEITER
BEFORE HOUSE GOVERNMENT REFORM COMMITTEE

HEARING ON STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VISTIMS AND HEIRS

September 16, 2003

Mr. Chairman, Congressman Waxman, distinguished Members of the Committee, good afternoon. I am Israel Arbeiter. I am a survivor of the Holocaust and President of the American Association of Jewish Holocaust Survivors of Greater Boston. I serve as Chairman of the Advisory Committee of the *Hakala* program of the Jewish Family & Children's Service in Boston, which provides emergency assistance to needy Survivors. I am also a founding Board member of the Holocaust Survivors' Foundation-USA, a national coalition of survivor organizations. In these roles I am in frequent contact with survivors who have filed claims for unpaid insurance policies.

I appreciate the opportunity to once again address the Committee both as a leader in my community and as an individual claimant -- to express my alarm over the slow pace of justice as practiced by the ICHEIC. Today I feel like we have reached the end of the line.

22 months ago I sat in this spot and appealed to you for help in resolving this matter of great concern to so many survivors. Time, we all agreed, was of the utmost importance. I listened to the testimony that day of Chairman Eagleburger, government officials and other members of ICHEIC. They all promised quick action, a fair process where rules are enforced, where everyone gets a fair shake. We were told to be patient, that improvements would be made, that the process would soon succeed.

The frustration I felt that day has become deeper with each passing month that my fellow survivors and I are left waiting for a resolution.

There are several issues I want to touch on today. Each of them is an important part of why survivors have little or no confidence in the ICHEIC.

Publication of Names

It was certainly an achievement to see hundreds of thousands of names from German insurance companies published by ICHEIC a few months ago. It was unfortunately a few years late but welcome all the same. For many survivors and families originally from Germany, it was important to see the names of loved ones come into the light. Among the discoveries on the list were the parents of one of my colleagues in Seattle, Fred Taucher, which was reported in the *New York Times* in May. Fred, like myself, had no documentation but had very clear

memories of insurance coverage purchased by his father. His efforts to file a claim with ICHEIC originally resulted in quick denials by Allianz and other insurers. Now the list has revealed that both his parents, who died in the Holocaust, actually had life insurance. We will now see if the list translates into real payments for Fred and others.

While the list is important for many German Jewish families, it is not really of any use to the vast majority of us who came from Poland and Eastern Europe. You see, the German companies didn't do business there.

We are still waiting for the light to fully shine on the files of Generali, RAS and other companies that operated in the East. I know that for every name Generali has agreed to release, there are many more kept hidden. Why? Because they get to make the rules about which names get published. Unfortunately, when it comes to the Eastern Europe names, French names, and many other lists, the agreement which led to German names being published does not apply.

Chairman Eagleburger says he thinks the current lists are, in his words, "virtually all the names that the companies have." How can he say this when so many of the Generali names remain purposely hidden from us?

We believe that the only way to make the process work, the only way to prove to skeptical survivors that the process is honest, is to allow the publication of comprehensive lists.

The Claims Process

I submitted my claim in late 2000 -- almost three years ago. In December of that year, I was informed by ICHEIC that they received my claim and that I would hopefully receive a response in 90 days. That was exactly 1,011 days ago, and in that whole period, I have not heard one more word from ICHEIC about my claim.

My repeated calls to their "Help Line" have provided no new information about the status of my claim. I decided to try again just last week. I was told that nothing could be determined about my claim until the completion of company "audits." When I asked when these audits were to be completed, I was told the date was "indefinite." For someone who is 78 years old, this was not a comforting answer.

What has ICHEIC been doing with my claim since they received it? Are they still "negotiating" with the companies over how to handle claims like mine? Are they still waiting for Generali and the other companies that once did business in my native Poland to complete their investigations? Are they waiting me out? Have they lost my claim? Do they care? I have the impression that ICHEIC is still struggling to establish basic ground rules for its claims process, and this is holding up my claim and probably thousands of others. How can this honestly be called a "claims process?"

Claims with No Company Named

I read recently in the *Economist* magazine that ICHEIC was still trying to figure out what to do with the thousands of claims it has received that do not have documentation naming a specific company. Because the lists of names from Eastern Europe are so meager, most of us have only our sharp and painful memories to go on. I am in this category.

I will repeat what I told this committee in Nov 2001: My father Itzchak Arbeiter had life insurance. I remember distinctly the insurance agent coming to my home regularly and collecting premiums from my father. I remember how my father kept a record of his payments using the booklet provided by the company. I remember how my father explained that he was thinking about our future. But after the war, I had no papers. Nothing was left.

ICHEIC has been accepting claims like mine for over three years. And here we are in September 2003 and they haven't been able to decide on how to deal with them. This is shameful. After three years, they should have been able to make some kind of decision one way or another. At the very least, they could have provided an honest explanation of what is causing the holdup.

I have even read that the companies and other ICHEIC members feel they need to create a special system for considering claims like mine that do not name a company in order to prevent fraud. I want to ask Chairman Eagleburger: because I have no documentation, is my story not believable? Am I considered a potential risk for fraud?

I will tell you what the fraud is…it is the ICHEIC process itself that is carrying out a deception on people like me.

What good does it do to create an elaborate claims system and proclaim there are "relaxed standards of proof" when everyone knows from the beginning that most of us survivors have no documentation? What good does it do to have rules about completing claims investigations in 90 days when they don't honor them? What good does it do to have a claims "process" when claimants receive no word about their status for almost three years? I feel like I have no voice in the process, and am at the mercy of the companies which control the process.

ICHEIC Humanitarian Fund

While we wait for the claims process to somehow begin working for us, we are also reading about the efforts by Chairman Eagleburger and the ICHEIC members to distribute funds specially designed for "humanitarian" purposes. So far as I understand it, ICHEIC has $162 million at its disposal. This amount may grow depending on how many claims are paid or denied.

Ladies and Gentlemen, I must report to you that thousands of aging survivors in this country are today facing a crisis - the lack of adequate social services to meet their needs. Thousands of survivors alone and in poor health depend on special services. I see this problem personally in my community in my capacity as chair of the Advisory Committee reviewing emergency assistance in Greater Boston. Jewish Family Service agencies everywhere are straining to meet even the minimal needs of survivors who need home care, transport and other special services to maintain a decent quality of life.

The strong consensus in my community is that, until the needs of aging survivors are met – all available funds from the insurance settlements and other Holocaust settlements must be devoted to these needs.

The ICHEIC has been debating how to use its humanitarian funds. The debate has taken place behind closed doors. My voice and my community's voice is not heard. This is no way to run a humanitarian program.

ICHEIC has taken on a major responsibility in this humanitarian area with the approval and support of our government. I ask you to do everything you can to require an open and transparent process for the distribution of these desperately needed resources. $162 million is a lot of money that can make a huge difference in people's lives. Let's make sure it is distributed fairly.

Let me share with you from a letter written jointly by 48 Executives of Jewish Federations and Community Relations Councils in the United States to Chairman Eagleburger last March urging that all ICHEIC Humanitarian Funds be directed to the care of needy survivors. I have attached the complete text of the letter to my written testimony.

The letter concludes this way:
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When you consider the distribution of the funds under your control, we beg you to be guided by ... the very name you have chosen for the fund---"humanitarian." Please help ensure that Holocaust survivors are not abandoned in their final years.

I am proud to tell you that the leadership in my community, under the Jewish Federation of Greater Boston, helped initiate this letter.

In conclusion, I believe you in Congress can do much to address these problems, either through legislation calling for the publication of comprehensive lists of Holocaust-era policyholders, by exposing the problems fully & honestly, by

demanding real oversight of ICHEIC, by conducting hearings on the plight of needy survivors in our country, and through moral persuasion.

Hopefully this hearing will help ICHEIC turn a new page, and that fundamental changes can be implemented. My community still has a glimmer of hope that something good and decent can come out of the insurance settlement process while we are still alive to see justice done.

Thank you.

Mr. SHAYS. Let me just say to you that I used to, in chairing hearings about Gulf war illnesses, we used to have the Department heads come first and they would tell us no veterans were sick. And after they spoke, they left, and the veterans came and showed how they were sick. So we reversed the role. And I do probably agree that we should have had the three of you go first. In part, because you are the third panel, we let you go on for 15 minutes because it was important for you to put on the record. I do want to ask, is there—and I hope the answer is yes. So I am hoping that there is a staff member from ICHEIC here right now. Is there any staff member? Thank you. I appreciate you being here. And you are taking good notes. Correct? Thank you very much. Would you identify your name, please? Pat Boudish? Thank you very much. Appreciate you being here.

Thank you. Dr. Kadden.

Mr. KADDEN. Thank you, Mr. Chairman, Representative Waxman. We thank the committee chairman, Mr. Davis, for this opportunity. And I am pleased to come back here and speak with you again after 22 months. My name is Daniel Kadden; I work as a Holocaust survivor advocate, it seems around the clock lately because time is very urgent.

The hour here is late and the number of people hearing me are small, but I appreciate this opportunity, and I will try to condense my written testimony today for you. Most of my points were covered by Mr. Arbeiter, I think, much more eloquently. And I do want to leave you with an impression which I came into this meeting with, which has not changed one bit after hearing the testimony of the last few hours.

I want to focus briefly on the central issue before us, which is the publication of policyholder names. My written testimony includes other material covering the fundamental accountability issues, which I appreciate your spending some time and reading through, and the committee's members have that, I understand.

I believe the publication of names and whether there is any success in that area is going to determine whether ICHEIC has even a chance of gaining a passing grade in the weeks and months ahead. As of today, they have not reached a passing grade. Let me emphasize that the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process. For claimants, the list simply demonstrates transparency of the entire process.

I wanted to mention for the record on a personal note my own recent experience with the German policyholder list. Both sides of my family are German-Jews from the Hitler era. My parents and grandparents were all Holocaust survivors. Previous archival research by ICHEIC identified one of my grandfathers as an insurance policyholder, the first time we had direct evidence of this. In reviewing the new names last spring from the German lists, I was able to locate my other grandfather, four great uncles, a great aunt, and about 25 additional relatives. It is a bittersweet thing to see the names of people, some who didn't survive and whom I never met, and to think about what this really signifies.

The publication of the German lists demonstrate the value of names as a core element of the claims process. It argues for the ex-

pansion of this model to other companies in regions of Europe so that the greatest number of names can be published. Unfortunately, ICHEIC and the companies have failed to do so beyond the German list.

And I was struck, I think, with an Alice in Wonderland feeling when I heard that publishing more names will in fact degrade the claims process during earlier testimony. I am struggling with how to even respond to that. I find it such a topsy-turvy statement which I reject and I strenuously would argue against. The entire claims process is driven by the publication of names. It should be a names-driven process because of the nature of the Holocaust and the intervening time that has passed, and it is simply an argument that I am going to stick by as strongly as I can. I have found it to be true and I am sure it will continue to be true if we could see more names published.

I want to address the issue of lag time which I took some notes on. Mr. Eagleburger claimed that there was a long lag between the offering, of ICHEIC offering or the companies making an offer to claimants, and the reporting whether the offer was accepted. I find that it makes no sense at all. I think the reporting of how many claims have been settled, how many cases have been closed, finalized, ended, put to rest is the single most important measurement point of a claims process. It is the basic data line. And I want to tell you that Mr. Eagleburger spoke about weeks and months of lag time. That number stopped being reported internally in ICHEIC in June 2002. That is not just a few weeks or months ago. This is a fundamental reporting problem. I will refer you to my written testimony for more points.

Mr. SHAYS. If the gentleman will just suspend. One of the things that will be good is, I think, for the staff to make sure that we have a direct followup question as to why that is the case.

Mr. KADDEN. I believe they have had trouble collecting the information from the companies as to how many checks have been cut, literally, to people. I believe that they don't have the ability to collect that information from the companies. The companies can simply say, "No, it is hard, we don't have time, it is confusing, we can't tell you." This is a fundamental reporting and oversight problem. And here we have a very public process that doesn't have access to internally or externally the single most important measure of its performance. And I believe there is a communication breakdown of some sort—I am not in a position to really understand it fully—between the ICHEIC and its member companies.

Obviously, the companies have this information. If I was an executive in the companies, I would want to know how many checks are cut and how many people have signed away future rights to bring litigation against them by accepting an offer. That would seem to me a very, very important point that the company would be obsessed with knowing on a daily, weekly, basis even. The fact that there is a communication breakdown points to the failure of the ICHEIC to be the claims process that it purports to be.

I want to, in the very little bit of time remaining—and I hope there will be an opportunity to return to these things when there are questions, and I do appreciate any additional minute or so that you can give me for this—I want to put aside ICHEIC the process

for a moment, if you don't mind. I represent survivors; I work with survivors daily. I have had hundreds and hundreds of conversations with insurance claimants over the last few years, both in my capacity working with the Washington State Department of Insurance and now in the field, so to speak, as an advocate. This process has ground to a halt and come to an end, in my mind. We can talk about and describe the problems. We can come up with possible solutions. And I have had many ideas in the past. But I am looking at it from the point of view of the claimants of the survivors and their family members who need justice, who need completion.

And I want to appeal to you, the committee, and all of Congress, based on some of the past discussions here today, that we have to keep all of the options open, including the litigation option. We should promote the publication of comprehensive lists of names for every reason. We should also support the right to litigation.

I want to conclude by saying, the survivors I talk to—and I am not exaggerating—many, many of them talk about their experiences coming to this country after the war. My own parents were immigrants and my grandparents to this country after the war, and they embraced the American system, the political system, the justice system, and all the institutions of our democracy with passion, and they taught me that. Survivors cannot understand how the doors toward gaining their rights are being closed on them, how the government is turning its back on their efforts to at least have their day in court, even if they lose. It is something about being an American for them which is maybe amplified by the fact of their history and their experience coming to this country as immigrants. And I want to just underline that point in my conclusion, that they need your help, because they are not organized, they don't have resources to contend in the political sphere. They need your help to keep those doors open so that they can gain justice. And I will leave it at that, and I hope we can have a little more discussion about this.

Mr. SHAYS. Thank you very much.

[The prepared statement of Mr. Kadden follows:]

STATEMENT OF DANIEL KADDEN
BEFORE THE U.S. HOUSE GOVERNMENT REFORM COMMITTEE

HEARING ON STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VICTIMS

SEPTEMBER 16, 2003

Chairman Davis, Representative Waxman, Members of the Committee:

My name is Daniel Kadden. Thank you for inviting me here today. Along with many Holocaust survivor leaders across this country that I work with closely, I want to express my appreciation to you for your continued concern about the fate of thousands of Holocaust-era insurance claims and your willingness to candidly examine the record of the International Commission on Holocaust-era Insurance Claims.

Public scrutiny of ICHEIC and its very public mission has been sorely lacking over the past 5 years, largely due to the reluctance of ICHEIC itself to engage with the public. I believe this Committee is performing an important and timely service in attempting to shine light on the continuing difficulties thousands of survivors in the U.S. and around the world face in getting their good-faith claims investigated and paid.

Everyone who cares about the survivors is deeply disappointed with the current situation, all the more because the original tasks the newly-formed Commission took on in 1998 seemed to hold great promise:

- ·To create a claims settlement framework that accounts for the historical realities surrounding the Holocaust: that the vast majority of potential claimants do not possess documentation or reliable knowledge of details of their family insurance coverage.

- To craft a claims processing system that is fair, accountable and verifiable and provides for prompt payment of all valid claims.

- To establish an administrative process that supports this work efficiently and with transparency, provides for necessary funding and ensures the representation and involvement of key stakeholders.

An honest evaluation of the ICHEIC's performance leads me to the conclusion that it is has earned a failing score in each of these areas. And unfortunately we see precious little being done by the ICHEIC administration to acknowledge and address these problems.

In my remarks today, I want to focus on the central issue before us, the publication of policyholder names, as well as fundamental accountability issues that I believe are going to determine whether ICHEIC has even a chance of gaining a passing grade in the weeks and months ahead.

Let me emphasize that the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process. For claimants, the lists demonstrate transparency of the entire process and accountability of the companies.

ICHEIC committed itself in its 1998 charter to publish policyholder names as an integral part of the claims resolution process. However, this promise has not been adequately met.

A great deal has been said about the 2002 agreement by the German insurers to provide names to the ICHEIC. While these companies have still been allowed to withhold a significant number of records, a large volume of names were released and these were used in a rigorous matching exercise to identify hundreds of thousands of likely Jewish policyholders in Hitler's Germany.

On a personal note, allow me to share with you my own recent experience with the German policyholder list. Both sides of my family are German Jews from the Hitler era. My parents and grandparents were all Holocaust survivors. Previous archival research by ICHEIC had identified one of my grandfathers as an insurance policyholder, the first time we had direct evidence of this. In reviewing the new names this past spring, I was able to locate my other grandfather, four great uncles, a great aunt, and about 25 additional relatives.

It is a bittersweet thing to see the names of people – some who didn't survive the Holocaust and whom I never met -- and to think about what this really signifies: families investing in their future, parents providing for their children, young couples buying a piece of security. As we know, it was all for naught, and now the surviving generation and the children of survivors like myself must reconstruct family information, notify far-flung cousins of the possibility for filing a claim, and gird ourselves for what will likely be a frustrating and joyless experience in the pursuit of justice.

The publication of the German list demonstrates the value of names as a core element of the claims process. It is an important achievement that argues for the expansion of this successful model to other companies and regions of Europe so that the greatest number of insured victims can be compiled and published. But

ICHEIC cannot rest its laurels on the German list alone and argue they have now fulfilled their obligation to provide names to the public. It must be followed by other lists that represent the widest possible range of affected policyholders.

Unfortunately, other companies and governments have not been nearly as forthcoming in this regard. Apart from the German names, the remainder of names found on the ICHEIC list is mostly from archival research conducted by ICHEIC itself, and this mostly in German public archives. The number of published names provided by the non-German companies on the ICHEIC – AXA, RAS, Winterthur, Zurich and Generali – amount to only a tiny percentage of the total. The persistent refusal of France to release hundreds of thousands of insurance records now well over 60 years old, citing data protection concerns, contrasts sharply with the more flexible attitude of the Dutch, Italian and now German, governments. Austria, once home to a vibrant and prosperous Jewish community, remains uncooperative to this day. There is much work still to be done.

To make matters worse, ICHEIC has been unable or unwilling to share with the public all the information it has obtained. For example, while about 9,000 names of Generali policyholders appear on the weblist, an additional 80,000 names provided by that company several years ago remain in the ICHEIC database but out of public view.

For three years, we have been promised more of these Generali names, that some undisclosed percentage actually match up with names of Jewish Holocaust victims. While any additional names would be welcome, we are left with a bitter question: why only now, near the scheduled end of the claims filing period? What forces conspired to suppress these names?

This episode with the Generali list is only one aspect of ICHEIC's overall poor record on names. The "voluntary" and "cooperative" process has not yielded adequate results. It is important to note that there remain significant troves of records in a number of European locations, especially Poland. On several occasions I heard Chairman Eagleburger promise, "no stone will be left unturned" in the search for names. There are undeniably a number of stones left to turn, and very little time to do it.

In the aftermath of the disappointing Supreme Court decision, it has now become a compelling Federal interest to ensure the full disclosure of names. We look to you here in Congress to help us finish this important task by enacting appropriate legislation and encouraging the Executive Branch to get behind efforts to disclose company and European archival lists that will shed light and help bring closure to these claims issues.

Let me turn now to another critical issue. One of the most striking weaknesses of the ICHEIC model is the failure to develop and sustain adequate oversight of the

claims process. Some observers early on in the process expressed concern that ICHEIC aspired to be little more than a "post office" receiving claims from around the world, and then delivering the claims to the various companies for investigation and resolution.

Addressing the numerous problems and delays afflicting his organization, Chairman Eagleburger, appearing before this Committee in November of 2001, promised ICHEIC was more than a post office, that he would institute a "policing" function to ensure rules and standards are followed. Those assurances have not been fulfilled, and as we approach the sixth year of ICHEIC's existence, the failure to step up and exercise vigorous and comprehensive oversight amounts to something close to negligence.

There has been little or no administration of the various settlement agreements reached with the companies and governments, no mechanism created to bring companies into compliance with agreed-upon rules, poor supervision of outsourced claims handling services. The list goes on; it is a lengthy one.

The most damaging result of lack of oversight has been the undermining of the claims review process. The truth is that these problems have been fully identified and aired among ICHEIC members for over 3 years. They are common knowledge. An oversight committee led by Lord Archer in Great Britain – acting very much in the capacity of a special audit team -- last year found and documented systematic violations of the claims guidelines, improper denials, and flagrant disregard by companies of evidence supporting claims, but little came of the scathing report.

The Archer Committee evaporated, and today, the companies continue to operate largely without oversight. There are no standard requirements the companies must meet when investigating a claim. Denials do not have to be justified. There is no tracking of outstanding claims. Claims that ICHEIC has itself matched with its large policyholder database are turned over to the appropriate company, but there is no follow-up to see that the companies act on the evidence presented to them and pay valid claims.

In this sense, ICHEIC is much more than a post office passing along claims; it is, sad to say, a storefront enabling a consortium of companies to effectively deny thousands of claims as they see fit under the guise of a U.S.-sanctioned settlement.

Because the companies make the claims determinations supposedly based on adopted ICHEIC standards, the solution of course must be based on checking every decision for compliance. This is the basic safeguard ensuring an independent and verifiable claims process. Without it, the integrity of the process is undermined.

But there is no sign that a serious oversight function will be activated and that actions or decisions by the companies under the banner "ICHEIC Claims Process" are going to be systematically scrutinized.

For the public, the most immediate and visible failing of ICHEIC is in the area of openness and transparency. On the simplest level we can see that essential documents describing the ICHEIC process are, inexplicably, even now not to be found on the Commission's public website. The Memorandum of Understanding – the charter document of ICHEIC -- is among the missing, although many other posted documents refer specifically to it. This begs the question: why is ICHEIC uncomfortable with sharing its founding document?

Equally puzzling, ICHEIC has chosen to refrain from reporting to the public any but the most cursory statistics about its claims process. Even its own members do not have access to the single most relevant performance measure for any claims process: the number of final settlements concluded. It goes simply unreported, and we are left to guess if it is actually known by anybody beyond the individual companies. Does ICHEIC ask for this? Given the resistance to any sort of oversight, do they even think to ask?

ICHEIC's finances are also consistently concealed in darkness. What little we know is the result of occasional leaks to the press. This is unsettling enough, given the unique public work ICHEIC is engaged in. Concerns were raised further last year when financial improprieties led to the dismissal of ICHEIC's Chief of Staff and his subsequent professional disbarment.

Promises made to publicly share audits and financial statements have never been honored over 4 years of the Commission's operation. The recent public disclosure of budget projections merely amplifies questions about the fiscal record of ICHEIC since 1998.

The claimants are also bewildered by the lack of consistency and uniformity of the process they have pinned some hopes on. Claimants expect to be treated equally and fairly in any publicly sanctioned claims settlement process. However, uniformity and consistency in ICHEIC's rules & procedures has not been achieved, reflecting the predominance of the companies in shaping the process to fit their own needs. As a result, the public interest has been ill served and the rights of claimants compromised.

The best way to describe the claims process is "Balkanized". The promising work accomplished early on to create uniform system-wide standards foundered and was undercut by various initiatives by the companies to establish separate settlement agreements with ICHEIC, each reflecting special concessions sought and won by the different companies.

First came an agreement with Dutch insurers who were allowed to retain their own established claims standards, followed by Generali, the German insurers and German Foundation, and finally the French and Swiss companies. Recently an additional accord was reached with the Belgians, and negotiations continue with the Austrians.

Each agreement features a financial cap, variations in how companies handle and value claims, and how they conduct appeals and audits. Generali came up with an additional innovation: the transfer of all claims work to a special foundation set up in Israel for that purpose, the Generali Trust Fund, forcing claimants and ICHEIC staff to triangulate in a confusing manner between both Generali and its Foundation.

The last issue I want to highlight here today is quite apart from the claims process, but it deserves equally serious attention from all of us. This year ICHEIC embarked on a new mission first envisioned at the time it was founded – that of a humanitarian foundation – when it announced that it would begin distributing worldwide at least $162 million in General Humanitarian Funds – mostly from the settlement with German industry -- to Survivor social services and other programs it deems appropriate, over a ten year period.

The principle of full accountability in this area is based on well-established public standards guiding non-profit philanthropies. We expect nothing less than disclosure of all disbursements, fund balances and associated administrative costs. We are particularly concerned that no co-mingling of funds or overlap occurs with ICHEIC's claims-related functions and general administrative expenses. Such overlap would clearly violate the "humanitarian" purpose for which these funds were provided.

Furthermore, ICHEIC has a special obligation to involve the community in its decisions regarding humanitarian distributions, which will impact many local communities in various countries. We hope that Members of Congress can impress upon the ICHEIC administration and the managers of the Fund to meet these reasonable standards.

In conclusion, I want to simply highlight some of the logical avenues for solutions to the serious problems my fellow witnesses and I have identified:

- A sweeping reorganization is in order to inject a public accountability ethic into the operations of ICHEIC

- Independent oversight involving outside experts and an expanded role for regulators is probably the only way to save the credibility of the claims process

- There must be full disclosure of detailed claims data, particularly the most basic performance measure of all -- the number of settled claims by each company

- Publication of all appeals decisions

- Regular detailed financial disclosure of the ICHEIC General Humanitarian Fund, including all associated administrative costs

- Open the plenary sessions of the Commission to the public

Thank you again, Mr. Chairman and Representative Waxman, for your ongoing concern. I'll be happy to answer questions and look forward to continuing a constructive dialogue in the future.

Mr. SHAYS. Mr. Bazyler.

Mr. BAZYLER. Thank you. Good afternoon, Mr. Vice Chairman, Congressman Waxman and distinguished members of the committee. My name is Michael Bazyler; I am a professor of law at the Whittier Law School in southern California, and a research fellow with the Holocaust Educational Trust in London, England. I am also a child of Holocaust survivors. I received my primary education in Poland and emigrated with my family to the United States as a refugee in 1964 at age 11. Since 1965, I have lived in Los Angeles.

My legal specialty is international law, and I am the author of over 50 legal articles on the subject. For the last 8 years, I have devoted my research and scholarship exclusively to the area of Holocaust restitution. And in April of this year, New York University Press published my book, "Holocaust Justice: The Battle For Restitution in America's Courts," whose aim is to examine the various Holocaust restitution claims and settlements that have been reached since 1998. When the U.S. Supreme Court last June issued its decision in *American Insurance Association* v. *Garamendi,* both the majority decision of Justice Souter and the dissenting opinion of Justice Ginsburg cited to and quoted from my book.

I want to emphasize that I have not been involved in any of the lawsuits filed by Holocaust survivors or their heirs or been involved specifically in any of the claims. My role is strictly that of the professor in the Ivory Tower analyzing the various claims being made and the responses to the claims. Now, in trying to figure out the actual situation on the ground, I keep in close touch with the individuals both in the United States and abroad, in and out of government, involved in Holocaust restitution, many of the people that were here testifying earlier including representatives of major Jewish organizations both in the United States, Israel and Europe, and elderly Holocaust survivors, primarily and most importantly.

I hope to be able to assist the committee to assess how the Holocaust era insurance process is doing. Since I am limited to 5 minutes, I am including a more complete statement. And, as Congressman Waxman previously noted, I have put together four summaries of actual case studies, of actual claimants, Holocaust survivors that have made claims. Let me go ahead and put on the record what they are and how I obtained them.

The first one is that of Holocaust survivor Zev Jalon of Israel, who is 77 years old, and the claim he made is against the Italian company RAS, which is part of Allianz. I obtained this from Moshe Zanbar, who is the representative from Israel on ICHEIC, and in fact, is a former Governor of the Bank of Israel. And in sending me this information by e-mail, he tells me that: "I now hasten to bring to your attention an excellent example of ICHEIC's negligence"—those are his own words—"in supporting and following up documented claims." And that is what Mr. Jalon's claim is.

The second, third, and fourth claims I was provided by attorneys Lisa Stern and Bill Chernoff, and also Beth Settak Legal Services in Los Angeles, the organization that has been referred to before that has also been critical of the ICHEIC process. The second claim is of the sisters Esther Berger Lichtig and Violet Berger Spiegel, age 83 and 85 respectively, that Congressman Waxman asked sec-

retaries to Eagleburger. The third one is that of Iga Pioro, also from Los Angeles. And the fourth one is of Holocaust survivor Felicia Haberfeld, 92 years old, who received an offer on two insurance policies from Generali of $500. That was the offer that she got. And then another policy which was issued to her father, she received a denial letter saying, just like for the Pioro claim, that they don't have any records of the policy being in existence in 1936. So, negative proof was the reason for them to deny the policy, specifically contrary to the decision memorandum issued by Chairman Eagleburger.

Mr. SHAYS. Let me just ask the gentleman to suspend. We have taken each of these cases and we have given them to ICHEIC to have them check out, and we are going to expect that there will be a report.

Mr. BAZYLER. Well, what I have done is this. I know Jodie Manning, the chief of staff of ICHEIC in her previous position of working with the Special Envoy's office, and so I gave her the four summaries with the backup documentation. I am more than happy to provide——

Mr. SHAYS. No. What I said is, we have given these cases to ICHEIC.

Mr. BAZYLER. OK.

Mr. SHAYS. And we expect ICHEIC will get back on a formal basis to the committee.

Mr. BAZYLER. Wonderful. I want to add that there is a fifth case that I just received last night, and that is from the Washington State Commissioner of a Fannie Mattalone who actually received a decision from the appeals board and is now waiting months for that decision, and I want to add that to my statement.

Now, Mr. Chairman, next month ICHEIC will mark its 5th anniversary. Sadly, it will do so under a continuing cloud of public distrust and skepticism over its poor performance in mishandling claims and in getting claims paid. This is not where we expected to be 5 years ago. We on the outside, like you and Congress, have struggled to make sense of ICHEIC and evaluate its troubled track record. Let me briefly review what I feel are the two most critical failings that impact claimants.

The first one, the passive pileup of unprocessed claims. A number of principles were adopted by ICHEIC at the time it was formed to take into account the unique challenges posed by the passage of time and the nature of the Holocaust. Among these were relaxed claims standards and the need to determine a fair mechanism for treating claims that are undocumented and do not name a company. Living up to these principles has proved elusive. An initial experiment with well-documented claims in 1999, the so-called fast track process, was a complete disaster and showed that the companies were basically rejecting their best kind of claims for really specious reasons.

After 5 years, and up to this very day, ICHEIC continues to struggle by consensus with how to handle and resolve these claims and also claims that do not name an insurance company. These claims that do not name an insurance company constitute the majority received from around the world. And these claims are being held up. Thousands of them have been held up since 2000 when

the claims process began. As the claims process has piled up with nowhere to go, ICHEIC in the past year has shown no hesitation to throw money at the problem. They contracted with a top-tier consultant to develop standards for claims without a named company. And, if completed, these will only be the latest in a series of standards that have been developed since 2000 but have never been implemented. That was per your reference to the Archer Commission. We are all waiting to see what will emerge and how many good faith claims will be honored in the end.

The second problem I see is the administration of the claims by the ICHEIC staff. While the pileup of unprocessed claims is perhaps the single most important issue involved in ICHEIC and the cause of a good deal of paralysis, it is by no means the only unfinished element or gap in the process. What I see as time passes is that the London office of ICHEIC, where the administration and oversight of claims is done, has not put pressure on the companies, has not put their feet to the fire to resolve these claims. Over and over, I hear stories of survivors sending in their claims to ICHEIC, like Mr. Arbeiter, and waiting for years for a response from the companies with no followup from ICHEIC.

Now, this brings me to the last point, which is with regard to the appeals process that Secretary Eagleburger mentioned. The right to an appeal is a fundamental element of fairness, but ICHEIC has developed a confusing system for appeals, with three different appeal bodies: The appeals tribunal for non-German claims, the appeals panel for the German claims and what appears to be a separate appeal-like process only for Generali claims done with the Generali trust fund, completely separate from the other two. Each one has a different basis of standard and different authorities which decide the claimants.

Moreover, and I think this is really critical, there have been no publication in any of these decisions. And I compare this to the Swiss bank dormant account claims where the decisions of the Swiss claims resolution tribunal are publicly available and posted on the tribunal Web site. And I urge ICHEIC to go ahead and start posting these decisions. It well may be that the appeals process is the court of real resort rather than the court of last resort in deciding these claims. If that is so, then the pending claims that exist, the unprocessed claims, should be decided quickly up or down, yes or no, and then go on to the appeals process where a final decision can be made.

Now, what can Congress do? The publicity and the hearings that are done today I think are very, very critical. The second point is really important to keep the litigation option open to the claimants. If a claimant does not want to go through the ICHEIC process, has no confidence in it, he or she should be able to file a lawsuit in court and have that lawsuit decided by a judge or jury, as Dr. Kadden has mentioned.

Now, the Supreme Court decision also makes clear that our Federal law requiring foreign insurance companies doing business in the United States to disclose Holocaust era insurance policies would not run afoul of the Constitution. And if such a Federal law would not instantly solve these problems, I think it would go a long way in moving the process forward. And I think, as has been said

by others, the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process, and I urge you to pass such a law. Thank you.

Mr. SHAYS. Thank you very much.

[The prepared statement of Mr. Bazyler follows:]

Statement of Michael J. Bazyler
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Before the Government Reform Committee
of the U.S. House of Representatives
On Status of Insurance Restitution for Holocaust victims and their heirs

September 16, 2003

Good afternoon, Mr. Chairman, Congressman Waxman, and distinguished members of the Committee. My name is Michael Bazyler. I am Professor of Law at Whittier Law School, in Southern California, and a research fellow with the Holocaust Educational Trust in London, England. I also have recently completed a fellowship at the Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum in Washington D.C., and so it is a pleasure to return so soon to our nation's capitol.

I was born in Tashkent, Uzbekistan, a child of Holocaust survivors. I received my primary education in Lodz, Poland, and emigrated with my family to the United States as a refugee in 1964, at age 11.

My legal specialty is international law, and I am the author of over fifty articles in the area of international human rights law, international criminal law, and international trade. For the last eight years I have devoted my research and scholarship exclusively to the area of Holocaust restitution. In 1996, I held at Whittier Law School, my home institution, the first legal conference on the legal aspects of Holocaust restitution, focusing on the subject of dormant Swiss bank accounts, Holocaust-era insurance policies and Nazi looted art. Since that time, I have published a number of both scholarly and popular articles analyzing the various Holocaust restitution lawsuits filed in American courts, including Holocaust-era insurance. In April of this year, New York University Press published my book, Holocaust Justice: The Battle for Restitution in America's Courts, whose aim is to examine and compare and contrast the various the Holocaust restitution claims and settlements reached since 1998. When the United States

Supreme Court last June issued its decision in *American Insurance Association v. Garamendi*, both the majority decision of Justice Souter and the dissenting opinion of Justice Ginsburg cited to, and quoted from, my book.

I want to emphasize that I have not been involved in any of the lawsuits filed by Holocaust survivors or their heirs – even though I have been asked by law firms representing both the claimants and the European defendants to join their legal teams. My role is strictly that of the professor in the Ivory Tower analyzing the various claims being made and the responses to the claims. In assessing the claims, however, I have tried to climb down from that tower as much as possible to figure out as best as I can the actual situation of these various and complicated Holocaust-era claims. In fact, this is the primary aim of my book. In trying to figure out the situation on the ground, I keep in close touch with the individuals both in the United States and abroad, in and out of government involved in Holocaust restitution, including representatives of Jewish organizations both in the United States and Israel, lawyers for both sides involved in the litigation, and, most important, elderly Holocaust survivors who are faced with the complicated task of trying to make sense of the various Holocaust restitution settlements – from Swiss, Austrian, and French bank accounts, to German slave labor, to Holocaust-era insurance, to looted art, to Eastern European property restitution – and what benefits, if any, are they entitled from these settlements.

I also meet on a regular basis with Holocaust survivors and assist them *pro bono* with filling out the settlement claims forms, and then tracking how they are being dealt with after they file a claim.

I hope to be able to assist the Committee to assess how the Holocaust-era insurance process is doing. Since I am limited to five minutes, I will keep my remarks short, but hope to elucidate and expand on my testimony from the questions you may have for me.

I am also appending to my statement four summaries of insurance claims made by survivors with ICHEIC and the status of those claims. While these summaries are anecdotal, they present actual and, I believe, typical experiences of survivors as they try to deal with the ICHEIC claims process. They illustrate real-life examples of the points I discuss in my statement.

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In October 1998, following pressure from the American federal and state government officials, public hearings on the matter, and lawsuits filed in American courts, six European insurance companies (later reduced to five) formed, in conjunction with the National Association of Insurance Commissioners (NAIC), the World Jewish Congress and the State of Israel, the International Commission on Holocaust Era Insurance Claims (ICHEIC).

Next month ICHEIC will mark it's fifth anniversary. Sadly, it will do so under a continuing cloud of public distrust and skepticism over its poor performance in mishandling claims and in getting claims paid. This was not where we expected to be five years ago. It is also particularly disappointing in light of the unfulfilled promises made to this Committee in November 2001 to address the many serious problems plaguing ICHEIC and delaying justice for victims of the Holocaust.

We on the outside, like you in Congress, have struggled to make sense of ICHEIC and evaluate its troubled track record. Let me briefly review what I feel are the most critical failings that impact claimants:

Massive Pile Up of Unprocessed Claims

A number of principles were adopted by ICHEIC at the time it formed to take into account the unique challenges posed by the passage of time and the nature of the Holocaust. Among these were "relaxed" claim standards and the need to determine a fair mechanism for treating claims that are undocumented and do not name a company.

Living up to these principles has proved elusive. An initial experiment with well-documented claims in 1999, the so-called "Fast Track" process, was beset with problems and inconsistencies in the way companies interpreted "relaxed standards," an early signal that oversight was necessary. This only worsened after the main claims process was initiated. Today, the consistent application of "relaxed standards" remains in serious dispute.

After five years – and up to this very day -- ICHEIC continues to wrestle "by consensus" with how to handle and resolve claims that do not name a company. These claims constitute the majority received from around the world. Deferred and disputed issues related to this category are currently

holding up thousands of claims filed since 2000. In reality, this means the claims process has not really commenced for the majority of ICHEIC claims, and claimants are not told the real reasons they are in limbo.

Disturbingly, and despite discussions that have spanned several years, it has not yet been decided how much the fixed payment for these claims will be and what system ICHEIC will employ to evaluate and approve their validity.

As the claims have piled up with nowhere to go, ICHEIC in the past year has shown no hesitation to throw money at the problem: they contracted with a top-tier consultant and former National Security Advisor, Sandy Berger, to develop standards for claims without a named company. If completed, these will be only the latest in a series of draft standards that have been developed since 2000 but never implemented. We all are waiting to see what will emerge and how many good-faith claims will be honored in the end.

Administration of claims by ICHEIC staff

While the pile up of unprocessed claims is perhaps the single most important unresolved issue in ICHEIC, and the cause for a good deal of paralysis, it is by no means the only unfinished element or gap in the claims process. Indeed, the failure to settle recurring disputes over the interpretation of rules and make the many technical adjustments that arise in an evolving claims process has also stymied resolution of a large number of claims that name a particular insurance company or where a match appears. As times passes, it has become apparent that the ICHEIC staff lacks the expertise in technical issues and oversight of the claims guidelines. To state it directly, the London office of ICHEIC, where administration and oversight of claims is done, has not put pressure on the companies, (has not "put their feet to the fire") to resolve the claims. Over and over, I hear stories of survivors sending in their claims to ICHEIC, and waiting for years for a response from the companies, and no follow-up from ICHEIC.

Appeals Process

The right to an appeal is a fundamental element of fairness and due process in the context of a claims settlement process. ICHEIC has developed a confusing system for appeals involving three different appeals bodies: the

Appeals Tribunal for non-German claims; the Appeals Panel for the German claims; and, what appears to be, a separate appeal-like process only for Generali claims, done within the Generali Trust Fund in Israel. Each is based on different authority and follows somewhat different standards.

Moreover, there has been no publication of appeals decisions. This is in stark contrast to the settlement of the Swiss banks dormant account claims, where the decisions of the Swiss Claims Resolution Tribunal are publicly available and posted on the Tribunal website (www.crt-ii.org).

Being unable to review the actual appeal decisions made through these bodies, I was able only to review basic statistics. I do get the distinct impression that the appellate forum is turning out to be the only level of the ICHEIC process that may be capable of applying rules and standards consistently, leading to a relatively high percentage of reversals of company denials. The appeals stage may in fact be the place to resolve systematic failings of the process, a "Court of Real Resort" instead of "Last Resort." If so, then the general claims process cannot render fair and uniform decisions, and all denied claimants or those feeling they have received unfairly low offers, should logically be encouraged to use the appeals option where the real and fair review of the claims is done. Pending claims should also be accepted or rejected by the companies, rather than held in abeyance, so a final decision can be made at the appellate level.

Conclusion

ICHEIC's failure to perform adequately raises this question anew: after five years, has the private, voluntary model for claims resolution, touted as a desirable alternative to litigation in American courts, yielded the promised benefits to victims and claimants? I must sadly conclude that systematic problems plague ICHEIC, causing massive delays in resolution of claims, frequent decision reversals or reopening of cases, loss of trust among claimants that they are receiving fair and neutral treatment, unnecessary expenses, and lack of public confidence that the original objectives can be attained.

On the benchmark standards that we expect any claims settlement to meet, the ICHEIC Holocaust-era insurance claims process bears little resemblance to comparable class action settlements administered by American courts and

also compares unfavorably to them. The best comparison is the claims process currently ongoing in the settlement of the Holocaust Victim Asset Litigation, the Swiss banks settlement process, which also is confronted by the same set of historical problems which bedevil ICHEIC. On all the important measures -- establishing a historical record and audit trail on which claims settlements are based; consistent publication of names and creation of a comprehensive asset database; uniform and timely application of claims processing rules and standards consistent with the historical realities; independent oversight; transparency of decisions and timely disclosure of performance measures – the ICHEIC claims process has been a major disappointment. ICHEIC's mission – establishing a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust – has not been fulfilled.

What can Congress do? Bringing to light these problems, such as being done today through this hearing, plays an important function in putting pressure on ICHEIC and its companies to move the process forward. As the various settlements of other Holocaust restitution claims have shown, constant and vigilant attention to these issues, by both federal and state officials, activist groups, and the media can play a critical role in a fair and expeditious resolution of long unrecognized World War II historical claims.

More specifically, I urge Congress to "federalize" California's Holocaust Victim Insurance Relief Act (the "HVIRA"), the law declared unconstitutional by the 5-4 majority of the Supreme Court in *AIA v. Garamendi.* As the Supreme Court decision makes clear, a federal law requiring foreign insurance companies doing business in the United States to disclose information about unpaid Holocaust-era insurance policies would not run afoul of the Constitution. While a federal HVIRA would not instantly solve the problems I discuss above, it would go a long way to deal with a major problem plaguing Holocaust-era insurance, publishing a comprehensive list of insurance policies issued in prewar Europe and matching those policies to the claims made so far. It would also allow the still-living Holocaust survivors worldwide, who were children or young adults during the Holocaust, and heirs of Holocaust victims to know once and for all whether their families had an unpaid Holocaust-era insurance policy. As has been said by others, the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process.
Thank you.

I. ICHEIC COMPANIES FALING TO MAKE A DECISION ON CLAIMS WITH DOCUMENTED PROOF OF INSURANCE AND ICHEIC'S FAILURE TO FOLLOW-UP ON SUCH PENDING CLAIMS

Claimant: ZEV JALON

Zev Jalon of Haifa, Israel has documentation regarding two life insurance policies issued by Riunione Adriatica di Sicurta S.p.A (RAS) presently owned by Allianz of Germany.

Mr. Jalon filed a claim with ICHEIC in 2000, shortly after the beginning of the ICHEIC claims process. The claim was transmitted to RAS. RAS has both the name of the insurance company and the actual policy numbers of the policies upon which he is making a claim.

Three years later, RAS still has not processed his claim, claiming that "due to the complexity of the issues involved, unfortunately, we are not able to communicate to you any decision at the moment."[1]

Mr. Jalon has written to the ICHEIC offices in London seeking their assistance in helping to speed up the processing of the claim, but without ICHEIC taking any action on his behalf.[2]

Mr. Jalon has never been informed by either RAS or ICHEIC what is the "complexity" that is holding up RAS from making a decision on his claim, and why this "complexity" has not been resolved for the last three years.

Because the claim is in abeyance, not being accepted or rejected by RAS, Mr. Jalon is precluded from having his claim reviewed through the ICHEIC appeals process.

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[1] RAS letter to Mr. Jalon (July 4, 2003)
[2] Letter by Mr. Jalon to ICHEIC, London (September 9, 2003)

II. ICHEIC DELAY AND FAILURE TO DISCLOSE CLAIM INFORMATION

Claimant: ESTHER BERGER LICHTIG

Esther Berger Lichtig and her sister Violet Berger Spiegal lived in Michalovce, Slovakia before the war.[1] Numerous members of the Berger family were murdered by the Nazis. Esther, now age is 83 and Violet, who is 85, survived the war by being slave laborers. Today both are living in Los Angeles and are in ill health. Esther is a widower and Violet takes care of her 95 year old husband.

In July of 1999 Mrs. Berger Lichtig filled out a Holocaust Insurance Claim Form.[2] In May of 2000 she filled out an ICHEIC claim form.[3] In August of 2000 ICHEIC gave her two claim numbers[4]. In October 2000 Generali informed the family of a potential match in their archives.[5] In November 2000 Generali wrote to the family and reported: "Our investigation has been unable of locate any life insurance…"[6]

In June of 2003 the sister's father and uncle's name appeared on the ICHEIC web site.[7] Despite decades-old pleas, the family has not received confirmation, documentation nor an offer from ICHEIC.

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[1] Family photographs of the Berger family
[2] Department of Insurance Holocaust Survivor Claim Form (July 28, 1999)
[3] ICHEIC Claim form (May 16, 2000)
[4] ICHEIC letter (August 7, 2000)
[5] Generali letter (October 2, 2000)
[6] Generali letter (November 15, 2000)
[7] ICHEIC web site (June 17, 2003)

*Permission granted from Mrs. Lichtig, her son Irving and Violet Spiegel

III. ICHEIC COMPANIES DO NOT FOLLOW ICHEIC GUIDELINES

Claimant: IGA PIORO

Emil Goldman owned large lumber yards in Jazowsko, Poland. Emil's daughter, Iga was a young child when the Nazis marched into town. Her family was taken to a ghetto; Emil was murdered. After the war she and her mother were in a displaced persons camp and then immigrated from Germany to Venezula, New York and finally Los Angeles. Before Iga's mother died, she told Iga that the family had several insurance policies with Assicurazioni Generali.

In September 1999 ICHEIC issued a Decision Memorandum[1] wherein it was agreed that: "when the existence of the contract has been established, the burden shifts to the companies...A company may present any evidence from its own records or external sources which would prove that a payment was made to the proper insured or beneficiary." In 2000 Iga applied to ICHEIC and was given claim numbers 14789 and 19095. In November 2000 ICHEIC issued another directive that: "ICHEIC companies will investigate the claims, applying relaxed standards of proof, which are to be liberally construed in favor of claimants.."[2] In December 2000 Generali notified Iga that her Holocaust era insurance claim had been submitted to ICHEIC for processing.[3] Despite the policy of relaxed standards of proof which were to be interpreted liberally in favor of the insured, Ms. Pioro's claim was rejected--although two Generali policies were identified--because Generali records were lacking: "we cannot but conclude that they were either cancelled or surrendered before 1936". [4]

At no time did ICHEIC or any member company supply proof or documentation that the policies were cancelled or surrendered. This"negative proof" –the inability of a company to find documentation—ought not inure to the detriment of the insured.

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[1] ICHEIC Decision Memorandum
[2] ICHEIC letter to Burt Neuborne (November 21, 2000)
[3] Generali letter to Ms. Pioro (December 1, 2000)
[4] Generali letter to Ms. Pioro (February 28, 2001)

IV. ICHEIC AS A "COMPANY STORE" USED TO DENY AND MINIMIZE CLAIMS

Claimant: FELICIA HABERFELD

Felicia Haberfeld is a 92 year old widow living in Los Angeles. Before the war her family lived in a palatial estate in Auschwitz, Poland. In 1939 Felicia and her husband set sail for the World's Fair in New York. During their return voyage, Germany invaded Poland and the ship, along with the Haberfelds, were forced to return to America. Fortunately Alfons and Felicia survived the war, their two year old daughter did not.

In April of 2000 Mrs. Haberfeld filled out a Holocaust era insurance claim.[1] In May 2000 ICHEIC, who was investigating the claim said that: "the company you named in your claim form is unfamiliar to us."[2] That company was Assicurazioni Generali--a founding member of ICHEIC.[3] In September of 2000 Generali notified Mrs. Haberfeld that her inquiry to Generali would be regarded as an ICHEIC claim.[4]

On January 17, 2001 Generali acknowledged two policies purchased by the family, **purportedly applied the ICHEIC formula and offered Mrs. Haberfeld a total sum of $500.00 for all claims.**[5] In February 2002 Generali found another family policy but: "under the guidelines set forth by ICHEIC, Generali will not be able to offer payment to Mrs. Haberfeld..."[6]

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[1] Haberfeld insurance claim (April 6, 2000)
[2] ICHEIC letter sent to Mrs Haberfeld (May 12, 2000)
[3] Generali letter sent to Mrs. Haberfled (April 14, 2000)
[4] Generali letter sent to Mrs. Haberfeld (September 7, 2000)
[5] Generali/ICHEIC offer to Mrs. Haberfeld (January 17, 2001)
[6] Generali letter (February 28, 2002)

*All exhibits are attached to deposition transcript of Felicia Haberfeld in *Haberfeld v. Generali* BC250565

Mr. SHAYS. At this time, the Chair will recognize Mr. Waxman for 10 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Well, I think the three of you have given us a pretty disturbing picture of ICHEIC. In trying to help my colleagues understand the problems in the ICHEIC system, I have used your case, Mr. Arbeiter, as an example of the system's unfairness. As I understand it, you are saying that since December 2000, when ICHEIC first sent an acknowledgment that your claim was received, you have never gotten one letter with an update on its status?

Mr. ARBEITER. No, sir.

Mr. WAXMAN. Even after you called the help line, ICHEIC still didn't send you a letter or an update explaining that your claim would be reviewed by ICHEIC once all other claims had been paid because your claim does not name a company?

Mr. ARBEITER. No, sir. I did not get anything from them. The only answer was when I called them and they tell me we don't know anything yet. And, like I said, the last call which I made last week, they told me we won't have any answer for you until the audit is done. And I asked him how long will that take, and they said indefinitely.

Mr. WAXMAN. Mr. Bazyler, Mr. Kadden, is it too late to restore public confidence in ICHEIC? Is it too late to have the people in the survivor community feel that this system is busted, that an easier process could still succeed?

Mr. KADDEN. I think it is largely too late. I have to be perfectly frank with you. I am looking at it from the point of view of survivors, Congressman Waxman, and not looking at it from the point of view of the mainstream of those invested in the process, in administering the process and the legal aspects of the process. I am talking about the concerned stakeholders that are most important here, which is the claimants, who are mostly older people who survived the Holocaust. And for them, I think it is largely too late. The suspicions run so high. And I have to say that the words from the Federal judge overseeing the Generali case, which is still active in the Federal courts, who called ICHEIC the company's store in one of his rulings is a very, very hard thing to rub off. And I think one has to look at it from the point of view of survivors, that there is virtually nothing at this point, especially based on the testimony we heard today, that can be done to earn the trust of survivors.

Now, the process may muddle through and come to some kind of conclusion that is minimally acceptable to power brokers and others, but I don't think it is going to pass muster based on what I have seen with the survivor community, sorry to say.

Mr. WAXMAN. Mr. Bazyler.

Mr. BAZYLER. Well, I would hate to see 40 million go to waste; and I hope that ICHEIC can improve and can go ahead and make progress. I will have to say that the publication of the German names was an important step. A lot of people looked at that list and came up with, I see, you know, my name is on it. I am able to make the claim.

Mr. WAXMAN. So publication of names to you is really key.

Mr. BAZYLER. Absolutely. It is the first and most important step. We are dealing with a reality, as everybody knows, that most sur-

vivors don't have the information. They were children at the time. You need to start publication. If you suppress the names, you suppress the claims.

Mr. WAXMAN. Mr. Kadden, the companies say the publication of the names is not important, because if you have a claim, your name will be searched at the companies even if you are not on the list of policyholders. Why is the list publication so important? And how will we know that the list of the names of policyholders is relatively comprehensive? Should we assume that a certain percentage of the Jewish population at the time held policies? Is that the way we should judge it?

Mr. KADDEN. Yes. I think we should assume that, to answer the second part of your question. There has been a great deal of research done, and if you don't mind, I am going to share with you a report which I obtained, an internal document of the ICHEIC. In December 1999, the estimation of unpaid Holocaust era insurance claims in Germany, Western Europe and Eastern Europe. And I will be happy to share my copy with the committee. This is actually in direct answer to the question asked of Chairman Eagleburger earlier, which he was unable to answer clearly. And I don't think he fully understood the question. The ICHEIC has gone through this process of trying to estimate in a very systematic way as much as possible, given various assumptions, the actual extent of insurance coverage within the Jewish communities across Europe. And, not only that, tried to attach a certain estimation of the value of unpaid insurance. It makes for fascinating reading for those interested in this issue.

To answer your main question, I think——

Mr. SHAYS. We will make that part of the record. Thank you.

[The information referred to follows:]

International Commission on Holocaust Era Insurance Claims

Report to Lawrence Eagleburger,
Chairman

by the

Task Force
Co-Chaired by Glenn Pomeroy and Philippe Ferras

On

The Estimation Of Unpaid Holocaust Era Insurance Claims In Germany, Western and Eastern Europe

Task Force Report

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I. BAV Summary Analysis of Data Supplied by German Insurance Companies in response to BAV Circular 1/99 (English and German versions)
J. BAV supplementary memorandum of 26 November (English and German Versions)

PRIVILEGED & CONFIDENTIAL 12/13/99

TASK FORCE REPORT

Introduction.

1) The Plenary Session of the ICHEIC unanimously decided in Washington on October 20-21 1999, that it would be in the overall interest of the ICHEIC process to link its endeavours and commitments to those of the German Foundation Initiative.

2) The Task Force was established by the Chairman. Its assignment is to help the Chairman approach (with appropriate liaison with all the members of the ICHEIC) the question of the amount the German Foundation Initiative should allocate to the ICHEIC to meet the goals of the Memorandum of Understanding, signed August 28, 1998, with the specific objective of settling in a fair and expeditious manner the issue of unpaid insurance policies issued during the Holocaust era by the signatory insurers.

3) The Chairman of the ICHEIC asked the Task Force to report to him and appointed two co-chairmen, Glenn POMEROY (Insurance Commissioner of North Dakota and former President NAIC), and Philippe FERRAS (Executive Vice-President AXA-Paris). The Task Force was free to decide on its composition and working procedures, provided it approached the issues in an even-handed way.

4) Since the establishment of the ICHEIC in 1998, the focus has been almost exclusively on the commonly agreed "claims-driven" approach and there has been no substantial discussion regarding the global figures of the insurance markets of that time or on how to approach the issue of the Humanitarian Funds as embodied in the MOU (art. 8-a-1, 8-a-2 and 8-b). Therefore, in an effort to reach a conclusion in a short timeframe, the Task Force established the following :

   a) In terms of working procedures:

      i) The number of people invited to participate in the Task Force should be strictly limited in order to move quickly. The following persons contributed on a permanent basis : Karen ASHER-COHEN (Florida Insurance Department), Frank R. LICHTENBERG (Economics Professor, Columbia University Graduate Business School),Catherine LILLIE (Holocaust Claims Processing Office, New York State Banking Dept), Helen B.JUNZ (Economic Consultant to ICHEIC), Shawna ACKERMAN (Actuary, advisor to California State Insurance Regulator), Lise RENELLEAU (actuary AXA-Paris); David BUTLER from the London ICHEIC was designated as Secretariat.
      ii) The parties (Jewish organisations and insurance companies) should be invited to present their views
      iii) The final report should be given to the Chairman.

   b) In terms of overall approach:

      i) The Task Force opted for a "top-down" type of approach. It had been foreseen that this approach was to have been employed at a later stage during the ICHEIC process, supplemented by an audit programme, notably after the "claims-driven" process was in place and the number of potential claims was better known, as a result of the present "Fast Track" procedure and of the forthcoming "Outreach" programme.
      ii) Analysis should proceed on a country-by-country basis; and specific factors should underlie the analysis in each separate country case, e.g., the size of

the insurance markets, the relative size of the Jewish population and its propensity to insure, the date Holocaust persecution started, the various components of the discriminatory practices, the establishment of post-war compensation programs, etc.;

iii) Values should be established in local currencies of the period because they relate to local data of that period;

iv) The Chairman will need to determine, in conjunction with all the other members of the ICHEIC, how the findings and overall evaluation of the MOU companies' exposure should be treated in order to bring them to the current i.e. 1999 values.

5) The Jewish organisations as well as the companies, when informed of these operational decisions at the time they made their presentations in London and New York, voiced no objections. The Chairman was satisfied with this overall approach.

6) In making their estimates of the totals, the Jewish representatives as well as the companies who made presentations to us, have adopted a broadly similar approach. We therefore believe that the approach has broad consensus, even if the ultimate figures that can be derived may differ widely.

The Three Sections

7) We have divided the country-by-country approach into three sections:

a) "Undisputed facts": these are statistical data for which the sources are well-established and broadly accepted as reliable

b) "Judgmental factors": these are estimates based on assumptions and derivations about which there may be differences of view, whether as regards pure facts or interpretation of the commitments of the companies under the MOU or extension of these commitments and, in view of the many uncertainties, where we have tried to indicate a possible range of figures; furthermore, the choice of where, within these ranges, the emphasis would fall also requires judgmental factors.

c) Proposal of formulae: using the data and estimates, on which estimates of the MOU companies' exposure might be calculated.

8) For each of these three sections, we have tried to insert precise quantified elements, as detailed below :

9) **Section1**

a) The size of each market in terms of numbers of Life insurance policies, sums insured and mathematical reserves.

b) Total population in each country to derive estimates of participation rate (policies per capita) and average sum insured per capita.

c) Statistics of the Jewish population in each country. Estimates of the numbers who perished; estimates of survivors in each country.

d) Figures for the share of the total insurance market in each country held by companies, that are members of the groups of MOU signatory companies

Although given lack of some data and some specific country factors (such as moving borders during the period) there are some inconsistencies in the report, the Task Force is of the view that the facts and figures included in Section 1 give a fair overview of the situation and constitute a solid ground for moving to Section 2 and then Section 3

Section 2.
We have tried to determine the "best estimates" regarding:

e) The rate of participation of the Jewish population in the insurance market. We examined the propensity of the Jewish population to purchase insurance relative to that of the population as a whole (however we have relatively little information on this point)
f) The average sums insured by the Jewish population and their ratio to the average values found for the market as a whole.
g) The size of the Jewish population in each country that is relevant for an assessment of its share in the insurance data of that country. Given the migration flows that occurred in Europe in the late 1930s and early 1940s, it is important to try to assign to each country the appropriate domestic population. Similarly, the deportation and death figures have to be correctly assigned, as far as they can be.
h) The base value of insurance policies attributable to those who perished and those who survived.
The proportion of policies that have been paid before or after the war or which may have been treated under compensation or restitution programmes after the war. From this assessment of the volume of "paid-unpaid" policies we can derive the base value of unpaid policies attributable to Holocaust victims, whether perished or surviving.
- There are two significant differences of opinion regarding the issue of paid and not received policies. While the companies consider these paid (according to Nazi local laws and regulations), regardless of the recipient, the Jewish groups have consistently stated that policies not received by the appropriate beneficiary cannot be considered settled.
-

During the course of the examination and given the very sparse information that exists and/or could be collected regarding a) (number of policies per Jewish household) and b) (average value of Jewish-owned policies), the Task Force opted for a single judgmental factor for a) and b) which it called the "Jewish insurance propensity" factor.

10) Consequently, In Section 2, the two main judgmental factors for which the Task Force clearly endeavoured to give a range of figures were :
a) the " Jewish insurance propensity "
b) the percentage of unpaid policies

11) Section 3.

- Both parties were asked to propose a formula or formulae taking into account all the relevant factors as set in stages 1 and 2
This is obviously a critical step which requires a good deal of subjective judgement and which, no doubt, will be questioned by each party, necessitating in the end a face-to-face meeting to reach a consensus. But this process should be helped by the fact that areas of agreement and disagreement will have surfaced clearly and that discussion can proceed within the ICHEIC from a jointly accepted basis .

- The companies gave indications of two sets of formulas, one for all countries except Germany, and a separate one for Germany.

- The Jewish organisations provided a detailed proposal for Germany from which it is also possible to derive a formula for all the other countries.

12) Having heard from all parties, it appeared to the Task Force that, although each "judgmental factor" may differ for each party, there may be at least a consensus on the formulae to be implemented in all the countries except Germany, which constitutes a separate case.

13) In the former, multiplying the various relevant "facts" and "factors" as outlined in Sections 1 and 2 allows for a reasonable approach to the "unpaid" Life insurance policies for each of the relevant groups in local currency of that time.

14) For Germany, one has to take into account:

a) the relevant events, i.e., the erosion of Jewish-owned assets began in 1934, five years before the war started..

- the post-war restitution programmes which were implemented. However, these are viewed differently by the parties. An issue in that respect is:were the heirless claims covered by the various treaties and laws in 1952 and 1956 (as stated by the companies and the German regulator) ?
- or is there still a group of claims or claimants not yet compensated or not yet fairly compensated (as stated by the Jewish organisations)? "

15) The report now addresses the various Sections :

* Section One: **The Undisputed Facts.** This section describes the "undisputed" facts with a summary description of the situation in each relevant country
* Section Two :**The Judgement Factors.** This section considers the "judgemental factors" with an emphasis on the Jewish insurance propensity to determine the pre-Holocaust Jewish-owned insurance assets and the percentage of remaining unpaid policies ; for these two decisive factors, the Task Force proposed alternative ranges of figures.
* Section Three : **The formulae.** We propose different formulae, one for Germany and another for the other countries that yield a view of Holocaust exposure by country. Here again two different technical approaches are possible with different results ; consequently each of these different formulae must be calculated on the basis of the alternative ranges of figures as set in Section Two.

16) Once there is a consensus on the Holocaust exposure in each relevant country, the share to be attributed to each MOU company and their affiliates can be derived automatically from the market share of each of them in each country. The companies have provided the Task Force with the relevant statistical data and they are in agreement on their own market-shares. These market-shares are included in Appendix 3 of this report. These figures which are derived from well-known and public documents will be audited by the ICHEIC auditors ; they then, and only then, may be considered as indisputable ; at this stage and as presented by the companies, they may be considered as temporarily valid.

17) Again, it must be emphasised that the Task Force has worked on a country by country basis and that all figures are figures of the pre-Holocaust or immediate post-Holocaust period. The Task Force did not want to make any proposal of a valuation process in order to bring the Holocaust exposure to a 1999 value . It did so for Germany only because both the Jewish organisations and the companies provided a valuation key (divergent ones) in their own proposal for this particular country. The

Task Force did not discuss the relevance of such valuation keys and is not in any way committed to these methodologies, negotiation on which must proceed in a different ICHEIC forum as it was not included in the Task Force's mandate.

SECTION 1 : THE UNDISPUTED FACTS

Introduction

18) Each of the following sections includes, the following information (by country) :

a) Statistics for life insurance
b) Relevant historical information
c) Estimates of total population
d) Estimates of Jewish population

The death toll the Holocaust took on the Jewish population

19) We have looked at four groups of countries:
Germany
Western Europe: Austria, Belgium, France, Italy, Netherlands
Eastern Europe: Czechoslovakia, Hungary, Poland
Others: Bulgaria, Greece, Yugoslavia, Romania

20) It should be noted that only the first three groups above were targeted by the Audit Group and subject to subsequent ICHEIC auditors' confirmation. The fourth group, about which we had less information, is covered in Appendix 2.

Sources

21) The primary sources are

- Assekuranz Jahrbuch published annually
- Neumann's Jahrbuch for Germany

Where possible we have used national statistical publications to cross-check the data in the Assekuranz Jahrbuchs.

22) Further information has come from:

- papers submitted to ICHEIC
- papers presented to the London Conference on Nazi Gold, Nov. 1997
- papers presented to the Washington Conference on Holocaust Era Assets, Dec. 1998

23) For estimates of the Jewish population we have used information supplied by Helen JUNZ, who has been preparing a report on the pre-war wealth owned by the Jewish population in Nazi-affected countries for the VOLCKER Committee. Her sources were the various census data in different countries, as well as the more authoritative publications, archives and libraries with information on Holocaust events. At her suggestion, we defined our target population as that persecuted under the Nuremberg laws of 1935, although this necessitated making estimates of the adjustments that would have to be made to the pre-Nazi era population data in those countries where censuses classified population by religion.

We have also reviewed a demographic study of German Jewry produced by Professor Moshe SICRON for the Statistical Approach Group, chaired by Moshe SANBAR.

Years

24) For Germany, we used two base years: 1933 (the year when the Nazi Party came to power in Germany and before the main effects of any anti-Jewish measures started to be felt) and 1938 when most of the anti-Jewish discrimination laws had been implemented.
25) For the other countries we have used 1938 as the base year (with the exception of Austria, Czechoslovakia, Hungary and Poland where 1937 or 1936 are used) because it is the last pre-war year in which insurance markets were not yet influenced by the Nazis and for which we have reasonably reliable data. Moreover, the territorial boundaries had not yet been dismantled as a consequence of the expansion of the Third Reich.

Basic information.
26) The statistics of the Jewish population compared with the general population are also summarised in the final section of this Part for all countries.

27) The tables in the text show for each country:
   a) Premium income for Life insurance companies. Most of the time this is the "gross" income (including the portion of these premiums that was ceded to the reinsurers)
   b) Premium reserve or mathematical reserve. This is the present value of the companies' liabilities towards policyholders, calculated on an actuarial basis (taking into account accumulated saving and mortality risk liabilities)
   c) Sum insured. This is the total capital insured in case of death of the insured portfolio. For endowment or mixed policies it is traditionally the value at maturity, which consisted of accumulated premiums plus earnings.
   d) Number of outstanding policies.

28) In some countries, substantial business was conducted by state-owned companies or public sector institutions (e.g., France, Italy, Poland). In such countries, the market share of the MOU companies is smaller than elsewhere. Figures for France, however, are only for the private sector companies, because figures for public sector insurance were not published; consequently, the market shares of the companies, notably of the MOU companies, are much higher for France than elsewhere.

Type of pre-war insurance product
The companies presented the following regarding pre-war insurance products:

- Most life insurance sold in Europe before the war was a form of savings plan: the so-called "mixed policies" that guaranteed payment of the sum insured in case of death and payment of the accumulated capital at the end of the policy (generally 20 years), which normally equals the sum insured.
- In the first few years of the life of a policy, the cumulative premiums exceeded its cash (surrender) value, because of the need to cover the risk premium, the acquisition costs paid to the agent when the policy was initiated, and the administrative expenses. Acquisition costs paid to agents were usually paid in the first three years. Consequently, a policy for which the policyholder stopped paying premiums during the first three years would receive no benefits and the company would cancel the policy.
- If after this initial period, the regular premium due was not paid, the policy was converted into a "paid-up" policy either at the request of the defaulting policy-

holder or automatically at the company's own initiative if the policy holder did not respond to the letters from the company asking him to pay the late premiums. The "paid-up" policy would entitle the policy holder to a lower level of benefits at the policy's maturity or upon death of the life insured.

- The break-even point came in about year 12 of a policy. Profits would only accrue in the final years. Thus a company's interest was (and still is) in ensuring that contracts ran to the full term.
- At any time and notably when converting a policy to a "paid-up" status, the policy-holder was entitled to ask for the immediate payment of the "surrender" value of his policy ; he could also ask for a loan based on the surrender value of his policy which, then, was not cancelled but remained open and in force.
- At maturity date the company calculated the remaining amount to be paid to the beneficiary ; this amount was often minimal if the loan had not been repaid in-between. The "paid up" value would be higher than the surrender value because, instead of being cashed out immediately, the policy would stay with the insurance company until full maturity and consequently would earn interest.

WESTERN EUROPE

GERMANY

Insurance Market

	1933	1938
Population, millions	66.0	
Sums insured, millions RM	16,770*	26,443*
Premiums, millions RM	891	1,480
Mathematical reserve, millions RM	3,200	6,670
Number of policies 000s	17,982*	31,427*
Average policy sum insured RM	933*	841*
Average policy mathematical reserve RM	178	212
Average policies per capita	0.27	0.47

Source: Neumann's Jahrbuch

29) The following points were presented by the companies:

a) The Depression in Germany from 1929-32 caused many policyholders to stop premium payments, converting their policy to a lower sum insured or cashing immediately the surrender value. Alternatively they might take out loans against their policies to raise cash.

b) Though the market recovered with the end of the Depression, economic deprivation continued to force a similar pattern on the Jewish population from 1934 onward

c) The special research conducted by one MOU parent company on five of its distinct companies' portfolios in its archives showed that the sum insured for Holocaust-affected policy holders (as determined through the BAV questionnaire – see below) reached a peak in 1934 (growing to about 180% of its 1928 value).

d) The withdrawal from Life insurance was particularly strong in the years 1937 & 1938 so that, on the evidence of one company's files, the policies attributed to Jewish policyholders fell to 10% of their 1928 level.

Note: Figures exclude" group insurance" (where the insurance contract is between the employer and the insurance company, and where individual claims may be against the employer). Average sum insured in group schemes tended to be low. The exclusion of group insurance for 1933 and 1938 has been derived by using the same proportions, in numbers and sum insured, as existed in 1934 national statistics.

The ratios found in 1934 are :

% Group in total policies	24.0%
% Group in sum insured	14.1%

They were applied to the Neumann raw figures :	1933	1938
Sums insured, millions RM	19,523	30,784
Number of policies 000s	23,660	41,351
Average policy sum insured RM	825	744
Average policy reserve RM	135	161

31) **The Jewish population**

- The estimated size of the Jewish population in Germany in 1934 (within Germany's 1934 boundaries) was 550,000 (within the definition of the Nuremberg laws) constituting 0.8 % of population.
- The number perished was estimated at 165,000, constituting 30 % of the Jewish population.

AUSTRIA

Insurance Market

	1936
Population, millions	6.8
Sums insured, millions Schillings	1,834
Mathematical reserve millions Sch	519
Premiums millions Sch	75
Number of policies 000s	1,472
Average policy sum insured Sch	1,246
Average policy mathematical reserve Sch	353
Average policies per capita	0.216

Historical Background

- The 1936 Collapse of Phoenix Insurance Company which operated in Austria, Germany, and Eastern Europe; the portfolio in each country was then attributed to an existing company or in the case of Austria to a new entity, ÖVAG .
- Anschluss : The Nazis marched into Austria in March, 1938; Austria merged into Third Reich April 1938. German insurance regulations were immediately applied and German and Italian companies assumed the foreign-owned operations.
- April,1938 - Jews required to report assets exceeding RM 5000. 20,815 life insurance contracts were reported in this census (see Part 2 below for the analysis on the census of Austrian Jewish assets regarding insurance)
- Jewish-owned insurance contracts confiscated by the Third Reich in November, 1941; all contracts regarded as cancelled, from December, 1941. Post-war restitution arrangements. Three acts covering restitution and compensation for all types of property 1946-47. Insurance Compensation Act 1958. Claims had to be registered within one year. Law to re-establish insurance (1955) limited payments to 40% of contracts. Austrian Insurance Association quoted compensation of 456 contracts at nearly Sch. 1.5 million, quoting an average of Sch 3,086 per policy

Jewish Population

- The Jewish population in 1933 was estimated at 217,250 (within the definition of the Nuremberg laws) constituting 3.2 % of the total population.
- About 92% (nearly 200,000) lived in Vienna
- The number who perished is estimated at 65,460 (30.1 %)

BELGIUM

Insurance Market

	1938
Population, millions	8.3
Sums insured, millions BFrs	12,011
Mathematical reserve millions BFrs	3,120
Premiums millions BFrs	566
Number of policies 000s	2,288*
Average policy sum insured BFrs	5,250*
Average policy mathematical reserve BFrs	1,364
Average policies per capita	0.276

No insurance regulatory authority until 1956

Historical Background
- German Occupation 1940

Jewish Population
- 65,000, representing 0.8% of the total population, excluding pre-war refugees.
- 35,000 deported or imprisoned. 28,500 perished (43.9 %).
- Former nationals of countries incorporated into the Third Reich were subject to confiscation and blocked accounts. Consequently, as a very few long-term immigrants obtained Belgian nationality, a significant share of the Jewish population in Belgium fell victim to the Nazis' dispossession activities.

* numbers for policies is an estimated figure from US Army Service Forces information handbook. Average policy value found in US Army source consistent with numbers estimated.)

FRANCE

Insurance Market
Only direct and indirect domestic business available*

	1938
Population, millions	41.3
Sums insured, millions FFrs	65,032
Mathematical reserve millions FFrs	17,717
Premiums millions FFrs	2,968*
Number of policies 000s	3,135
Average policy sum insured FFrs	20,744
Average policy mathematical reserve FFrs	5,651
Average policies per capita	0.076

* this figure for premiums, when compared with the national statistics which give FFrs 2.688 millions for premiums shows that 9.5% is included in the figure above for assumed reinsurance (reinsurance by the retail companies for others). There is thus some overstatement in the above figures due to double counting of assumed reinsurance.

Historical Background

- Invasion 1940, establishment of Vichy government with German army occupying two-thirds of the territory.
- Board for Jewish Affairs (Commissariat General aux Questions Juives, CGQJ) established March, 1941. Censuses in occupied zone – October, 1940 and in non-occupied zone – June, 1941; figures were not reliable. Aryanization began with expropriation of enterprises and securities from July, 1941 (information from the report of the London Conference on Nazi Gold - December, 1997)
- Nazi expulsion of Alsatian Jews to unoccupied zone – July, 1940. Compulsory transfer of Alsace-Lorraine portfolios to German companies. However we have no information on the actual completion of this transfer .
- May 20, 1941, Central Office of Emigration in Berlin's circular letter to all German consulates, informing them that Goering had banned all emigration of Jews from all occupied territories, including France.
- No confiscation of Jewish insurance policies. But from Sept. 1941, no new policies issued to Jews, except with a state institution
- From Sept . 1941, payments by insurance companies above FFrs 10,000 to Jewish beneficiaries in the occupied zone went to blocked accounts
- FFrs 1 billion fine levied on Jews blocked accounts in Dec. 1941, in retaliation for attacks against the German occupiers
- March 1942 - first convoy to concentration camps
- Nov. 1942 - after the entry of the Allied Forces into North Africa, Germany occupies all of France.
- Paris is liberated and General de Gaulle cancels all discriminatory regulations on Sept. 1, 1944.

Jewish Population

- Jewish population 1934 - 250,000; around 0.6 % of total population.
- pre-war immigrants number 55,000
- 75,700 deportees according to the CDJC (Centre de Documentation Juive Contemporaine), i.e. the "Klarsfeld" list (of whom 33 % of French origin, 35% Polish, 9% German, 6% Russian, 4% Romanian, and 3% Austrian)
- Total number perished 76,100, i.e. 25 %

ITALY

Insurance Market

	1938
Population, millions	43
Sums insured, millions Lire	25,903
Mathematical reserve millions Lire	6,478
Premiums millions Lire	1,152
Number of policies 000s	2,769
Average policy sum insured Lire	9,355
Average policy mathematical reserve Lire	2,339
Average policies per capita	0.064

Historical Background

- Italy was an ally of Germany before and during the war. Some anti-Jewish measures were introduced before the war, mainly excluding Jews from professions. But economic and other anti-Jewish measures were not rigorously applied until the German occupation in 1943.
- Post-war decree by Italian government designated the Italian Jewish community heir to all heirless Jewish assets.

Jewish Population

- Jewish population 1933 - 48,000. About 0.1% of total population.
- Had risen to 50,000 by 1939, mainly refugees e.g., from Bulgaria. Evidence that Jewish refugees from Bulgaria were allowed to enter Italy 1941 and become Italian citizens. (London Conference on Nazi Gold, Dec. 1997).
- Estimated Holocaust victims 9,000. 7,600 perished (17.5 %)

NETHERLANDS

Insurance Market

	1938
Population, millions	8.5
Sums insured, millions NFL	2,192
Mathematical reserve millions NFL	1,176
Premiums[1] millions NFL	144
Number of policies 000s	1,237
Average policy sum insured NFL	1,717[2]
Average policy mathematical reserve	951[3]
Average policies per capita	0.145

Historical background

- German occupation in 1940
- Compulsory registration and deposit in LIRO Bank of financial assets, including insurance policies owned by Jews 1942
- After forcible deposit of insurance policies (with other financial assets in LIRO bank in 1942, these were cashed in at Nazi behest in 1943.
- Post-war 1948 and 1954 agreements on payment of surrender values to beneficiaries or on policies' re-instatement.

November 1999 : agreement between the Dutch Association of Insurers and the local Jewish community for a global settlement (FL 25 millions to cover individual claims, FL 20 million for causes determined by the Jewish community and FL 5 million for the Monument of the Jewish Community Project (an educational project).

Jewish Population

- Jewish population 1938 estimated at 140,000, including pre-war immigrants; excluding immigrants the population estimated at 118,000.
- By 1941, official statistics put number of Jewish population at 160,882 on widest definition (i.e. wider than Nuremberg), of whom 138,630 were Dutch and 22,252 were foreigners, predominantly German.
- 107,000 were deported, 104,000 perished. (74.3 %)

[1] Including "Volksverzekeringen" . These were burial insurance policies with very low average sums insured, no surrender value, and were not designated as to be compulsorily surrendered to LIRO. Other figures do not include burial insurance.
[2] This figure was given from official statistical sources (not derived from other figures)
[3] Derived from total figures

EASTERN EUROPE

CZECHOSLOVAKIA

Insurance Market

	1937
Population, millions	15
Sums insured, millions Koruna	13,422
Mathematical reserve millions Kc	4,644*
Premiums millions Kc	606
Number of policies 000s	1,112
Average policy sum insured Kc	12,070
Average policy mathematical reserve Kc	4,176
Average policies per capita	0.074

30) From the companies presentation, based on Assekuranz Jahrbuch:

- Bohemia Moravia, 1939 total market sum insured - Kc 10,245 million ; mathematical reserve Kc 4,148 million ; premiums Kc 482 million . [insured value compared with Assekuranz Jahrbuch figures for total sum insured of 1937 = 76%]
- Slovakia market Kc 1,022 million sum insured. Number of policies 44,373.

Historical Background

- Germany occupied Sudetenland in September, 1938. Poland and Hungary absorbed other territories Bohemia-Moravia was created as a separate state, then occupied as the Protectorate in March 1939. Only Slovakia retained "independence".
- Nazis deprived the Jewish population of the Sudetenland of the right to have insurance. The majority of the Jewish population left Sudetenland after the Munich treaty in 1938. At that time, the Sudetenland insurance portfolios which no longer contained Jewish-owned policies were transferred to German companies.
- Czech insurance companies were taken over by German or Italian companies. French, British and Swiss companies, which had also acquired Czech portfolios after 1938, were later taken over by German companies.
- Jews were required to register property, including insurance. Jews were only allowed to benefit from insurance up to 5,000 Koruna (about $1,000). From 1940 payments to Jewish policyholders were made into bank accounts under state control.
- There is no evidence of post-war payments/compensation.
- Communist take-over resulted in dispossession of private insurers and state monopoly for insurance.

Jewish Population

- Estimated Jewish population in 1934 : 396,000, around 2.6% of the total population.
- Emigration "encouraged". Estimated 26,000 left between March 1939 and November 1942.
- 265,000 perished (67 %)

HUNGARY

Insurance Market

	1937
Population, millions	9.0
Sum insured millions Pengos	669
Mathematical reserve millions Ps	175
Premiums millions Ps	32
Number of policies 000s	809)
Average policy sum insured Ps	827
Average policy mathematical reserve	216
Average policies per capita	0.09)

Historical background

31) The following information was provided at the London Conference on Nazi Gold, Nov. 1997, and Washington Conference on Holocaust Era Assets Dec 1998.

- Hungary was an ally of Germany before and during the war.
- Hungary acquired territory from Czechoslovakia, in 1938 - 1939, from Romania in 1940 and from Yugoslavia in 1941. Transfer of foreign insurance portfolios to Hungarian companies.
- Anti-Jewish legal discrimination introduced from 1938, but confiscation and deportation were enforced later during the war.
- Hungary entered war in June 1941.
- German occupation in March 1944. Blocked accounts and seizures during 1944. Assets from Eastern part of Hungary transferred to Budapest office of Hungarian Savings Bank.
- After war, German and Austrian owned companies were taken over by East-European Insurance Corporation (Hungarian registered but Russian owned). Companies of British, Italian or Hungarian ownership were exempt from take-over and remained operative until merger and liquidation ("cold nationalisation") from 1950 onwards. Take over of all companies' portfolios by State Insurance Company.
- 1946 Jewish Restitution Fund established, obligation to hand over heirless property to survivor organisations. Inventory of proprietorless goods compiled by Centre for Credit Institutes Corporation. The Restitution Fund ended in 1954 assets transferred to State Office of Ecclesiastic Affairs, which gradually sold relinquished properties. All proceeds nationalised. There is no evidence that any insurance policies were compensated.

Jewish Population

- Population within old (Trianon Treaty) boundaries 521,640.(247,000 in Budapest) representing 5.7 % of population
- Population within wider Hungary in 1941 : 825,000
- Losses before German occupation 42,000 to labour battalions, 21,000 to deportation and Bacska massacres (1941-42).
- Total perished estimated at 298,000 i.e. 57.14 % (from Trianon Hungary) and 267,000 (from annexed territories).

POLAND

Insurance Market

	1937
Population, millions	34.0
Sums insured, millions Zlotys	633
Mathematical reserve millions Zl.	141
Premiums in millions Zl.	28
Number of policies 000s	261
Average policy sum insured Zl.	2,425
Average policy mathematical reserve Zl.	540
Average policies per capita	0.0077

One company supplied an estimate of loans granted on its life policies of 22.7million zlotys.

Historical Background

A paper supplied to the Commission by a Polish observer to the ICHEIC provided the following information:

- German invasion August 1939. Anti-Jewish measures imposed almost immediately.
- Poland partitioned with Soviet Union. The latter occupied Eastern Poland. Third Reich absorbed Western Poland under the General Government.
- Most domestic companies self-liquidated. The Third Reich kept the largest in operation as the General Mutual Insurance Company (PZUW). Two Italian companies remained active (Generali and RAS).
- 1947 Polish government liquidated all insurance companies and merged portfolios with PZUW. Compulsory administration of RAS & Generali portfolios given to Post Office Savings Bank. PZUW became PZU. Claims for repayment invited.
- Successive consultations between governments of Poland and Italy from 1950. Poland sought repayment for the liabilities. No agreement was reached.
- In 1963, PZU started making payments on life policies but only to Polish residents
- Polish archives apparently show that PZU, as liquidator, made payments to about 35,000 people. For the Italian companies, payments were made to 1,410 claimants.
- Estimated death toll in Poland during war 5 million, 15% of total population.

Jewish Population

- 3.3 million Jews, approximately 9.7% of population, with a much higher percentage in cities; notably in Warsaw (15 %),
- 2.9 million perished (88%).

SUMMARY STATISTICS ON THE JEWISH POPULATION (2(C))

32) Our base year for the estimates of Jewish population is 1934. This is prior to the Nazis' anti-Jewish measures taking effect. The sources have been the various censuses in each country, with interpretation and additional information from Helen Junz. The censuses, if they recorded ethnicity at all, did so on the basis of religious affiliation. The Nazis applied a wider definition from 1935 onwards – under the Nuremberg laws. It is necessary therefore to add an estimated number to the census data by interpolation.

33) Included are estimates of the numbers in each country who perished.

Country	Total population million	Jewish Population Nuremberg Definition	Jewish pop. as percent of total pop. %	Perished 000s	Per cent of total
Germany	66.0	550,000	0.8	165	30
Austria	6.8	217250	3.2	65.5	30.1
Belgium	8.3	65,000	1.0	28.5	43.9
France	41.3				
incl pre-war immigrants		305,000		76.1	25
excl. pre-war immigrants		250,000	0.6		
Italy	43.0	48,000	0.1	7.6	15,8
Netherlands	8.5	140,000			
a)inc.pre-war immigrants			1.8	104	74.3
b)excl. pre-war immigrants		118,000	1.4		
Bulgaria	6.2	50,000	0.8	11.3	22.7
Czechoslovakia	15.0	396,000	2.6	265	67.0
Hungary	9.0	521,640	5.7	298	57.1
Poland	34.0	3,300,000	9.7	2,900	87.9

34) In estimating the numbers of survivors we have to take account of those who remained in a country (or returned to it) and the flows of migration before and (for the few who escaped) during the war. The main places of refuge were North America, Palestine and other parts of Europe. For the latter, however, many may have been swept up later in the tide of Nazi occupation. Allowance should also be made for demographic trends.

35) In some countries the first people to be deported and to perish were those who had recently arrived. They would be likely to have insurance in their country of origin. Where possible we have tried to take account of this factor in our assessment of country data.

SECTION TWO : JUDGEMENTAL FACTORS

36) This part of the report focuses on the information available on which estimates of the following may be based:
   (a) The average participation in insurance of the Jewish population i.e. the propensity to insure.
   (b) The average market value of insurance policies held by the Jewish population and its relation to market averages.
   (c) That part of the Jewish population in each country that may have owned insurance. This involves distinguishing long term residents from those who came to the country shortly before the war and who were likely to own insurance (if any) issued by companies in their country of origin. It may alternatively be necessary to consider emigrants (e.g. from Germany) who had insurance.
   (d) Distinguish those who perished and those who survived, because each group may have different insurance values attributed to their policies.
   (e) The percentage of policies which have been paid or compensated, so as to derive the policies which remained "unpaid".

(a), (b) and (e) are considered in the following paragraphs. (c) was considered in paragraphs 44 & 45. (d) is considered at Section 3 (paragraphs). The following presents the evidence presented by each party, followed by our proposal.

(a)& (b) Estimating the Propensity to Insure of the Jewish Population

Sources

37) Insurance companies in the normal course of their business did not ask their customers about their ethnic or religious affiliation. Consequently, any statement on the behaviour of the Jewish population towards insurance, whether in terms of number of policies per capita or of average policy value, cannot rely on any statistical information before the Holocaust.

38) During the Holocaust, the Nazis ordered that special censuses of Jewish assets based on the pattern of their own 1938 censuses (conducted in Germany and Austria) – be conducted in a number of other countries (e.g. France, Poland). The accuracy and reliability of such figures, given the extreme circumstances of the time, are open to doubt. It can be argued that it was in the vested interest of the Nazis to over-inflate the figures. Conversely, it was in the vested interest of the Jewish respondents to give as low a figure as possible. However, it should be noted that penalties for inaccurate reporting were significant.

39) The German regulatory authority, the BAV, gave us information based on a synthesis of the answers given by the German operational companies of the five MOU insurance signatories to the January 1999 questionnaire sent to them by the BAV . This report assessed the proportion of "relevant" policies as defined by the BAV to the total surviving files of the period. It also gave information about the proportions which were paid or unpaid and which had been subject to compensation procedures.

40) Although theoretically discrete concepts, in practice it may not be possible to separate the propensity to insure from the average amount insured. Neither party attempted to do so. Nor did they attempt to distinguish different factors for each country.

Assessment by the Jewish organisations

41) The Jewish parties presented an analysis that the Jewish population on average held at least two to three times as much insurance per capita as the market as a whole. This might be calculated by assuming the same participation rate as the population as a whole and setting the average sum insured at two to three times the population average.

42) They presented the following arguments to support the view that the Jewish population had a higher participation rate and higher value policies:

a) Urban populations and the middle classes would have held more insurance for higher than average sums. The Jewish population was predominantly urban and middle class. An above-average proportion were in certain professions and self-employed. In Eastern Europe for example, 4% of the Jewish population were in rural areas, 96% were urban, while half the non-Jewish labour force was in agriculture. In Western Europe, more than half of the active Jewish population was in trade and finance, whereas for non-Jews the figure was about 20%. In Poland, 50% of the lawyers were Jewish and 35% of doctors, although only 10% of the population was Jewish. In Germany 15% of lawyers and 10% of doctors were Jewish, although only 0.8% of the population was Jewish. While most of the working Jewish population was self-employed as compared to 10%-20% of the non-Jewish population. Moshe SICRON quotes somewhat different figures, but the substance remains the same.

b) Data from the Vienna archive of asset declarations (which the Claims Conference had sampled before the results of Helen JUNZ'S work – see below) strongly suggested that the average value of policies being declared was 2 ½ times the overall surrender value of policies Given that the asset declaration required the Jewish population to report surrender values, the multiple on this analysis can be presumed to be even higher.

< 50%

c) The Hungarian presentation to the Washington Conference on Holocaust-Era Assets arrived at a figure of 4 times. Additionally, studies in the Netherlands of the policies surrendered to LIRO had estimated Jewish-owned policies at 4.5 times the average.

d) An analysis of some claims currently with the U.S. regulators reported face values with the following multiples of the average – Austria 4X; Hungary 2.7X; Czechoslovakia 3X. This information was derived from a small sample of policies, but these figures were consistent with the general analysis.

1965

e) The responses to the BAV questionnaire from those companies who had supplied reports to the ICHEIC Statistical Approach Group indicated Jewish-owned polices were from 1.78 to 3.95 higher than the general average.

1.64

2.7x

f) An analysis of the information from Allianz to the Task Force suggested a multiple of 6.07 for Jewish policies over the average in 1933, though if group policies were deducted from the total, the average for all other policies was higher and the differential became 1.81 times higher.

1.7

43) In conclusion, the Jewish parties stated that the limited evidence pointed to higher multiples. They offered an estimate of two to three times for all countries. More

specifically for Germany, three times the average was proposed to encompass both the propensity to insure and the average policy value.

Assessment by the companies

44) The companies offered a participation/holding factor of 1.25 times the average holding for Germany. This was derived from an earlier presentation and publication by Sidney Zabludoff on Jewish assets in general in Europe ("And It All but Disappeared" – WJC). In this he concludes that the wealth (not insurance) owned by the Jewish population was on average 1.25 times that held by the population at large.

Assessment by the German Regulatory Authority, the BAV

45) The BAV synthesis of the reports provided by MOU companies was as follows:
   a) 2.2 million files were found
   b) 44% have been sampled or searched (968,000)
   c) the number of files, according to the definitions set by the German authorities as to the characteristics suggesting they were Holocaust victims ("relevant files"), amounted to 7051. The characteristics sought covered all those likely to be Holocaust victims, not just Jewish policyholders, though they would be the largest group.
   d) The BAV statistical approach indicated that the proportion of Holocaust Era files to the total archive was 0.54% [It should be noted that this figure was not calculated based upon a random statistical sample, but was based in part on a full search and in part as a result of sampling]

46) The BAV further said that
   a) In their view the 0.54% was an upper limit. The "relevant" files were those that might be subject to compensation proceedings after the war. They were therefore more likely to have been preserved beyond the legally required period for preservation after closure [ten years] in contrast to non-"relevant" files where no prospect of compensation existed.
   b) In the ordinary life files (i.e. those that had an insured value above RM 2000) the average sum insured for "relevant" files was found to be twice the average sum insured for ordinary life in the German market. The small sum insured policies (below RM 2000) were at the average of the German market. However, of the contracts which were thought to be still unpaid, the sum insured was lower than the average for the German market. Indeed, the open and unsettled amount of these "relevant" policies was in the range of 10-40% of the sum insured. The main reason for this was that many policies had substantial loans against them or had been exempted from premium payments because the policy holder was in economic distress, notably, as a result of Holocaust-related persecution.

Discussion

47) We gave considerable thought to the significance of this information from the search of relevant files in the archives of the German companies. A detailed discussion of the results in relation to "unpaid" and "uncompensated" categories is in the section (e) below. We are concerned with the implication that the average number of policies per capita held by Jewish policyholders were less than the average for the population as a whole. The Task Force agreed we would have expected the proportion to reflect

the share of Jewish people in the population (0.8%) or higher, given the demographic and social mix. This is true because of the unusually high percentage of urban professionals and self-employed individuals within the Jewish population. Historically, these groups of individuals purchased more insurance

48) The following points were discussed

a) The finding that 0.54% of the files could be associated with Jews (or other Holocaust victims) compares with the proportion of Jewish population to the total German population of 0.8% in 1933. It suggests that the Jewish population held fewer policies per capita than the market as a whole

b) A large number of the 2.2 million files were for small sums insured ("Kleinleben"). The proportions of "relevant" files in this category was very low, thus reducing the overall average to 0.54%. We were told by the Jewish representatives and our own consultants that these policies, which were predominantly burial policies, were not especially attractive to the Jewish population, who would be more likely to make arrangements through their communities. The predominance of small value policies in the 2.2 million files found would tend to reduce the share of Jewish-owned policies in the total.

c) While the search, sampling and statistical methods have been subject to independent audit in at least two companies with the largest collection of files, the Task Force remains unconvinced that the threshold criteria chosen to identify "relevant" files were exhaustive. [the BAV circular 1/99 is included in the collection of evidence that accompanies this report] Many of the identifiers as relevant Holocaust files related to matters that occurred quite late in the period of Nazi persecution. Therefore, Jewish-owned policies taken out early in the period would not be identified as "relevant"

49) The assertion that the 0.54% participation is the upper limit is problematic, as evidenced by the debate within the Task Force. There was a massive conversion, surrender and cancellation of policies, reported by Allianz, for the period 1937-39. There is a high probability that many of the files in the latter two categories, i.e. closed files, would have been destroyed before the first Federal German Government restitution and compensation programmes started in 1952 and consequently such "Holocaust relevant files" would not be part of the 2.2 millions remaining files.

50) There is reasonable doubt as to the significance of the information from these archives. However, they cannot be discounted completely as a source of direct evidence.

The Austrian census

51) A large proportion of responses to the Nazi's 1938 census of Jewish assets have been preserved in the Austrian State archives providing considerable detail as to the average value of Jewish-owned insurance policies 50,200 declarations have survived, 47,000 of which were the subject of an exhaustive study by Helen JUNZ. This study showed that 8,810 reported insurance totalling 14,921 policies. Of these, 14,562 recorded surrender values, as required by the instructions. The policies for which values were reported averaged RM 2,838. Each respondent had on average 1.7 policies (some had many more). The average value per respondent was RM 4,690. The total surrender value of the policies reported was RM 41.32 million.

52) Because the census was confined to those who had net assets of RM 5,000 or more, these figures may not be directly compared with averages for the market as a whole. We know that in 1937-1938 between one-third to two-fifths of the Jewish population in Vienna lived at the edge of subsistence and was financially dependent on the Jewish community. However, the Task Force did not explore to what extent this differed from the population as a whole and by extrapolation, the market as a whole.

53) The average sum insured and mathematical reserve per policy for the market as a whole in1936 was respectively Sch 1,246 and Sch 353. As the census figures were reported in RM, conversion of the average surrender value at the Nazi decreed RM 1 = Sch 1.5 rate gives an average surrender value for the Austrian market of RM 235 in 1938. In other words, the average surrender value of policies from the Vienna archive is twelve times the average surrender value of policies for the market as a whole. Thus even if the insurance assets reported in the census represented the entire insurance holdings of the Jewish population, the per capita holdings of the latter would be a multiple of those of the market as a whole.

54) An alternative calculation, which attempts to separate the propensity to insure from the average value insured yields similar results. There were about 200,000 Jews in the Vienna region according to the Nuremberg definition. If we make the extremely restrictive assumption that none of those not included in the census held life insurance, we have a propensity to insure of 0.08 policies per head (as compared with 0.31 for the census population alone). This is much lower than the population as a whole, which Section 1 shows at 0.216. It is likely that the remainder of the Jewish population held some insurance, though at lower average values than that reported in the census. Assuming that this part of the Jewish population conformed to the national average yields the conclusion that the Jewish population held on average about two to three times as much insurance as did the population as a whole.

Conclusion

55) On the basis of the information available to us, the Task Force , when endeavouring to assess the propensity to insure , could not distinguish clearly between the relative number of policies held by the Jewish population and the relative value of those policies;. The Task Force therefore concluded that, taking all factors into account, the "Jewish insurance propensity" was probably three times the market average.

56) For reference, in the charts produced in Section 3, the factors 1,25 and 2 have been also shown but the Task Force is of the view that it is the factor 3 that is relevant.

57) Assumptions about deductions in respect of loans or unpaid premiums must be considered alongside other evidence of unpaid or uncompensated amounts.

e)Estimating unpaid and uncompensated amounts

58) One of the most uncertain elements in the process is to estimate the amounts that were paid to Jewish policy holders or their heirs either during the term of the insurance contracts, or after the War so as to deduct the totals from the estimated amount of unpaid or uncompensated insurance. This is because there is very little evidence available.

59) In theory we should make deductions for the following :
   a) premature repayment or conversion made voluntarily at the request of the policy holder or by the company following failure to maintain the terms of the contract (principally non-payment of premiums), before the Holocaust
   b) payments on claims made before and during the Holocaust era to the proper beneficiary and without any restrictive condition (flight-tax, blocked-account...) or after the war on policies which had run their normal term or in response to a known insured event
   c) loans taken during the life of the contract, and deducted from the capital due
   d) compensation payments made under post-war programmes, which may have covered not only restitution of confiscated assets but also compensation for the proceeds of policies which were paid by the companies but into blocked accounts to which the policy holder had no (or only very restricted) access.

55) Unfortunately we have very little reliable information. There are however some indicators which can guide the broad assumptions we make.

a) We know that there were restitution and compensation programmes in Germany (under the BrüG and the BEG – see Appendix 1), France, The Netherlands, and to a limited extent, in Austria. But we do not know about the totals that were paid out or the number of cases covered. We know the outline of the post-war period in Eastern Europe during which the Communist authorities took over or liquidated the private insurance companies; the circumstances were such that we think little if anything was paid in restitution or compensation to Jewish individuals .

b) We have little information about loans or premature repayments, except about Germany and (for one company) Eastern Europe. This latter implied that the loans outstanding on all its policies in 1937, as a proportion of insured value was 3.8% for Czechoslovakia, 4.9% for Hungary and 5% for Poland. The proportion for the Jewish population might be higher, but, given that in 1937, they had not the reason they had in Germany to liquidate their assets, it should not be a much larger percentage.

c) The Nazi policies of persecution and deportation were applied in different countries with differing severity. In Poland whole families were wiped out. In others expropriation and persecution were less ruthless and there were survivors to make post-war claims for restitution. The incidence of death and survival can be a guide to the estimates of unpaid and heirless policies.

d) The evidence for the amounts unpaid and uncompensated in the analysis commissioned by the BAV for Germany is reviewed below.

The BAV survey

60) The summary results of the BAV survey in terms of the Jewish propensity to insure were given in paragraph 45 above. The BAV also requested information on all Holocaust relevant files. The files deemed Holocaust relevant were to be found according to special criteria. Information was to be classified into 7 different categories and each category noted whether the file had ever been subject of the BEG or other restitution-compensation program.

The results and the role of the BEG were as follows:

Evidence from the documentary files that the following occurred	per cent of investigated files in this category	The proportion of the files in each category that had been subject to examination be the BEG or other restitution authority	per cent of all files reviewed by BAV
	A	B	A x B
1.contracts under which benefits were paid to beneficiaries and/or terminated before 1945	49.6%	80%	39.68%
2. benefits were paid to beneficiaries after 1945	7.93%	56%	4.44%
3 a) The Third Reich authorities confiscated the proceeds	6.3%	73%	4.6%
3 b)proceeds were paid into blocked accounts (i.e. accounts that could only be accessed with approval of a Third Reich authority)	9.76%	68%	6.64%
4 a combination of cats. 1 & 3 (e.g. partial surrender values or loans under 1 , then balance confiscated or blocked)	3.24%	66%	2.14%
5 contracts not terminated, apparently unpaid	11.3%	19.6%	2.21%
6 some evidence that payment was made, but insufficient to assign to a category	8.15%	72.17%	5.88%
7 impossible to say if paid	3.52%	54.84%	1.93%
	100%		67.52%

The information from the BAV related to the number of policies. There was no separate information regarding amounts insured relating to these identified Holocaust relevant files

According to the BAV when payments had been made to the Reich authorities at the "request" of a policyholder, these would have been included in category 3.

61) Taking all categories together, the evidence suggests that 67.5 % of the files had been reviewed by the BEG. Conversely, about a third of the files (32.5 %) had not

been submitted to the BEG. Looking only at the files that had not been paid (cat.5), plus files on which there was no evidence one way or the other (cat.7) and the files which were confiscated or paid into blocked accounts (cat.3), the proportion of files in these categories was 30.88%. But, after deducting the shares of these categories which had been reviewed by the BEG, the residual is 15.5 %.

A strict approach is that categories 5 and 7 are the only ones which are clearly unpaid; after taking into consideration the number of files treated under BEG, the really "unpaid" portfolio of the German market stands to-day at 4.14 %

62) The Jewish organisations, in their second memorandum of evidence argued that this estimate was too low
   a) Category 1 – paid before 1945 – included many policies terminated before 1933, which would be irrelevant. This would artificially inflate the proportion of paid policies. [This somewhat conflicts with the evidence from the companies that the bulk of policies were surrendered or converted in 1937 & 1938. Unfortunately, we were not able to obtain a split for the numbers of policies paid before 1933 and after]
   b) Category 3 - contracts confiscated or paid into blocked accounts - were considered paid by the BAV and should be considered "unpaid", unless compensated.
   c) It is likely that a significant portion of the contracts that were paid or compensated were done so at less than the original face value [notably because of missed premium payments during the Holocaust] and at a value far less than the real value at time of payment.

63) The Jewish organisations concluded that it was reasonable to estimate that repayments of Jewish life insurance claims in Germany fell between 50-60%. This suggests, conversely, that the amounts remaining unpaid or unreceived should be put at 40-50% in Germany

64) This is the only evidence we have of the insurance history of Jewish-owned policies in Germany.

Task Force's assessment

65) In assessing the percentage of policies which remain unpaid, we follow the Chairman's clarification of his 6 August Decision Memorandum that "it would be wrong for the ICHEIC to reopen any case (including denials and part payments) on which the BEG has taken a decision."

66) Therefore, we would
   a) Begin with those policies which did not receive BEG review which were classified as unpaid or lacked evidence of payment,(categories 5 and 7)
   b) Include the policies in categories 3 a and 3 b which had been expropriated by the Nazis or paid into blocked accounts and not reviewed by the BEG (implicitly accepted as part of the unpaid category by the BAV, but not included in the companies' calculations of unpaid),.
   c) Also include a proportion of the "paid before 1945" policies which might have been surrendered or paid under economic duress, even if not explicitly expropriated.(category 1)

d) We also think that policies which were not considered by the BEG might have been owned by Holocaust victims who died without heirs, or whose heirs were not aware of the policies or compensation schemes, or for survivors who did not live to see the BEG scheme in operation. (all categories)

67) In deciding what the total should be, we believe that the true figure would be between the companies figure of 15.5 % and the Jewish organisations' estimate of 40-50 %. However, very serious consideration has to be given to the 32.5 % implied by the total number of cases that were not considered by the BEG.

68) We should also take account of the BAV statement that the residual value of unpaid policies would be somewhat less than the full insured value because of loans and unpaid premiums. The weight given to this depends on the view about how far such losses were a result of discriminatory actions by the Nazis

.

69) We assume therefore that the value of unpaid policies in Germany lies within the range 15.5 % and 32.5 % of the value attributed to Jewish-owned insurance assets. ✓

Estimating Unpaid Policies in Other Countries

70) So little is known about the pattern of repayments and compensation in countries other than Germany that we have to make broad assumptions based on what little information we have. We distinguish between Western Europe and Eastern Europe.

Among other factors (referred to at the beginning of Part Two) we have been guided by
a) the impact of the Holocaust on the total Jewish population in each country
b) evidence from the claims already received by some regulators and the ICHEIC London office.

71) On (b) we have information on the files being handled at present by ICHEIC London (the "fast track" claims) and the New York Holocaust Claims Processing Office (HCPO). The percentage of files by country originating the policy are shown in the following table

	ICHEIC % of all files (953)	HCPO %of all files (2,384)
Germany	14%	27%
Czechoslovakia	32%	24%
Poland	14%	16%
Hungary	22%	9%
Other Eastern Europe	5%	3.5%
Austria	7%	16%
Belgium	0%	0.4%
France	0.6%	0.3%
Italy	3%	0.3%
Netherlands	0.1%	0.8%
Other Countries	0.4 %(Greece, Switzerland)	1.5 %(Greece, Switzerland, UK)

72) Any assumptions we can make about unpaid policies have to be in the form of assessment against a relative scale, comparing one country with another. This is in the form of **low** (10-20 %), **medium** (30 %), **high** (50-70 %), **very high** (80 %). This does not mean that we have to give the same value to all in the same category, but may be a helpful method of ranking.

Western Europe

Austria

73) A compensation scheme was launched in 1958, open for one year with payments limited to 40% of contracts. The conclusion that the percentage of unpaid-uncompensated policies must be relatively high is reasonable. The companies are said to have processed 456 contracts under this scheme. There were 1.5 million policies in force in 1936 and the Jewish population was 3.2 % of the total population. A pro rata share would have been 48,000 policies. We know from the evidence of the Vienna archive that 14,900 Jewish-owned policies were declared in the 1938 census. We do not have information about the number of policies paid or surrendered 1936-58. But the number compensated seems very low. Furthermore, the death rate among the Austrian Jewish population (30% perished) and the severity of the economic persecution suggest that the allowance for unpaid policies should be at the upper end of the scale for Western Europe **(very high 50-80%)**

Belgium

74) In Belgium the Nazis blocked accounts and confiscated the assets of all former nationals of the lands absorbed into the Reich. There was aryanisation of property and enterprise and limitations on the use of proceeds. The proportion of the Jewish population in Belgium that perished (30%) is relatively high, but includes a number (unknown) of refugees from other countries. For Belgium we assume the per cent of unpaid policies is **low 10-20%**

France.

75) There was no confiscation of Jewish-owned insurance policies but payments above 10,000 Francs had to be made into blocked accounts from Sept 1941 until mid-1944. At present there is little evidence of a substantial proportion of unpaid policies after the war. The work of the Matteoli Commission is in progress but information about insurance is not available yet. The number of Jewish long-term French residents who perished, (about 25,000) as a percent of the total resident Jewish population was about 10-20%. The presumption may be that proportion of unpaid policies will be at the lower end of the scale **(low – 10-20%)**

Italy

76) In Italy where the number perished is low and persecution came late in the war, we assume a low percentage for unpaid policies **(low – 10-20%)**

Belgium, France, Italy versus other countries

77) Given the fact that the majority of the Jewish population of Belgium, France and Italy stayed in their respective home countries after the war, it can be stated they had all had means to request payment of their policies after the war at normal maturity date as any other local insured ; in cases where the maturity date occurred during the war and the insured asked for immediate payment although he knew it would be paid in certain cases into a blocked account (which case seems to be an odd one), the bank account was freed immediately at Liberation and the proceeds of the policy attributed to the proper beneficiary.

78) Consequently, the « unpaid » factor (%age of the policies which were never claimed by the heirs) should apply only to the « perished » part of the Jewish community and not to the one which survived and stayed in the country, by sharp contrast with the Jewish communities in Germany and in Eastern Europe which perished in great

proportion and which after the war decided in most cases to leave its home land to go to Palestine or the USA, etc.

79) The survivors in these countries waited, in very difficult conditions, in camps for Displaced Persons for a number of years, never living again in their pre-war local environment where they could have resumed normal life and, for insurance, where they could have asked for fulfilment of their pre-war insurance policy ; for these cases it is fair to state they could hardly recover their Life insurance policy and the survivors should be paid the average surrender value.

Netherlands

80) There was a large-scale expropriation and few Jews survived the persecution. Insurance policies first deposited with the LIRO Bank were forcibly appropriated later. After the war, a compensation and re-instatement procedure was enacted. Any conclusion on The Netherlands has to take account of the Scholten Commission's Report due on 15 December. In the meantime the Association of Insurers has come to an agreement with the Jewish community. The presumption is that the proportion of unpaid policies is low **(low 10-20%)**

Eastern Europe

81) The nationalisation or liquidation of private insurance companies by the communist authorities after the war did not mean that claims were settled promptly or that compensation was paid. The main facts are covered in the country sections in Part 1. The following facts are relevant:

Czechoslovakia

82) The Jewish population was required to register assets, including insurance, and after 1940, payments were made into blocked accounts. There is no evidence that any compensation was paid to Jewish-owned policies that were confiscated or unpaid. In view of the proportion of the Jewish population that perished (67%) we put the proportion of unpaid policies in the **very high (50-80%)** category.

Hungary

83) There were blocked accounts and seizures from the date of the German occupation in 1944. After the war, the process of nationalisation and restitution seems to have been complicated and slow. Although the Jewish Restitution Fund was established in 1946 with a remit to handle the heirless property of Holocaust victims, it concluded in 1954 and the state acted as heir. There is no evidence that any individuals received the proceeds of insurance policies. The proportion of the Jewish population that perished (57%) and further communist take-over suggest that the proportion of unpaid policies should also be in the **very high (50-80%)** category

Poland

84) The PZU started in 1963 to make payments on insurance policies to Polish residents. Of the 35,000 people paid, 1410 had held policies with Generali and RAS. We have not been able to determine whether any of these payments were to Jewish policyholders but it seems very likely that the bulk of the Jewish-owned policies in Poland remained unpaid and without heirs. Since nearly 88% of the population perished, the assumption is that unpaid and heirless policies are in **very high (50-80%)**

STAGE THREE : Application of the Formulae

The Proposals from the Companies & the Jewish Representatives

We received proposals from the companies and the Jewish representatives as to how the provision for heirless claims in Germany should be calculated. Each party adopted a similar "building blocks" approach to the issue. It is therefore possible to make a tabular comparison.

Germany: Proposals from Companies and Jewish Representatives compared

	Companies' Proposal	Jewish Representatives' Proposal
1.Total market size for life insurance in Germany 1933 sums insured	RM 19523 million	RM 19.523 million
2. Deduct group insurance	RM 2.5 million[1]	
3. Net market size	RM 16.523 million	
4."Participation rate" for Jewish life insurance (the estimated number of life insurance policies held by Jews as a % of all life insurance policies)	0.54%	1.1%[4]
5. Average Jewish insurance policy (expressed as multiplier of market average size policy)	1.25 X[5]	3 X[5]
6. Total size of insurance assets held by Jews in Germany in 1933 (= (1 – 2) X 4 X 5)	RM 111.5 million	RM 644.3 million
7. Estimated proportion unpaid	8.96% - 10.5%[6]	40% - 50%[7]
8. Maximum total amount unpaid (6 X 7)	RM 10 - 11.7 million	RM 258 - 322.2 million

[1] The companies' presentation comes to 16,523 million but the direct calculation of 19,523 – 2,500 gives 17,023 and not 16,523 million

[4] The companies took the participation rate from the estimated percentage of "relevant files" found in the exercise for searching Holocaust era files initiated by the BEG. The 0.54% relates to German companies belonging to the MOU group companies. The participation rate proposed by the Jewish representatives is based on their estimate of the Jewish population compared with the total population. The figure given for the Jewish population appears to be for Greater Germany after 1938, not that for the Germany of 1933 (550,000), which constituted 0.8% of the population.

[5]

[5] The companies took their estimate of the average insurance for Jews from an earlier Claims Conference paper on Jewish assets (based on an assessment of Jewish –owned wealth) produced for the WJC by Sidney Zabludoff. (The current estimate supplied by the Jewish representatives is explained in Section Two of this Report).

[6] The companies take their estimates of unpaid policies from the responses to the BAV circular. This is discussed more fully in Section Two of this Report. The lower figure is the proportion of category 5 (contracts not terminated) which had not been processed through the BEG (11.2% x 20% = 8.96%). The upper figure includes category 7 (unclear whether paid or not): 14.7 % x 71.6% = 10.5%).

[7] The Jewish representatives' estimate of unpaid policies was provided after the revaluation to current day prices. Their reasons for offering a higher figure is explained in Section Two of this report.

The Task Force Formula For Germany

85) We have adopted the same building blocks approach, but offer a slightly different range of options. We have not offered multipliers to bring the total up to the present day values. Our reasons for taking the position we have on the different variables are given in full in Part Two. But they are summarised here.

86) For Section 3, the Task Force debated an issue which had been raised by the companies and was not discussed in detail . Were we to make a distinction between those victims who perished and those who survived in estimating the amounts due ? The arguments for making such a distinction are the following :

a) it is a difference which is fundamental to insurance activity at any time : if the person insured is dead, the beneficiary is entitled to the full sum insured but if the person insured is still alive at a date which is not the maturity date of the policy, then the insurer has to pay the « surrender value ». The same technical approach should apply to the present situation: sum insured for the heirs of all those who perished during the Holocaust and surrender value (based on the mathematical reserve of the companies) for all the survivors (or the heirs of the survivors) since the exposure is calculated as at the end of the Holocaust and not at the average maturity of the policies after the Holocaust (which would be very difficult to assess).
b) Given the fact that in all countries, but more specifically Germany between 1933 and 1938, a number of those persecuted succeeded in leaving Europe for safer countries before the war started in 1939 and also that some of those took loans out against the cash-value of their policies, it would be inappropriate to use a single formula based on the full sum insured amount to calculate a company's liability . The calculations in Section 2 do not take into account such a factor and consequently it has to be accounted for at this Stage 3 level.
c) Within ICHEIC itself, the « Valuation Group » has already set such a distinction when it discussed and eventually agreed on the basic amounts to be considered for valuing the policies of the perished versus the survivors.
d) It would therefore seem inappropriate to allocate the full sum insured for the whole Jewish population, making no distinction between those who perished and those who did not. This is reflected in **Option A** (see below)

87) The arguments for not making a distinction between perished and survivors are that this creates an unreal distinction.

a) The Jewish population in Germany from 1933 on and in the other countries at a later date suffered from economic or direct discrimination and persecution. Loans or an inability to pay premiums forcibly reduced the value of their insurance policies.. Therefore, no reduction in value should be made.
b) Many survivors would have come out of the concentration camps, only to suffer in the camps for Displaced Persons. The lives of many others would have been shortened by their experiences.
c) Since we are dealing only with unclaimed policies, it can be assumed that these mainly relate to those who died or were unable to claim after the war.

This is reflected in **Option B** (see below)

Task Force Formula for Germany

Step	Summary reasons	Value
1-3 total market size	We have taken the market size excluding group insurance, because any unpaid claims would be against the employer, not the insurer. It results in a lower number of total policies, but a larger average policy value. In the context of the German Foundation Initiative however, which includes companies not just insurers, the figure for group insurance might be added.	RM 16,770 million
4. Participation rate	For reasons given in Section Two we use the Jewish population share as the market participation rate for the per capita number of policies.	0.8%
5. Average Jewish insurance policy	We think the weight of the argument points to a higher average policy value of 3X, but we show three alternatives	1.25X,2 X,3X
6. Total size of insurance assets held in Germany by Jewish population		RM 173-416 million
7. Estimated proportion unpaid	We showed in Part Two why we think the proportion unpaid is at least 15.5 % including the amounts paid into blocked accounts which were not reviewed by the BEG . And we think there are reasons for going higher, up to the maximum of all files not reviewed by the BEG i.e., 32.5 %	15.5% – 32.5%
8 Option A Distinguish between perished and survivors in amount paid	Those perished receive full sum insured according to the formula : average number of policy per person in Germany (0.27) x average sum insured (RM 933) x Jewish insurance propensity (1.25 or 2 or 3) x perished (165,000) x % unpaid (15.5% or 32.5%) Those surviving receive surrender value according to the formula : average number of policy per person in Germany (0.27) x average mathematical reserve (RM 178) x Jewish insurance propensity (1.25 or 2 or 3) x survivors (385,000) x %age unpaid (15.5% or 32.5%)	
9 Option B Total amount unpaid	The full insured value for all whether perished or surviving.	

The result is the following :
Option A

Insurance Propensity	% age unpaid	Perished (165.000 x 933)	Survivors (385.000 x 178)	Total Amount millions RM
1,25	15.5	8,05	3.58	11,63
2	15.5	12,89	5.74	18,73
3	15.5	19,33	8.60	27,93
1,25	32.5	16,89	7.52	24,41
2	32.5	27,02	12.03	39,05
3	32.5	40,53	18.04	58,57

Option B

Insurance Propensity	% age unpaid	Total Amount (550.000 x 933)
1,25	15,5	26,84
2	15,5	42,95
3	15,5	64,43
1,25	32,5	56,29
2	32,5	90,06
3	32,5	135,09

88) The result of applying these formulae is to present a range of estimated unpaid amounts for the total German market from RM 11.6 million to RM 135 million at 1933-1938 values. This can be compared to :

i) the Jewish parties' estimate of RM 258 to RM 322.2 millions

ii) the companies' estimate of RM 10 to RM 11.7 millions

89) No need to say that a critical factor is the way these numbers will be "re-valuated" in order to give their present 1999 value :

a) the ICHEIC (and apparently the companies) valuation principle for "validated individual claims" transforms 1 RM of 1938 into 1.2 DM of 1999 after BEG and Government Long Term Bonds and taking into account the passage from RM to DM in 1948 (10 RM = 1 DM) ; this would give for the whole German market a total amount of between 14 million DM (corresponding to the lower estimate of RM 11.7 million) and DM 162 million (upper estimate of RM 135 million)
b) the Jewish organisations calculation with a multiplier of 27.7 would put the similar parameters at DM 324 and DM 3,742 million.

Task Force Proposed Formula for Other Countries

We have followed a similar approach in estimating the appropriate formula to be applied to countries other than Germany. But here, because the uncertainties are even greater, the range of appropriate conclusions is very wide.

In particular

- We lack specific information about insurance in some of the countries
- Demographic and wealth data for the Jewish population is available in respect of some countries, particularly those which have a closer social and economic structure to Germany, but it may be less applicable to Eastern European countries, for which there is less material.
- Little information is available on the proportions of policies unpaid or uncompensated. We have to make assumptions based on what happened to the Jewish population in each country.

In view of these uncertainties we have adopted the following approach

- For each country we have examined three scenarios corresponding to the assumed propensity for Jewish policy holders to have 1.25 times, twice and three times the average policy.
- As with Germany, show Option A – where the policies of those who perished would be paid at full sum insured, and the policies of those who survived would be paid the surrender value. And Option B, where the full sum insured would be paid on all policies, whether belonging to those who perished or survivors.
- For each option show a low estimate of policies unpaid and uncompensated and an upper estimate

The resulting values, expressed in local currencies of 1938, are shown in the attached tables.

other countries" High Scenario (Jewish insurance propensity 3 times market average)
Amended figures 13 Dec

	Austria	**Belgium**	**France**	**Italy**	**Netherlands**	**Czechoslovakia**	**Hungary**	**Poland**
Currency	Schilling	BFrs	Old francs	Lira	Guilders			
Average No of policies per person	0.216	0.276	0.076	0.064	0.146	0.074	0.090	0.008
Average sum insured per Jewish policy	3738	15750	62232	28065	5151	36210	2481	7275
Average surrender value per Jewish policy	1059	4092	16953	7017	2853	12528	648	1620
Total Jewish population	217000	65000	250000	48000	118,000	396000	521640	3300000
Local Jews perished	65500	28500	25113	7600	104,000	265000	298000	2900000
Lower limit of "unpaid" policies	50%	10%	10%	10%	10%	50%	50%	50%
Upper limit of "unpaid" policies	80%	20%	20%	20%	20%	80%	80%	80%
Option A (in millions local curr.)								
sum insured for perished, surrender value for survivors								
total sum insured for those perished	53.00	123.74	118.63	13.74	77.96	711.36	66.46	161.95
total surrender value for survivors	34.73	0.00	0.00	0.00	5.81	121.67	13.03	4.97
Total value of all Jewish policies	87.73	123.74	118.63	13.74	83.77	833.02	79.48	166.93
Option A Lower estimate	**43.87**	**12.37**	**11.86**	**1.37**	**8.38**	**416.51**	**39.74**	**83.46**
Option A Upper estimate	**70.18**	**24.75**	**23.73**	**2.75**	**16.75**	**666.42**	**63.59**	**133.54**
Option B (in millions local curr.)								
full insured value for all Jewish policy holders (except Belg, Fr, It)								
Total value of all Jewish policies	175.59	123.74	118.63	13.74	88.46	1063.01	116.33	184.29
Option B Lower estimate	**87.79**	**12.37**	**11.86**	**1.37**	**8.85**	**531.50**	**58.17**	**92.15**
Option B Upper estimate	**140.47**	**24.75**	**23.73**	**2.75**	**17.69**	**850.41**	**93.07**	**147.43**

"other countries" Medium Scenario (Jewish insurance propensity 2 times market average)
amended figures 13 Dec

	Austria	**Belgium**	**France**	**Italy**	**Netherlands**	**Czechoslovakia**	**Hungary**	**Poland**
Currency	Schilling	BFrs	Old francs	Lira	Guilders			
Average No of policies per person	0.216	0.276	0.076	0.064	0.146	0.074	0.090	0.008
Average sum insured per Jewish policy	2492	10500	41488	18710	3434	24140	1654	4850
Average surrender value per Jewish policy	706	4092	16953	7017	1902	8352	432	1080
Total Jewish population	217000	65000	250000	48000	1[illegible]8,000	396000	521640	3300000
Local Jews perished	65500	28500	25113	7600	104,000	265000	298000	2900000
Lower limit of "unpaid" policies	50%	10%	10%	10%	10%	50%	50%	50%
Upper limit of "unpaid" policies	80%	20%	20%	20%	20%	80%	80%	80%
Option A (in millions local curr.)								
sum insured for perished, surrender value for survivors								
total sum insured for those perished	35.33	82.49	79.09	9.16	51.97	474.24	44.31	107.97
total surrender value for survivors	23.15	0.00	0.00	0.00	3.88	81.11	8.68	3.32
Total value of all Jewish policies	58.49	82.49	79.09	9.16	55.85	555.35	52.99	111.29
Option A Lower estimate	**29.24**	**8.25**	**7.91**	**0.92**	**5.58**	**277.67**	**26.49**	**55.64**
Option A Upper estimate	**46.79**	**16.50**	**15.82**	**1.83**	**11.17**	**444.28**	**42.39**	**89.03**
Option B (in millions local curr.)								
full insured value for all Jewish policy holders (except Belg, Fr, It)								
Total value of all Jewish policies	117.06	82.49	79.09	9.16	58.97	708.67	77.56	122.86
Option B Lower estimate	**58.53**	**8.25**	**7.91**	**0.92**	**5.90**	**354.34**	**38.78**	**61.43**
Option B Upper estimate	**93.65**	**16.50**	**15.82**	**1.83**	**11.79**	**566.94**	**62.04**	**98.29**

"other countries" Low Scenario (Jewish insurance propensity 1,25 times market average)
Amended figures 13 Dec

	Austria	**Belgium**	**France**	**Italy**	**Netherlands**	**Czechoslovakia**	**Hungary**	**Poland**
Currency	Schilling	BFrs	Old francs	Lira	Guilders			
Average No of policies per person	0.216	0.276	0.076	0.064	0.146	0.074	0.090	0.008
Average sum insured per Jewish policy	1557.5	6562.5	25930	11694	2146.25	15087.5	1033.75	3031.25
Average surrender value per Jewish policy	441.25	1705	7063.75	2924	1188.75	5220	270	675
Total Jewish population	217000	65000	250000	48000	118,000	396000	521640	3300000
Local Jews perished	65500	28500	25113	7600	104,000	265000	298000	2900000
Lower limit of "unpaid" policies	50%	10%	10%	10%	10%	50%	50%	50%
Upper limit of "unpaid" policies	80%	20%	20%	20%	20%	80%	80%	80%
Option A (in millions local curr.)								
sum insured for perished, surrender value for survivors								
total sum insured for those perished	22.08	51.56	49.43	5.72	32.48	296.40	27.69	67.48
total surrender value for survivors	14.47	0.00	0.00	0.00	2.42	50.69	5.43	2.07
Total value of all Jewish policies	36.55	51.56	49.43	5.72	34.91	347.09	33.12	69.55
Option A Lower estimate	**18.28**	**5.16**	**4.94**	**0.57**	**3.49**	**173.55**	**16.56**	**34.78**
Option A Upper estimate	**29.24**	**10.31**	**9.89**	**1.14**	**6.98**	**277.67**	**26.49**	**55.64**
Option B (in millions local curr.)								
full insured value for all Jewish policy holders (except Belg. Fr. It)								
Total value of all Jewish policies	73.16	51.56	49.43	5.72	36.86	442.92	48.47	76.79
Option B Lower estimate	**36.58**	**5.16**	**4.94**	**0.57**	**3.69**	**221.46**	**24.24**	**38.39**
Option B Upper estimate	**58.53**	**10.31**	**9.89**	**1.14**	**7.37**	**354.34**	**38.78**	**61.43**

Appendix 1

Appendix on Luxembourg Treaty and Treaty with Jewish Successor Organisations

The companies referred the Task Force to two treaties or agreements

1. That concluded between the Federal German Government and the State of Israel in 1952 (the Luxembourg Treaty)
2. The agreement of 1956 between the German Government and the Jewish representative organisations, after which the German Government established the restitution organisation (the Bundesrueckerstattungsgesetz or BrüG).

The companies argued that both these treaties dealt with the question of restitution and compensation for expropriated assets of Jews, including insurance, and including assets to which there were no heirs. Furthermore, the treaties specifically indemnified the German Government against any further liability arising from future claims. In the companies' view these treaties meant that the companies could have no obligation to pay any more in respect of claims from individuals or those acting for heirless claims.

In article 1b of the Luxembourg Treaty it was stated that 450 million DM were to be paid to the State of Israel for the benefit of the Conference on Jewish Material Claims Against Germany. The Claims Conference had the status of legal heir of Jewish assets to which no individual claimants could be found.
The reasoning for the payment was set out in Protocol no.2 of the Treaty. This (reproduced in the Annex) referred to the confiscations of Jewish property and the fact that much of the losses cannot be made good because there are no heirs.

The companies also referred to the 1956 agreement with the Jewish organisations which *inter alia* referred to the restitution claims to which the successor organisations are entitled and which was to be covered by the Law on Restitution then before the Bundestag. Under para.11. of the BrueG life insurance policies are included among "ascertainable assets". The seizure and confiscation of life insurance policies were considered harmful acts within the meaning of para.12 of the Law. The Law also covered the confiscation of bank accounts as a deprivation of specific assets.

Under paragraph 8 of the 1956 agreement the Jewish organisations undertook to release the Federal Government of Germany from all claims raised by third parties in association with these claims.

The Task Force had the benefit of a presentation from Saul Kagan of the Claims Conference. His views are given below.

- The background to the Luxembourg Treaty was a speech by the German Chancellor Adenauer in 1951 in which he invited the representatives of World Jewry and the State of Israel to discuss the resolution of issues relating to the exploitation of Jews during the Third Reich. The Jewish organisations formed the Conference of Jewish Material Claims Against Germany to negotiate on their behalf. The first result was the Luxembourg Treaty of 1952 between the German Government and the State of Israel. Under it the German Government undertook to enact compensation legislation. Protocol no.2 to the Treaty committed the German Government to allocate 450 DM to the benefit of the Claims Conference. This was to be disbursed over 10-12 years, *pari passu* with the transfers to the Government of Israel (which were in the form of the delivery of goods and services rather than cash), and would come from the government of Israel as a charge on the earnings of assets created by the transfers.

- The purpose of the transfers to the Claims Conference was to help the resettlement of refugees from Germany and other occupied territories in Israel and elsewhere. It was a form of recompense for the wrongs done to the Jewish people by helping the survivors by means of relief, rehabilitation and resettlement. There was no settlement of property claims and no reference to a claims process.

- In 1956 there was a further agreement concluded between the German Government and the Jewish representative organisations aimed at restitution for asset seizures. The first property restitutions had started under the Allied occupation of Germany. The Americans, stimulated by the belief that no-one in Germany should inherit unclaimed estates, decided that, in their zone and sector, heirless and unclaimed estates should be inherited by a Jewish "successor" organisation, representing a class of claimants and the assets used for the benefit of that class. Thus began the Jewish Restitution Successor Organisation (JRSO). The other allies were slow to adopt this arrangement but the British created the Jewish Trust Organisation (JTC), and the French created a French branch office of the JTC. These successor organisation began to file claims on the Jewish property, in order to make sure that no deadlines were missed. When bona fide individual claimants came forward of course the successor organisations ceded to them. Most claims were for real estate, but there was provision to claim on the loss of moveable property.

- The Federal Restitution Law (the Bundesrueckerstattungsgesetz or BrueG), which was enacted in 1956, came after the BEG (Bundesentsschaeingungsgesetz – the Federal Compensation Law). The difference, and the reason for the BrueG, was that BEG was for individual claims only, successor organisations could not claim under it. The provisions setting up the BrüG allocated 1.5billion DM for restitution. Of this, it was agreed that the successor organisations could have up to 10%, on account of unclaimed and unidentified assets.

- Insurance was however a minor part of the BrüG, which covered a vast range of moveable property (jewellery, furniture, art and securities. Furthermore, the terms of settlement for insurance policies under BEG were more generous towards individual claims than BrüG. It was therefore most likely that the bulk of individual claims would go to the BEG (not least because it started earlier).

- Saul Kagan argued that the settlement with the Jewish organisations under the BrüG was an interim settlement only, which he saw as liable to be reopened when circumstances (and the strength of the German economy) were propitious. He did not speak about the clauses in the agreement referring to the indemnity on the German Government. But he agreed that the German Government had not hitherto been prepared to re-open the BrüG. Even at Reunification, when claims on the BEG were reopened for claimants from East Germany, they had only agreed a small hardship fund which the Claims Conference had been made to administer. And he pointed out that the insurance companies had not been party to these agreements. In the view of the Jewish representative organisations, there was a gap which ICHEIC should fill.

Later discussion in the Task Force led to the preliminary conclusion that the report should explain the points of difference over the interpretation of the treaties. But the Task Force did not reach a consensus on the effect of the treaties. In any case the task in hand requires the Task Force to reach a view on the extent of unpaid policies, irrespective of whether there have been block payments by the Federal German Government in the past to cover heirless property.

Appendix 2

Bulgaria, Greece., Roumania and Yugoslavia
Insurance market and Populations

	Greece	**Bulgaria**	**Roumania**	**Yugoslavia**
Local currency	drachma	lev	lei	dinar
Year		1938	1937	1937
Population millions	7.3	6.2	19	14.5
Jewish population	72,000	50,000	833,00[8]	82,200[9]
estimated numbers who perished	54,700[10]	3,000	211,200	60,000
total sums insured	600 million[3]	6,151 million	10,810 million	3,299 million
Mathematical reserve		1,658 mn.[1]	2,578 mn.	
Premiums	30 mn.[3]	272 mn.	567 mn.	157
number of policies 000s		232		137[2]
average policy sum insured		26,559		24,080
average policy mathematical reserve		7,502		
average policies per capita		0.037		.0094

Source for insurance statistics Assekuranz Jahrbuchs unless otherwise stated

[8] 1930 census 757,000 + 10% for non-confessional Jews
[9] 1941 estimate 72,200, Nuremberg laws 82,200.
[10] excluding estimated 4200 in territories annexed by Bulgaria
[3] Estimate provided by Sidney Zabludoff (date estimate provided?)
[1] domestic companies only

[2] Source Federal reserve Board report 1944, relevant to 1937. Estimated that Generali and RAS had 25% of market. Average value of policies with RAS Dinars 51,000, number of policies 7,752; policies with Generali 10,633, average value D. 39,000.

Appendix 3

Shares of MOU Companies in European Life Insurance Market 1936-38

The figures below are estimates by the companies, based on published material of that period, of the shares in the Life insurance market in different European countries held by insurance companies that are now members of the Groups that have signed the ICHEIC Memorandum Of Understanding.

They are estimates only and have not yet been audited by the ICHEIC auditors.

The shares are expressed as a per cent of premium income, except in The Netherlands (sum insured). The Czechoslovakia figures do not include Sudetenland portfolios transferred to German companies (without Jewish policies).

Country	Year	MOU market shares
Austria	1936	10%
Belgium	1938	42%
Bulgaria*	1937	5%
Czechoslovakia*	1937	15%
France	1938	61%
Germany	1938	39%
Hungary*	1938	16%
Italy	1938	23%
Netherlands	1938	3%
Poland*	1937	24%
Roumania*	1938	9%
Yugoslavia*	1937	29%

* Nationalised compnies ("state owned) not included in MOU company shares, except branch offices

Mr. KADDEN. Thank you very much—not only answers the current question, but answers the previous question, which I am glad to do. It is ironic that perhaps I am the one that can answer these questions, not the ICHEIC.

I said before that this has always needed to be a names-driven process, not a claims-driven process. We have so many decades that have gone by in the intervening years between the Holocaust, the rebuilding of people's lives, and the way this has come back into the light. And based on that alone, you have to, you simply have to have the process driven by names, because the vast majority of people who had any direct knowledge as children of their parents' policies, of the actual victims of the Holocaust who were adults at that time, are dead.

Families and child survivors, those who survived the Holocaust as children, like Mr. Arbeiter, must have that list in order to have even a glimmer of sense that there is an actual insurance policy to make a claim for. When you jury-rig the system from the beginning to force people on their own motivation and anger and frustration and just on a whim to file a claim in the hopes that something turns up, you are going to suppress claims. When you publish an extensive list, a comprehensive list, you are inviting people to participate in the process whether it comes to fruition for them or not.

And the question of what are comprehensive lists, it is a very hard thing and I think we got at that during the earlier discussion. But I look to the model of the German list and want to see that replicated. And I think your chart here on the side said as much as I could about the gaps. We have only begun to turn over the stones. Chairman Eagleburger promised there will be no stones left unturned. Well, I know of many, many stones that still have to be overturned, especially archives in Poland currently which may have significant numbers of Generali and RAS policy information that have not been tapped. We need the time, we need the extension of the deadline, and we need people simply to get that information so that they can make a choice whether to join the claims process or file litigation or whatever other options they may have ahead of them.

Mr. WAXMAN. I appreciate that. I have a lot of questions for the two of you, particularly, and I think I am probably going to submit them to you and get answers in writing because I want to ask your analysis of certain things in the ICHEIC process. But let me just ask this one question of you, Mr. Bazyler. In your testimony, you talked about ICHEIC's standards. How do we know whether relaxed standards are applied by ICHEIC and whether they have been applied consistently, and what would need to be publicly disclosed to make such a determination? This is the strongest argument for ICHEIC, they have this streamlined process with standards that are relaxed.

Mr. BAZYLER. Absolutely. And the evidence that I see of the claimants that I speak to is that the process is not being applied. That you have rules being made by either the chairman or through meetings or through consensus and then going through the process. They are not applied. I think the examples of the memorandum decisions saying that, if a claimant comes forward with the policy, then it is the insurance company that has to come up with proof

that, in fact, the policy, you know, is not in existence during the Holocaust era. We can see two cases that I provided. It hasn't occurred. The last case that I mentioned from Washington, you have a situation where a claim was submitted to the Generali trust fund and the person is waiting for a decision to come out. And I just don't see a consistency. I don't see one set of process, one set of rules, and one consistent application of rules. I think more transparency is critical. Publication of the decisions, getting statistics as to how many claims have been accepted from each country, from each company over 3 months, 6 months, 9 months, is really critical to understanding it. And then, what is going on through the appeals process, through each of the three appeals bodies.

Mr. WAXMAN. Well, I think those are excellent points. One of the biggest problems identified is oversight and accountability. Who or what should be overseeing ICHEIC? I know that NAIC, Congress and the State Department have limited roles. Do you think that more should be done in that area? It may be too late because they are so far along. And rather than respond to that, give it some thought and give me a response for the record.

And I am going to ask Mr. Arbeiter one last question now and then we are going to ask you questions later through writing. I understand Mr. Eagleburger is deciding how funds contributed for humanitarian programs should be spent. What are the priorities of survivors' organizations that you have worked with? And do you think that survivors need to be part of the decisionmaking process to ensure that social services are going to those most in need?

Mr. ARBEITER. Yes. We would—the survivor organizations and the survivors by and large would rather see the funds go to the emergency process, which is being carried out in conjunction with the Jewish Family and Children Service and the advisory committee consisting of Holocaust survivors; thereby, the money is distributed for the very needy Holocaust survivors. We supply them with help, with medication, help with food. And, Mr. Waxman, you would be surprised that in these days today in the United States of America how many elderly Holocaust survivors are in a position where they cannot afford to pay for their medication and they cannot buy the food, the necessary food that they come to us for help and we are doing the best possible to help them. And the same thing goes for clothing for the winter, helping with paying for the rent, and warm clothing and oil and so forth. In other words, the necessities of life.

Mr. WAXMAN. So if some money then is going to be dispensed for humanitarian efforts, you think that some of the survivor organizations ought to be part of the decisionmaking?

Mr. ARBEITER. Yes. Absolutely.

Mr. WAXMAN. Time is running out for these survivors, and so many of them are still in great need.

Mr. ARBEITER. I'm sorry, Mr. Waxman?

Mr. WAXMAN. So many of the survivors that are still alive need a lot?

Mr. ARBEITER. Yes.

Mr. WAXMAN. And they need the attention paid to their concerns.

Mr. ARBEITER. We are talking about the elderly survivors. Of course, today everybody—the average age today of a Holocaust sur-

vivor is 80 years. I am among the youngest group. I am 78. I am among the youngest. I am called a kid among my elderly friends because we are survivors, but in the 80's and even in the 90's. And some of them live just on the Social Security or on the fixed income. And——

Mr. WAXMAN. I want to tell you that I appreciate that you are here and you are speaking for others who have had the experience you have and others have had worse experiences, and I think that all three of you have given us excellent testimony. It will be important for the record. There may not be a lot of Members here at this moment, but we will make a record of this hearing. And your testimony orally will be in writing, and then the responses to the further questions we ask will also be part of that record and it will be very helpful for us. Thank you very much for your testimony.

Mr. SHAYS. I thank the gentleman. And, Mr. Waxman, thank you again for being such a motivator for this hearing.

I think you had such nice and thoughtful statements that are part of the record that a lot of my questions would be redundant. I do want to ask this question and then make a point and have you react to it. What will it take for the various stakeholders—and I would like all of you to answer this. What would it take for the various stakeholders to be satisfied that a comprehensive list of Holocaust victim policyholders is compiled? I will start with you, Mr. Bazyler.

Mr. BAZYLER. Could you repeat the last part? I'm sorry.

Mr. SHAYS. What will it take for the various stakeholders to be satisfied that a comprehensive list of Holocaust victim policyholders is compiled?

Mr. BAZYLER. I think that if we take the German model and apply that German model to the other countries, then the Holocaust survivors, the individuals who are making the claims have the possibility and their heirs, children and grandchildren, will be satisfied. I think that is a very workable, provable model. It has been done in Germany. It also—and Secretary Eagleburger mentioned this—took a long time to get the Germans to agree to that. This wasn't something they wanted to do and something that Chairman Eagleburger at first was not—was willing to forego. And then it was—their feet were held to the fire and they finally agreed to do so. That is a model that could be used for other countries. When that is done, I think that will be a feeling that the best possible thing could have been done.

Mr. SHAYS. Dr. Kadden.

Mr. KADDEN. I think whether ICHEIC is the force that is able to extract these names or acts of Congress or a further clarified force of state regulators, the public will benefit. And that is really the goal here. I am not very optimistic about the ability of ICHEIC at this point to extract any more names, and I can certainly say that my concerns were raised further by the testimony today from all the parties.

Mr. SHAYS. But what I asked is, what will it take for the various stakeholders to be satisfied that a comprehensive list of policyholders is compiled? Did you agree with Mr. Bazyler?

Mr. KADDEN. I do generally. I think ICHEIC has published the German names and has set a good and reasonable standard for

what should be done when you get your teeth into a source of names and how to go about putting together the best possible list that captures by their own objectives 90 to 95 percent of the presumed victim population, policyholder population. I believe that can be done in other countries in Europe. We may fall short in some of the countries, but there is very clear evidence in my mind that can be done. It is physically possible to do it.

Mr. SHAYS. And if it was done, you think——

Mr. KADDEN. And the survivor community—and I speak as a member of a family that found many, many names on the German list.

Mr. SHAYS. Right.

Mr. KADDEN. Some may not understand this when I talk to them about it, but there is a symbolic value which goes a long way toward survivors making peace with this process. And even if they decide not to file a claim—and I know people like that—"It is not worth it, the pain."—but there is a certain sense that something is being done by publishing these very comprehensive lists. Some good faith went into it, and the results that were yielded really showed that light is shining on this dark chapter. And I think that is quite apart from the claims process itself.

Mr. SHAYS. Thank you very much.

Mr. Arbeiter, how about you responding to that question?

Mr. ARBEITER. I feel that the publishing of course of the list is of very, very great importance. To be honest with you, Mr. Chairman, the feeling in the survivor community is, today, resignation. They don't believe that something—that ICHEIC is handling this honestly and that something will be done in their lifetime. We don't see—I get calls quite often being the president of the Association of Holocaust Survivors, I get constant calls from members of our organization. Did you hear anything? Do you know anything?

Mr. SHAYS. Well, but what that implies to me is that, whatever happened, they wouldn't be satisfied. And I want to have you respond to attorney Bazyler's—you are an attorney?

Mr. BAZYLER. I am, but much more I am a professor.

Mr. SHAYS. Professor Bazyler commented that, if they used the German model, that a lot more people would be satisfied.

Mr. ARBEITER. Any progress, anything the survivors will see that there is some movement, they would be—they would have hope and maybe a dim of satisfaction.

Mr. SHAYS. I am sorry, sir.

Mr. ARBEITER. As of now, they don't see anything. To the best of my knowledge, in the community in Boston, MA, I don't know of any survivor—and of course I don't know exactly how many claims were filed. I don't know of even one survivor that had his claim settled or had the satisfactory answer from ICHEIC about his claim.

Mr. SHAYS. I remember at the last hearing we had someone who had a document that was the actual reproduction of the policy, and that person clutched on to that policy as if they were hugging their loved one. It spoke volumes to me.

I appreciate—we, this committee and our staff—appreciate your presence and your participation. Is there any last thing you want to put on the record before we adjourn this hearing?

Mr. ARBEITER. I would just like again to appeal to you, Mr. Chairman, and to the committee and to Congress, you are the only ones that can help us. We are citizens of the United States and we have rights, and we should have the right, if we don't get satisfaction from ICHEIC, then we should be able to use that right of law and go to court and sue them. And we believe that you can help us with this. You are the only ones that can help us. And you, of course, are our representatives.

Mr. SHAYS. I don't intend to prolong this, but my understanding is that you could still go to court. So let us just put down on the record where I am wrong here. You can go to court right now. That is correct?

Mr. BAZYLER. Let me go ahead and answer that question. Right now, if you have a claim with a German company, you cannot go to court. It has been precluded by the German agreement.

Mr. SHAYS. In the German court?

Mr. BAZYLER. The German.

Mr. SHAYS. Because they have cooperated.

Mr. BAZYLER. Well, because you have an agreement, a comprehensive agreement with Germany in which all claims relating to World War II against Germany have been put aside. This is an agreement that was put together by the Clinton administration and the German Government and German companies, and included any kind of World War II claims.

Mr. SHAYS. So, in German court we could not go for German cases.

Mr. BAZYLER. In a U.S. court.

Mr. SHAYS. In a U.S. court?

Mr. BAZYLER. In a U.S. court.

Mr. SHAYS. Let me just make sure I am saying it correctly. In a U.S. court over a German policy?

Mr. BAZYLER. Correct.

Mr. SHAYS. Correct.

Mr. BAZYLER. The only claims right now that are still open are the claims against Generali, which is one of the largest sellers of insurance to Jews prior to World War II. That is still going on, that litigation is still open, and that is before Judge Michael McCasey, the chief judge, Federal district judge in Manhattan.

Mr. SHAYS. I have triggered one last question. Unfortunately, when you ask one, you sometimes realize you want another answer. What would happen if the money that you set aside from the social expenditures was put in a fund for those people who didn't make the deadline? How would you react to that? So, instead of it going for social expenditures, it went to pay settlements? In other words, the companies in a sense are held harmless; they have no further draw on their resources. How do you react to that?

Mr. KADDEN. I don't like the sound of it. I think the process of which I am not very enamored of was set up envisioning a claims process and a humanitarian process. This is what was negotiated, this is what was settled. The desperate need of survivors in the streets, and in some cases I am literally saying in the streets, of American cities as well as in Europe and elsewhere requires this money to be made available. It is desperate need for——

Mr. SHAYS. Well, we have a problem though. It is called compromise. And in this world of compromise, we have one problem; we have a deadline so they get nothing, or we try to find a way to deal with that deadline.

Mr. KADDEN. Well——

Mr. SHAYS. But I understand you don't like the sound of it. I don't like the sound of it either, compromise. I don't.

Mr. KADDEN. I think the volume of the claims process, the number of claims coming in, the volume of claims that are meeting some kind of acceptability by the companies and winding up as offers, we don't know anything about how many have been accepted.

Mr. SHAYS. Fair enough.

Mr. KADDEN. It is not enough, I think, to argue for the extension of the deadline using—borrowing money basically from other uses which are desperately needed. If the deadline is extended because there are innovations in the process, I think that would be a lot more acceptable.

Mr. SHAYS. It would be more acceptable. I hear you. Any last comment before we adjourn this hearing?

Mr. KADDEN. I do, with your permission. I did note Chairman Eagleburger in a letter to the London Economist magazine on August 8th of last month, which is published on the ICHEIC Web site. I don't think it is published in print by the magazine. But he said very simply, "ICHEIC is a process unlike the litigation course, which is also open to them," meaning claimants. Earlier, Mr. Bell said "Would result in a slow process that may not yield payments." I don't know if Mr. Bell is confused. He may have been talking about ICHEIC, not the litigation process, because ICHEIC is a slow process that may not yield payments.

I reiterate my point because it is so very important to the communities I work with: Keep the options open. Mr. Shays, you are in a sole position now to—and I take your promise very seriously that you will work hard to communicate with your fellow members and try to work out solutions with the ideas and the passion that exists here in Congress. The survivor community is depending on it. They don't have the resources literally to lobby. Thank you very much.

Mr. SHAYS. Thank you very much, Mr. Kadden. Anyone else, or are we all set here?

Mr. BAZYLER. I just agree with what Mr. Kadden said completely.

Mr. SHAYS. Thank you. All three of you have been a wonderful—the staff has just reminded me. We may be submitting followup questions to the three of you, so don't be surprised if you get that request in.

Mr. Arbeiter, I just want to say again. Your statement is the reason why we are having these hearing. So, on behalf of Chairman Davis, I would like to thank our witnesses for appearing today. And I would also like to thank the staff that worked on the hearing. And I would say, Mr. Arbeiter, you are the first person I have ever heard as a witness thanking the staff. So that goes——

Mr. ARBEITER. They deserve it. They did a great job.

Mr. SHAYS. I understand, but I just thought it was very nice.

I ask unanimous consent to insert in the record the written testimony of Christopher Carnicelli, the president and chief executive officer of the U.S. branch of the Generali Insurance Co. Without objection, it is so ordered.

[The prepared statement of Mr. Carnicelli follows:]

Record

Testimony of Christopher Carnicelli
President and Chief Executive Officer
Generali - U.S. Branch

House Committee on Government Reform
Hearing on Holocaust Era Insurance Issues
September 16, 2003

INTRODUCTION

I am President and Chief Executive Officer of Generali - U.S. Branch, a branch of the Italian corporation Assicurazioni Generali S.p.A. For several years, I have been involved in Generali's efforts to resolve claims on Holocaust-era insurance policies, particularly through the International Commission on Holocaust Era Insurance Claims ("ICHEIC").

Generali thanks the Committee and welcomes the opportunity to submit written testimony for the Committee's September 16, 2003 hearing. I regret that because of a long-planned business trip to England, which I have been unable to reschedule, I will be unable to appear personally at the hearing. I have spoken in person at length with members of the Committee's staff in Washington, D.C. on September 10, 2003.

As I will explain in greater detail below, Generali has been, and continues to be, the insurance industry leader in paying claims in respect of the company's former insureds who were victimized during the Holocaust. Among other things, Generali is a founding member of ICHEIC, and we believe ICHEIC has been a success in many vitally important ways, despite criticisms by a small number of critics. Generali joins those who believe that any attempt by Congress, in the wake of Supreme Court's decision in June in *American Insurance Association v. Garamendi*, 539 U.S. ___, 123 S.Ct. 2374 (2003), to

enact legislation to support litigation of Holocaust era insurance claims, would be extremely counterproductive.

BACKGROUND

Company History

Generali was created by Jewish merchants in 1831 in Trieste. The Company, which was more than a century old even before World War II, has historically had a rich tradition of contacts with the European Jewish community. As discussed below, this nexus continues in Israel today. Generali is therefore very sympathetic to the concerns of our former Jewish policyholders, and their beneficiaries and heirs. During the second half of the nineteenth century and through World War I, Generali was a significant insurer in the European territories then comprising the Austro-Hungarian Empire – including the areas surrounding major cities such as Vienna, Prague and Pest (now part of Budapest). At the end of World War I, when Trieste was ceded to Italy, Generali acquired Italian nationality. Because of Generali's historical roots, during the era between the two world wars when the policies in question may have been issued, it operated in the Central and Eastern European areas that eventually became Austria, Hungary, Czechoslovakia, Poland, and Yugoslavia (for convenience, I refer to these as Eastern Europe). Generali also issued policies elsewhere in Europe, including Italy, Spain, Germany, Belgium, Holland and France.

Generali, in keeping with its ties to the Jewish community, began doing business in Israel even before the establishment of the Jewish State in 1948. It has continued and grown its business in Israel, notwithstanding the risks of war, terrorism

and the Arab boycott which had deterred so many international companies from conducting business there.

Post-War Insurance Claims And Nationalizations

In the years following the end of World War II, Generali received claims or inquiries on pre-war insurance policies issued in Europe, many long after the time had lapsed for seeking recovery. Generali has never made a distinction between Jews and non-Jews or between those who were or were not victimized by the Nazis. For Generali policies issued in Western Europe, I understand that Generali has uniformly paid them even when prescription periods had expired.

In Eastern Europe, however, Generali's insurance business and assets were nationalized or otherwise confiscated by the Communist governments that assumed control over the region at the end of World War II, just as they expropriated other forms of private property. The Communist regimes nationalized and expropriated all real estate and other assets owned by Generali in those regions, which covered, compulsorily and in their entirety, reserves for locally issued policies. At the same time the newly installed Communist governments also assumed all liability and obligations under Generali insurance policies issued in their respective territories. Under those circumstances, Generali concluded that it had no further obligations under policies issued in those countries, making no distinction as between victims of the Nazi regime or those who were victimized by the Communists.

Prior to the nationalizations, subject to war-time conditions which in some instances caused the interruption or suspension of Generali's control of its operations, Generali had operated in Eastern Europe through local branch offices, all of which were

governed by local rules and regulations. Before World War II, when policies were issued, the local branch would maintain all policy files (consisting of, among other things, complete copies of the policies and premium information) and send a "water copy" of only the face page of the policy to Generali's main office in Trieste principally to assist in establishing aggregate reserves and accounting purposes. The assets seized by the Communist regimes included all the policy files for Generali insureds in the local venues. Generali was never able to recover this information. Generali was thus left with limited information, including in particular "water copies" of policy face pages and a general accounting ledger prepared at Generali's main office in Trieste to calculate the amount of aggregate policy reserves that Generali was required to maintain.[2]

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[2] A very small number of plaintiffs who are suing Generali and seeking windfall punitive damages have alleged for the first time in their lawsuits that the company purportedly required claimants to provide a death certificate when presenting a claim to a Generali representative in the immediate aftermath of World War II. Generali vigorously denies these scurrilous allegations, which have taken on a life of their own simply by repetition and have never had a basis in fact. To Generali's knowledge, it never has had a management policy of requiring such documentation for known victims of the Holocaust, and indeed all such claims were and have been regularly honored by Generali in Western European countries under relaxed standards of proof. In the first instance when such an allegation was pressed, investigation and discovery demonstrated that at the time of the alleged incident in the summer of 1945 at the Prague offices of Generali, that office (where the demand supposedly occurred) had been taken over by Communists who came to power in Czechoslovakia at the end of World War II. Whatever the details of that incident, it certainly was not one involving anyone speaking for Generali. In May 1945, immediately upon the Soviet takeover of Prague, Generali's former Prague office was seized and placed under the administration of the Czech communist forces. A contemporaneous first-hand account of that takeover, which recently was discovered in the national library of the Czech Republic, recounts how quasi-governmental revolutionaries seized control of Generali's operations during the Prague uprising at the end of the war and replaced it with a state-run insurance company named "Prazska pojistovna." Confirming Generali's loss of control over its former Czech business, a historical document written by the Communists who rose to power in 1945 states:

> I am sorry for you, dear Assicurazioni Generali! You prided yourself so on your tradition of over a hundred years, and now you are like a coin they have withdrawn from circulation. . . . Assicurazioni Generali is dead – Long live Prazska pojistovna!

"Bulletin of the Working Group of Assicurazioni Generali," dated April-December, 1946.

GENERALI'S EFFORTS TO RESOLVE HOLOCAUST-ERA INSURANCE CLAIMS

Open Letter And Generali Fund

In 1997, Generali established a Policy Information Center to locate Generali policies issued during the Holocaust era. It then published an "Open Letter to the Families of Holocaust Victims" in Jewish periodicals throughout the United States, Europe and Israel. The Open Letter was designed, among other things, to encourage potential beneficiaries to submit policy inquiries to Generali's newly-formed Policy Information Center, where their inquiries would be researched and any policy information discovered would be sent to them. The Open Letter also announced Generali's establishment of a $12 million trust fund ("Generali Trust Fund") in honor of Generali policyholders in Central and Eastern Europe who perished in the Holocaust. The Generali Fund is a charitable entity created in Jerusalem in 1997, which is funded by Generali but controlled and administered by independent trustees and chaired by a retired member of the Israeli judiciary. It reports regularly about its activities to the Israeli Knesset (parliament). Its purpose is to provide voluntary payments to Holocaust victims on Holocaust-era insurance policies and for other humanitarian purposes.

International Commission on Holocaust Era Insurance Claims

After concerns over Holocaust-era issues grew in the late 1990s, Generali conducted a time-consuming review of the single-page water copies of pre-war policies to develop a database to help identify former policyholders who, as of the onset of World War II, may have had Generali policies in force in Central and Eastern Europe. As a result, anyone can write to Generali and we can, and will, determine whether a policy was issued to the person making the inquiry or to an ancestor. Generali has received

thousands of such inquiries, and has responded to them. We inform inquirers of whether they or their ancestors owned Generali policies, regardless of whether they are in a position to indicate the policy number or provide complete data (*e.g.* date of birth) about their ancestors.

In 1998, Generali joined in founding ICHEIC. Other founding members and observers include the United States government, the State of Israel, the world's leading Jewish and Holocaust survivor organizations, and U.S. state insurance regulators, as well as European insurance regulators. These diverse constituencies recognize what the Supreme Court has now confirmed in *AIA v. Garamendi*: that the optimal way to procure meaningful payments on Holocaust era insurance policies in a timely fashion for aging survivors and their heirs throughout the world is through a voluntary international organization, and not through complex, prolonged and vigorously contested litigation in the trial courts of fifty different American states.

Since ICHEIC was founded, it has received the unqualified support of the United States government as the exclusive forum for resolving Holocaust-era insurance claims. Former Deputy Secretary of the Treasury Stuart Eizenstat, for example, repeatedly said during his tenure as the Clinton administration's senior official in charge of Holocaust-related matters, that ICHEIC should be the "exclusive remedy" for resolving all Holocaust-era insurance claims. For example, Deputy Secretary Eizenstat testified before the House Banking Committee that the "U.S. Government has supported [ICHEIC] since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era." Testimony of Deputy Treasury Secretary Stuart E. Eizenstat before U.S. House of Representatives Banking Committee,

February 9, 2000, at 3. The Bush administration has been equally supportive of ICHEIC. For example, on September 24, 2002, Ambassador Randolph M. Bell reiterated the government's commitment to ICHEIC, stating "[t]he U.S. government has supported ICHEIC since its establishment and believes that it should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist Era and World War II."

In 2001, Generali voluntarily and irrevocably transferred $100 million to ICHEIC, after having already funded ICHEIC with more than $11.8 million and paid millions of dollars in claims. (Additionally, Generali has made substantial contributions in recent years to foundations established for Holocaust restitution purposes in Germany, Austria and other European countries.) The $100 million transfer was an integral part of a settlement, arrived at with ICHEIC and the largest Jewish and Holocaust survivors' organizations that are ICHEIC members, to pay all anticipated claims made by (or through) victims of the Holocaust on unpaid Generali insurance policies in effect at the start of World War II and, in addition, to provide additional funds for humanitarian purposes.[1] After paying documented claims under ICHEIC standards, plus any additional amount for which Generali may be held liable in litigations related to Holocaust-era insurance policies, all remaining funds will be used entirely for charitable purposes selected by ICHEIC. After ICHEIC's receipt of Generali's $100 million contribution, ICHEIC appointed the Generali Trust Fund as the entity to evaluate and pay on ICHEIC's behalf and under ICHEIC standards, all claims regarding Generali policies. This decision

[1] Because of the intervening nationalizations discussed above, the vast majority of such unpaid (or deemed to be unpaid under agreed ICHEIC guidelines) policies involve those issued in Central and Eastern European countries.

was intended to increase confidence in the process, by turning responsibility for evaluation and payment of claims worldwide over to an independent Jewish entity under supervision of the State Comptroller of Israel.

As a general practice, when Generali's Policy Information Center receives policy inquiries, it researches them individually. If insurances policies are located, Generali transfers the relevant information to the Generali Fund, which independently decides whether payment is due and in what amount under ICHEIC standards. I understand that offers of payment are accompanied by letters that apprize claimants of ICHEIC's procedures and protocol, as well as the legal effect of accepting the payment offer. An independent appeals process at ICHEIC is available to those who are dissatisfied wit the Fund's decision.

ICHEIC has been extremely successful, despite what may be said by some who seek to minimize its accomplishments. Following extensive input by the affected constituencies, it established criteria of eligibility for policy payments, valuations of currencies and policies, and implemented a global outreach program to locate possible policyholders and their heirs. Although Generali believes that ICHEIC's criteria for evaluating the existence and amounts of relevant policies are far more generous than the historical facts and applicable laws merit, Generali has abided by them. To date, between payments made by Generali and the Generali Trust Fund, more than $44 million in payments have been made in respect of Generali policies that formerly were in force before and during the Holocaust era.

These payments have been made under ICHEIC's valuation and payment protocols, which are more generous to claimants than would be the legal process. In a

court of law, among other issues, the wartime and post-war currency devaluations that occurred in the countries where the policies were written would have to be considered. This alone would have rendered insignificant the face value of the policies in local currencies in which the bulk of policies were denominated. Thus, through ICHEIC, claimants have obtained generous payments on claims that would not succeed in court. I believe that Generali's experience of substantial payments through ICHEIC offers some of the best evidence of the organization's success. Indeed, many claimants have recovered more than $100,000 on individual Generali policies. (Some have questioned why the average payment in respect of former Generali policies has been a smaller amount. The response is simple. Each policy stands on its own. Moreover, historically, the vast majority of policies were issued in relatively small face amounts, in local currencies, to provide funds at a future time for a child's education or a daughter's wedding.)

Some have criticized ICHEIC, as well as Generali and other ICHEIC insurers, for supposedly only approving a small percentage of so-called "claims." This position is based on a regrettably common misconception that fails to distinguish situations where a claimant can identify a policy issued by a given insurance company, and blind inquiries where a person simply asks whether any company has any record of having issued a policy to his or her ancestors. According to ICHEIC procedures, this inquiry is then directed to <u>every</u> insurance company directly or indirectly a member of ICHEIC and statistically recorded by ICHEIC as a "claim." These inquiries are not, however, claims in the sense that a policy has been identified for the individual in question. A better term than "claim" in this context would be "inquiry." There have

obviously been many more inquiries than actual claims, and the overwhelming majority of actual claims that have given rise to a match with the company's records have resulted in offers that have been accepted. Conversely, almost all blind "inquiries" have not produced positive results, which accounts for the high rate of so called "denials," which I would rather call "no-match."

Also, the contention that ICHEIC's efforts have been limited because Generali or others have not been forthcoming in providing former policyholder information is misplaced. As I will explain, Generali has been forthcoming with information. But perhaps more importantly, it should be understood that this issue is a "red herring," because Generali has not denied a single claim, or given less than a full response to any inquiry, on the basis that a former insured's name did not appear on a list published by ICHEIC or others. Rather, whenever anyone makes an inquiry of Generali, we undertake a full search of our computerized information and determine whether that person or their relatives is a former Generali insured. That process is reviewed and validated by two sets of independent auditing firms (one of which appointed by ICHEIC with the agreement of all its constituents) and by the Generali Fund in Israel. If the answer is yes and the appropriate ICHEIC protocols are met, an offer will be made regardless of whether the former insured's name appears on any list published by ICHEIC or others.

Despite this, some have criticized Generali for not publishing, or directing ICHEIC to publish, the entire list of all Generali policies in force at the start of World War II. This criticism is unmerited. In May 1999, Generali provided this list to Yad Vashem, the leading organization in the world on identifying Holocaust victims, and

authorized it to provide ICHEIC with the names of all former policyholders Yad Vashem determines match the names of possible Holocaust victims. Generali never imposed criteria or restrictions on Yad Vashem or ICHEIC as to how to match its list of policyholders with Yad Vashem's archives. Generali was and remains in full and active cooperation with Yad Vashem to facilitate the matching process. Generali, at its senior management level, has made it a priority to expedite the process of discovering, locating, and making payments on unpaid policies issued to Holocaust victims. Previously, ICHEIC has published more than 8,700 names of Generali's policyholders provided to it by Yad Vashem. An additional 35,000 are to be published in the immediate future. Generali has not restricted the publication of any of this information, and we understand such information is freely available on the internet (through ICHEIC's website, www.ICHEIC.org), or will be in the very near future. But again, Generali and the Generali Trust Fund in Israel have processed inquiries, and have made and paid offers, regardless of whether a particular former policyholder's name is on any published list.

Accordingly, Generali does not believe that voluminous lists should be demanded when, by their very nature, most of the names on them would not be of Holocaust victims or would relate to policies which, for a variety of legitimate reasons, were not even in effect during the relevant period but had rather been paid or had lapsed before the onset of the Holocaust.

LITIGATION AND/OR LEGISLATION ARE NOT THE ANSWER

During the past several years, Generali has been forced to defend itself in a number of lawsuits in American courts on claims based on dated Holocaust-era European insurance policies issued to European citizens. In these cases, where zealous

trial attorneys have announced an intention to seek billions of dollars in windfall punitive damages from Generali, it has no choice but to present every available defense in as great detail as is possible. These defenses, which Generali contends bars all claims against it, include:

- First, that the claims cannot constitutionally be heard in American courts under American law because the plaintiffs' claims are grounded on events that occurred in Europe decades ago.
- Second, that the claimants' insurance policies were for the most part rendered worthless, or substantially worthless, as a result of currency devaluations throughout Europe generally, and Eastern Europe in particular, during and in the Communist-era aftermath of World War II.
- Third, that in the substantial majority of cases Communist-era governments expropriated Generali's assets in Eastern European countries that backed the policies written there, and also expropriated the policyholders' rights under the policies, which had the legal effect of nullifying the policies by operation of law.
- Fourth, that each case involves individual factual and legal issues. In many cases, it appears that policyholders stopped paying premiums for reasons unrelated to the Holocaust or waited scores of years to ever lodge a claim on a policy that lapsed in the 1930s or early '40s. Under governing European law, these claims are barred.

Litigation thus is not appropriate, because at best it will unnecessarily prolong the process of procuring payments for needful survivors. More realistically, it will not provide them with any meaningful recovery at all, and instead will result in funds being spent on lawyers instead of Holocaust victims. Despite this reality, some trial lawyers continue to bring claims for survivors, urging them to pursue litigation and to eschew ICHEIC, despite the substantial support for it by our government and leading Jewish groups. We believe the *AIA v. Garamendi* decision underscores that these lawsuits will not succeed, and hope it prompts the litigants and their counsel to rethink their approach and to reconsider their decision not to participate in and support ICHEIC.

Finally, we respectfully submit that federal legislation in support of the handful of litigants and their counsel is not appropriate. Indeed, it would be extremely counterproductive. Such legislation would create a direct conflict between the Legislative and Executive branches of our government in an area of foreign policy, which traditionally has been the province of the Executive branch. There is no need for such a battle because ICHEIC is working. Enactment of such legislation likely would lead to further litigation, which like *AIA v. Garamendi* would in all likelihood have to spend several years working its way to the Supreme Court. This further delay in providing clarity to claimants would also be counterproductive.

CONCLUSION

In short, the issue of paying Holocaust era insurance claims involves multiple layers of great complexity. Litigation is not the answer. The President has correctly recognized that a voluntary international organization supported by governments, victims organizations, and insurers, is the best means of securing payments for survivors in their lifetimes. ICHEIC, with the support of the President, Holocaust victims, insurance Regulators and insurers like Generali, fills that role and has done a praiseworthy job of implementing procedures that have resulted in large numbers of claimants obtaining substantial recoveries. With continued support by all the stakeholders, ICHEIC will continue to be the best vehicle for obtaining payments for survivors in their lifetimes or for their heirs. Additional litigation and/or legislation, on the other hand, will only complicate the picture and detract from what should be the common goal of quickly paying as many deserving claimants as possible. Any legislation by the Congress on this subject will result only in further delay and litigation,

especially in light of the *AIA v. Garamendi* decision, and the obvious jurisdictional and constitutional issues that such legislation would raise.

Thank you Mr. Chairman and members of the Committee for allowing me to share my views.

Mr. SHAYS. I will also leave the record open for 2 weeks so Members or witnesses can submit additional materials or comments.

It is this committee's hope that the information we have gathered today will help to facilitate the processing of insurance claims for Holocaust victims and their heirs. Almost 60 years have passed since the end of the Holocaust. All parties, including the U.S. Government, ICHEIC, insurance companies, and Europeans nations should do whatever it takes to resolve these claims in a fair, efficient, and expeditious manner. Paying these legitimate claims is not only a legal responsibility, it is truly a moral one. Thank you. With that, we will adjourn this hearing.

[Whereupon, at 5:56 p.m., the committee was adjourned.]

[The prepared statement of Hon. Edolphus Towns and additional information submitted for the hearing record follows:]

Congressman Ed Towns
Government Reform Hearing:
Holocaust Era Insurance Restitution After AIA v. Garamendi: Where Do We Go From Here?
September 16, 2003

Thank you Mr. Chairman for holding this hearing on an important and very serious issue. Without question, the Holocaust was one of the most, if not the worst, tragic crimes of humanity in all of recorded history. The murder of 6 million European Jews, the destruction of families, and the wholesale thefts of assets were among the worst of atrocities. Unfortunately, after the war was over, Holocaust survivors and their heirs continued to be denigrated as they were often turned away by insurance companies when presenting valid claims.

Many were rejected because the claimants did not have death certificates or physical possession of policy documents that had been confiscated by the Nazis. In 1998, the International Commission on Holocaust Era Insurance Claims was established to address this problem. However, more than 5 years after the establishment of ICHEIC, the problem persists. Companies holding Holocaust-era insurance policies continue to withhold names on thousands of dormant accounts.

I am a cosponsor of the H.R. 1210, the Holocaust Victims Insurance Relief Act introduced by Ranking Member Henry Waxman and Representative Eliot Engel which would require all insurance companies operating in the United States to publish basic policyholder information for all life, dowry, education, and annuity policies in effect in areas under Nazi control between 1933 and 1945.

In light of the Supreme Court's reasoning for striking down a California law, which had a similar objective as H.R. 1210, it would seem that congressional action is now clearly warranted in this area. In striking down the law, the Court said that the state did not have the right to

interfere in the national government's handling of foreign affairs. Thus, the only way to address this problem is with legislation enacted by our federal government such as the Holocaust Victims Insurance Relief Act. Survivors and their descendants have been fighting too long with insurance companies to settle unpaid insurance claims. Let us right this wrong.

For many years, I have fought for equitable treatment for those who survived the Holocaust. In 1993 as Chairman of the Subcommittee on Human Resources and Intergovernmental Relations, I worked with Ranking Member Waxman to draft clarifying and expanding amendments to his legislation to provide uniform Federal treatment of benefits received by Holocaust survivors. Because of our efforts, the bill won unanimous support of the Committee and was approved by unanimous consent on the House Floor. The bill and amendments were passed by both legislative bodies and signed into law by the President. (P.L.: 103-286).

However, as today's hearing shows, more work is needed. I hope the witnesses can shed light on what they think the remaining problems are and if legislation such as H.R. 1210 is the solution to correct them.

Thank you Mr. Chairman. I yield back the balance of my time.

TESTIMONY OF JOHN GARAMENDI
CALIFORNIA INSURANCE COMMISSIONER

HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON GOVERNMENT REFORM

Hearing: September 16, 2003
Testimony submitted: September 29, 2003

Although I did not have an opportunity to testify at the hearing on September 16, 2003, I would like to clear up some discrepancies in the record. You heard testimony from Chairman Eagleburger and from Superintendent Serio, but they do not represent the views either of all ICHEIC members or all members of the NAIC Task Force. Yes, ICHEIC may have made some improvements, and may have paid some claims, but there are serious organizational issues that must be addressed.

After everything that I have seen about the way ICHEIC has operated over the past nine months that I have been an ICHEIC Commissioner, and after everything I have learned after being thoroughly briefed on its past, I have regretfully come to the conclusion that Chairman Eagleburger will not take the necessary steps to get the insurers to do that they agreed to do. I have called for Secretary Eagleburger's resignation. It is time for a change.

Chairman Eagleburger testified that the insurers are cooperating with ICHEIC more than they were at the beginning of the process. While it would be difficult for the insurers to be cooperating *less* than they were in the beginning, there remain numerous, pervasive examples of insurers blatantly disregarding ICHEIC rules and valuation standards. Here are some examples.

In some instances, before the insurer will even tell the claimant the value of his claim, it requires extensive documentation, including family trees and death certificates and wills – none of which is required under ICHEIC rules. This is reminiscent of the insurers' conduct in the years after World War II.

The insurers are also misusing ICHEIC's negative evidence ruling, which allows them (rightly or wrongly) to deny claims based on the absence of a ledger entry in their records. While Generali has only been approved to use negative evidence to deny claims on policies issued in Eastern Europe, it has done so on Austrian, Greek and German claims as well. In spite of complaints, ICHEIC has not been able to stop these practices.

The insurers will not tell ICHEIC, and ICHEIC will not demand, that they disclose how they determine whether a claim matches a policy record in the insurer's possession. Without knowing whether the insurer requires an exact date of birth match, or requires an exact match on name, date of birth, and residence, for example, or will pay a claim if just two of those factors match, ICHEIC has no way to be sure that all claims are being evaluated in a consistent manner. ICHEIC will also not be able to adequately audit those claims in stage II of the audit, which has yet to commence.

The primary challenge for ICHEIC at this point in its existence, is to make sure that the insurers are doing what they are supposed to be doing and what they agreed to do. While it may be too late in the game to revisit the unfortunate decision to allow the insurers to research and evaluate the claims, it is not too late to make sure that the insurers are processing those claims in a consistent manner and are making offers per ICHEIC standards.

While there has been much discussion, and many excuses have been given for why ICHEIC has not had an effective oversight mechanism, and while it is true that ICHEIC has begun the process of hiring and training new staff to check all offers and documented denials, my understanding is that the process of checking all claims just began in late September 2003, and will only check offers and documented denials on a going forward basis. There are months worth of claims that were not checked and need to be reviewed.

As you heard from the third panel, there is great dissatisfaction among survivors about how ICHEIC makes its decisions. It is long past the time for the ICHEIC process to be opened up to different opinions. This is especially true regarding how the humanitarian funds will be spent. ICHEIC should not be making these decisions behind closed doors. ICHEIC must hold public meetings in order to hear from survivors how they would like to see their money spent.

ICHEIC needs to review the manner in which claimants are treated. You heard testimony from a claimant that he submitted his claim in 2000, received a letter later that year telling him that he would be hearing from the insurers within 90 days, and that since then he has heard *nothing at all.* Unfortunately, this is not an isolated incident. My staff hears every day from claimants who have heard nothing for months and years, and who have been unable to get basic information from the ICHEIC "helpline" regarding the status of their claims. These claimants must be treated in a respectful and professional manner.

I have presented ICHEIC with a plan for streamlining and speeding the processing of claims. This plan will involve the shifting of the matching process from the insurers to

ICHEIC staff. This will insure that matches are made pursuant to a reasoned and consistent standard. This plan will also impose deadlines within which the insurers will have to make an offer or reject a claim. If this plan is accepted and if the insurers follow the rules, claimants will no longer be left waiting for years – claims will be resolved within 90 days of receipt.

While it is necessary for the claims process to proceed rapidly and efficiently, it is also necessary for new names to be added to published policyholder lists. I urge this Committee to do everything that it can to insure that Congressman Waxman's bill is passed into law, that Eastern European nations open their archives to ICHEIC researchers, and that ICHEIC insurers provide additional names. With any combination of these additional steps, substantial numbers of new names will become available to the public and to the insurers for research and matching.

It is true that Congressman Waxman's bill would result in many more names being published. I agree with the testimony you heard, that many of the policyholders on the lists would not have been victims of the Nazis. I also agree with the testimony that some of the policies on the list would already have been paid. But more importantly, it is unquestionably true that publishing all available names would be far superior to what is happening now: The insurers, who are interested in paying as few claims as possible over as long a time frame as possible, select who they think were victims of the Nazis and which policies they consider to remain unpaid. If insurers publish all of the names, those people's heirs will be better able to make claims. If insurers publish all of the names, it is true that ICHEIC and the insurers will have more claims to process – but isn't that the point of this whole effort?

Publication of full policyholder lists will not delete ICHEIC as an option, as Ambassador Bell implied. Publication of full policyholder lists will not force Congress to audit insurers and negotiate valuation guidelines, as Secretary Eagleburger implied. Publication of full policyholder lists will force insurers to stop the stonewalling that they have been engaged in for over 50 years, will provide some assistance to potential claimants, and will show the world that something is being done to help survivors and their families and heirs.

I thank you for your continued interest and oversight of ICHEIC. Be assured that we will continue to fight for claimants and their right to a fair and expeditious claims process.

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Supplemental Testimony
to
Committee on Government Reform
U.S. House of Representatives

Holocaust Era Insurance Restitution after AIA v. Garamendi: Where Do We Go From Here?

Submitted by Daniel Kadden, PhD

and

Michael J. Bazyler, Professor of Law, Whittier Law School

September 29, 2003

After carefully reviewing the formal statements submitted by witnesses for the September 16, 2003 hearing, and after hearing oral testimony, we wish to jointly enter several additional points into the record.

Public Disdain of ICHEIC

Developments in the aftermath of the hearing underline the need for fundamental changes in the ICHEIC process if it is to maintain any legitimacy or integrity.

The filing of a lawsuit against ICHEIC by claimants in California (see attachment 1) and statements by California Insurance Commissioner and ICHEIC Commission member John Garamendi (see attachment 2), where the second largest group of Holocaust survivors in the United States reside, are reflections of public disdain over the current state of affairs. While Ambassador Bell in his Congressional testimony declared that ICHEIC "enjoys today the full support of survivors groups, of major Jewish-American NGOs, and of the Government of Israel, as well as the Administration," he conspicuously omits mentioning the U.S. insurance regulators, who first proposed and helped negotiate the International Commission.

Commissioner Garamendi is in our view exercising proper discretion as a board member of the ICHEIC who has become alarmed at the direction of management of the agency and the inadequacy of its performance to date. His calls for the Chairman's resignation are accompanied by both specific and constructive reforms that go to the heart of the problems with ICHEIC. We encourage Members of Congress and other members of ICHEIC to examine closely Commissioner Garamendi's suggestions and to support these sensible measures. Their enactment may be one of the last opportunities we have to save

ICHEIC by bringing some semblance of accountability and structure to a claims settlement process that has been skewed in favor of the company participants.

Names List is Not Comprehensive

In our own testimony we voiced support for direct intervention by Congress to advance the public's interest in accessing comprehensive lists of Holocaust-era policyholder names, which we view as a linchpin of the claims process. Put briefly, quoting former Washington State Insurance Commissioner Deborah Senn, "When you suppress the names, you suppress the claims."

We find it incomprehensible that both Ambassador Bell and Chairman Eagleburger would not be in favor of making the list of names more comprehensible. Not just Holocaust-era insurance, but the entire Holocaust restitution process, is based on the need to make public the prewar data of financial assets held by Holocaust victims.

Moreover, some of the witnesses associated with ICHEIC made statements at the hearing with regard to the names lists that deserve a response.

The new statistics on published lists provided by Chairman Eagleburger contradict assertions that he and other ICHEIC members make that ICHEIC's website now contains "the vast majority of possible Jewish policyholder names of those who might have had held policies in European insurance companies during the Holocaust era." Almost 80% of the total names available to the public relate to Jewish Holocaust victims in a single country – Germany – where access to substantial company records was finally achieved with the support of, and pressure by, the U.S. government. Whether or not Jews in Germany prior to the Holocaust had a higher propensity to be insured compared to their counterparts in other countries, German Jews nevertheless comprised just 6% of European Jewry. A public resource so heavily weighted in German names is by definition incomplete and unrepresentative of the historical realities.

The underlying fact remains that the current published list is neither a valid representation of the Jewish population nor anything close to a vast majority of Jewish policyholders or unpaid policies from the Holocaust era.

In their remarks, Chairman Eagleburger, Superintendent Serio and Ambassador Bell all implied that the laudable achievement of the German lists largely fulfills the overall responsibility of ICHEIC to publish as many European Jewish policyholder names as possible. We feel the German experience is an exemplar, not a coattail.

Chairman Eagleburger correctly points out some of the gaps in the list, including France, Hungary, Romania and Poland, and asks Congress for help in accessing archival resources and overcoming data privacy laws as part of what he says is an "ongoing" research effort. However, he fails to link the acquisition of new sources of names to the December 31, 2003 claims deadline, which is of central importance to the public. Instead, he points out the value of acquiring future lists as part of ICHEIC's claims matching exercise.

As interesting or useful as the matching process may be, this distinction signals to us the abandonment by ICHEIC of the effort to expand lists as an essential tool to inform the public that they may have a claim to pursue, literally providing a gateway into the claims process. The ICHEIC's emphasis, then, is not on publication as a way to stimulate claims, but bringing closure to the process and more efficient processing of existing claims. Despite the enormous amount of valuable time already lost, we need to remain focused on the importance of extending the announced deadline and fulfilling what even Mr. Taylor of the Claims Conference argued was the "cornerstone" of agreements with the companies: ensuring that they provide lists of unpaid policyholders. That cornerstone is missing more than a few bricks, and is one of the critical reasons why ICHEIC seems to be teetering on the brink.

It is striking that the Chairman chooses to emphasizein his lengthy written testimony the work accomplished in public archives in Europe, where ICHEIC was able to independently locate up to 100,000 names of mostly German and Austrian victims, while avoiding any references to the single largest potential source of policyholder names: the companies themselves.

We believe that the dominant role of the companies in ICHEIC long ago closed off this promising avenue and forced the Chairman to develop a lesser alternative. While any efforts to locate lists through public archives are to be welcomed and supported, the clearly unachieved goal of publishing the vast majority of possible Jewish policyholder names has, in our view, been fatally compromised by the failure of the ICHEIC insurers to reveal the most critical information for determining the extent of unpaid Holocaust-era insurance policies: the names of their prewar policyholders The insurers concede that they have these data, but refuse to publish it.

Aside from the notable achievement of the large German insurance list, only 10% of published names come from the ICHEIC insurers, and almost all of these come from Generali. It has been frequently noted that the founding companies of ICHEIC comprised about a quarter of the European pre-war life insurance market. They have not anted up their fair share of names, and they have helped rig the system to redirect pressure and responsibility away from them. It is this record of failure that argues most powerfully for a federal legislative remedy.

Our concerns were magnified at the September 16 hearing, where, to our dismay, we heard the most explicit opposition to date from ICHEIC members to an inclusive approach to names publication.

Ambassador Bell, in particular, presented a specious argument that more comprehensive insurance policyholder list publication would undercut the German Foundation Initiative, derail ICHEIC and stop the claims processing now underway. His remarks seemed to argue for the benefits of closing the process rather than expanding it. This is decidedly not a public interest perspective, and is directly against the interest of aging Holocaust

survivors, amounting to a slap in the face to the aging survivors desperately waiting for this information to be made public.

We were particularly struck by the demurral of Superintendent Serio to answer the question posed him about the seeming contradiction between his assertion that the NAIC believes that the ICHEIC website contains "the vast majority of Jewish policyholder names" (echoing the precise words of Chairman Eagleburger's statement but adding the curious qualifier "that can be compiled given the passage of more than 60 years") and the recent U.S. Supreme Court brief from the NAIC as a whole supporting California's contested HVIRA law and numerous past statements from the regulators calling on insurers to disgorge names to better serve the interests of claimants.

Chairman Eagleburger's testimony explicitly opposing the publication of inclusive or comprehensive lists and any proposed legislation as counterproductive to the claims process, contradicted his prepared statement in which he defended the practice of ICHEIC to publish substantial numbers of names found in archives "before investigating the details of the policy" because otherwise "we would not have been able to publish any lists in a timely manner. Rather than delay the process further and risk the loss of what living memory remains, ICHEIC chose to publish."

It would seem this approach has now been abandoned for reasons which ill serve the public. We again urge Congress to inject the "public" back into the Holocaust-era insurance claims process before the door slams shut on survivors and families of victims who are seeking simple justice.

Attachment 1

The New York Times
nytimes.com

September 25, 2003

2 Holocaust Survivors to Sue Group Set Up to Collect Insurance

By JOSEPH B. TREASTER

Five years after the creation of an international commission to help Holocaust survivors collect on claims from European insurers, two survivors plan to file a lawsuit today asserting that the commission has sided with the insurers and made it more difficult to receive fair payment on decades-old policies.

In the lawsuit, to be filed in a state court in Los Angeles, Manny Steinberg, 78, and Dr. Jack Brauns, 79, who survived Nazi concentration camps, assert that the commission has been used by insurers to diminish and deny claims and that it has permitted the insurers to withhold critical information on Holocaust-era policies and legal remedies.

The lawsuit is the most serious challenge yet to the widely criticized organization, the International Commission on Holocaust Era Insurance Claims. It was founded by American insurance regulators and Jewish groups on the premise that survivors were likely to receive more money faster through negotiations with insurers than through litigation. But many survivors say the commission, which includes five European insurance companies, has failed to live up to its promises.

Survivors have also complained of the commission's policy of closed meetings and of what they describe as an accommodating attitude toward the insurance companies. The companies pay the $360,000 annual salary of the commission chairman, former Secretary of State Lawrence S. Eagleburger, and all other expenses of the commission. Commission representatives did not respond to phone calls seeking comment.

In Congressional testimony this month, Mr. Eagleburger reported that the commission had spent 60 percent more than it managed to get the insurers to offer toward claims. It has spent $56 million, he said, and received offers of $35 million on 2,600 claims, or fewer than 5 percent of the 54,000 claims submitted. Holocaust experts estimate that millions of policies were sold to Jews at the time of Holocaust and that the benefits were never collected.

The two survivors who are filing the lawsuit are California residents. The suit is based on California's unfair business practices statutes and focuses on the commission's

relationship with one of its five member-companies, Assicurazioni Generali, a big Italian insurer that dominated sales to Jews in Eastern Europe. Generali has paid most of the claims resolved through the commission.

Christopher Carnicelli, the senior executive in New York for the company, said Generali had paid "well over $100 million" to the commission to be used for paying claims. Most of that money has not been passed along to beneficiaries, but Mr. Carnicelli said that "over 2,200 individual claimants" had "accepted offers of well over $30 million."

In the lawsuit, the lead lawyer, William M. Shernoff, estimated that Generali owed "well in excess of $1 billion" on Holocaust-era policies.

Deborah R. Hensler, a specialist on public policy at the Stanford Law School, said the unfair business practices laws had been used to extract large awards from insurance companies. Mr. Shernoff said his clients were not seeking monetary awards, but want the court to order changes in the way the commission operates.

Legal experts said they knew of no other case in which a commission or association had been sued under the unfair business laws. John C. Coffee Jr., a law professor at Columbia University, said the commission would probably argue that it had not been engaged in business but had simply been a forum for negotiations.

But Mr. Shernoff characterized the commission as a claims adjustor for the insurance companies. "The commission gets all its money from the insurance companies," he said. "It's just another division of the companies."

The lawsuit formalizes many complaints about the commission. "I think it accurately reflects the feelings of claimants and family members," said Daniel Kadden, a consultant to Holocaust survivors.

While some lawsuits against the insurers have been settled or dropped and a recent treaty between Germany and the United States appears to block lawsuits against German insurers, about 20 federal lawsuits are pending against Generali.

Dr. Brauns, a retired surgeon in Covina, Calif., said he has been trying to collect on a $2,000 annuity from Generali since getting out of the concentration camp at Dachau in 1945. He said he gave a policy number to Generali in Rome and years later presented a copy of the policy. He said Generali contended it owed him nothing but was willing to pay $5,000 through the commission. But Mr. Shernoff estimates that nearly 60 years later, the policy, with compounded interest, should be worth more than $100,000. Dr. Brauns filed suit earlier over the policy.

Mr. Steinberg, of West Hills, Calif., said he had called and written the commission many times about a policy taken out by his father. "They've given me the run-around," he said. "That's why I'm suing them."

Generali did not comment specifically yesterday on the claims of Dr. Brauns or Mr. Steinberg.

Mr. Steinberg, who owned a sewing machine shop, said his family lost their insurance documents when the Nazis took them to concentration camps. He said Generali had denied that his father ever took out a policy.

But Mr. Steinberg said in an interview: "As we were being put on a cattle car, my father said to me, `Manny, if we ever survive this terrible life, we have a little Generali policy and maybe we can start out life all over again.' "

# # #

Attachment 2

LOS ANGELES

Garamendi Wants Chairman of Holocaust Panel to Resign

State official says survivors' insurance claims are not being resolved properly.

By Henry Weinstein
Times Staff Writer

September 26, 2003

California Insurance Commissioner John Garamendi on Thursday called on former Secretary of State Lawrence Eagleburger to resign as chairman of a special international commission that was created to resolve the claims of Holocaust survivors and their heirs that European insurance companies were failing to honor $1 billion in valid policies.

"I have lost confidence in Mr. Eagleburger, and I think it is time for him to go," said Garamendi, one of three U.S. regulators who is a member of the International Commission on Holocaust Era Insurance Claims, which has offices in Washington and London.

"I am very disappointed and very concerned about the lack of progress the ICHEIC has achieved. It seems they are more often interested in protecting the companies than in providing quick and appropriate payments to survivors," Garamendi said.

Eagleburger "has no intention of resigning," said Anais Haase, his executive assistant.

Garamendi spoke out just hours after three elderly Holocaust survivors, who said they had been trying for more than 50 years to collect on policies, called for Eagleburger's ouster. The three made the demand at a news conference at the Los Angeles Museum of the Holocaust, where they also announced that they were suing the commission.

"We should recall Eagleburger from this position," said Dr. Jack Brauns, 73, of West Covina, who was freed from Dachau in 1945. Holocaust survivors Si Frumkin, 72, of Studio City, and Manny Steinberg, 78, of West Hills, also said that Eagleburger should resign, as did Claremont attorney William Shernoff, the lead lawyer in the lawsuit. Shernoff also represents a dozen other survivors.

The suit alleged that the agency has improperly delayed or denied payments of more than $1 billion in insurance proceeds to Holocaust survivors or their heirs who held policies before and during World War II.

Filed in Los Angeles County Superior Court under the state's Unfair Business Practices statute, the suit asserts that the commission is biased in favor of Assicurazioni Generali, a large, Italian-based insurer with U.S. ties that wrote thousands of policies in Eastern Europe before the outbreak of World War II.

The claims commission was formed in 1998. At the time, backers said that it would provide much swifter resolution of claims than would occur with protracted litigation.

But since then, the organization has been consistently criticized for failing to achieve that goal.

At a congressional hearing last week, Rep. Henry Waxman (D-Los Angeles) said that "approximately 80% of claims are still in limbo." He said that many claimants were caught in a "Catch-22" because "the Nazis often destroyed the records held by persons imprisoned in the concentration camps" and "many of the insurance companies who issued these policies won't disclose complete lists of their policyholders."

California enacted a law in 1999 requiring any insurer doing business in the state to disclose information about any policies sold in Europe from 1920 to 1945. Companies that failed to comply could lose their licenses to do business in the state.

Last June, however, the U.S. Supreme Court overturned the law, ruling 5 to 4 that the state was improperly interfering with the conduct of foreign affairs.

At the congressional hearing on Sept. 16, Eagleburger said that 5% of the 54,000 claims submitted to the commission have been paid by the companies. He acknowledged that the commission had spent 60% more on its operations — including travel, hotel bills and his $360,000 annual salary — than it had persuaded the companies to pay in claims.

So far, Eagleburger said, the commission had spent $56 million and obtained offers of $35 million in claims payments.

On Thursday, Brauns, the camp survivor, said insurance companies hoped the survivors would "die of old age before they have to be paid."

Survivors are not allowed to attend agency meetings, according to the lawsuit. Its rulings "are not subject to any judicial review or supervision, and are influenced by Generali, which funds ICHEIC operations and whose representatives attend all ICHEIC meetings," the suit alleged.

"It is a travesty of the judicial process to allow claims decisions to be made by a claims panel that gets its money" from an insurance company whose conduct is at issue, Shernoff said.

The suit, which was filed under the state's Unfair Business Practices statute, asks a judge to order the commission to publish on its Web site at least the names of "100,000 unpaid Holocaust era life insurance policies that Generali has admitted exist."

Christopher Carnicelli, president of Generali's New York office, said, "The lawsuit is baseless, misleading and does not reflect the reality that thousands of individual claimants, including several of Mr. Shernoff's own clients, have and will continue to be paid and offered generous amounts through ICHEIC, which is supported by leading Jewish Holocaust restitution organizations and the state of Israel."

Carnicelli said Generali had contributed more than $150 million to Holocaust restitution.

Eagleburger issued a statement saying that the commission was "committed to resolving unpaid insurance claims of the Holocaust era It has paid millions in claims and has allocated over $130 million for the needs of Holocaust survivors."

Roman Kent, chairman of the American Gathering of Holocaust Survivors, a commission member, defended Eagleburger, saying that the chairman had done his best under the circumstances.

But Garamendi said there was a "fatal flaw" in the commission's structure. Although U.S. regulators played a role in forming the commission and serve on it, they "have no direct power. We do not hire or fire or control the budget. The insurance companies seem to have the power. He who pays the piper calls the tune," Garamendi said.

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October 14, 2003

Chairman Thomas Davis
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Reference: ***Holocaust Insurance Restitution Hearing***
Held on September 16, 2003

Dear Chairman Davis:

I understand you have asked those who testified before you on September 16th at the hearing relating to the International Commission on Holocaust Era Insurance Claims (ICHEIC) to make some additional written statements for the hearing record. Thus, I have the following comments I would like the Committee to consider, and ask that you include this letter in the hearing record.

On reflection of our discussion at the hearing, listening to the panel that followed after the testimony, and upon reviewing the testimony that California Insurance Commissioner John Garamendi submitted, as well as reading press accounts of our hearing, I feel compelled to set the record straight.

I write to correct the misconceptions about ICHEIC conveyed in the form and testimony I reference above, and I write as a Holocaust survivor and Chairman of an organization representing Holocaust survivors, a member of the Commission, and as a United States taxpayer. In all of these capacities, I support and believe in the mission of ICHEIC, I take personal offense to the assault on the reputation of Chairman Lawrence Eagleburger, and I continue to be concerned that your Committee has "missed the boat" in terms of the nature and issues that the Congress should have with European insurance companies.

The Congress should be focused not so much on requiring these companies to turn over policyholder names for publication since that effort has been painstakingly and effectively coordinated by ICHEIC. Moreover, individuals who have the slightest sense that they may have a claim, should file an inquiry with ICHEIC prior to the December 31, 2003 deadline. They do not need to find a policyholder name on any published list to file such a claim. Your repeated emphasis on the legislation of Mr. Waxman and Mr. Foley will simply divert potential claims from what should be the most immediate objective of survivors: filing a claim with ICHEIC.

Continued .....

It appears that this is also diverting Congressional attention from what would be a productive focus with these European insurance companies, namely getting them to move more quickly and effectively in processing the claims which have been submitted to them through ICHEIC. The current pace at which these claims are being decided is far too slow; the companies need to provide a better explanation of their processing of matching internal information with claims that have been filed.

I am also disturbed that members of your Committee, and individuals such as Mr. Garamendi, continue to cite a statistic indicating that ICHEIC has spent more in administrative expenses than it has paid in claims, without further explanation. Of course, the press immediately picks up on this comparison, and the real story is left largely untold. Like any start-up organization, there were substantial initial costs incurred in ICHEIC's early stages. For example, ICHEIC spent approximately $10 million in an international outreach program in 1999 to alert potential claimants to ICHEIC's mission.

One must also understand that ICHEIC undertook something that was never attempted before. It was a monumental task to create a consensus and a full master plan to settle claims more than fifty years old involving the giants of the European insurance companies such as Allianz, Generali, Zurich, Winterthur, and AXA, all of whom had diversified interests and spheres of influence. However, they all had on thing in common .... strong reluctance to pay the old claims.

It is accurate that to date ICHEIC has been responsible for claims payments of nearly $50 million (a figure higher than Chairman Eagleburger referenced in his testimony because he was being exceptionally conservative with statistics that were in the process of being reconciled) with administrative expenses to date of approximately $56 million. However, this comparison of costs to claims paid to date, has omitted from the claims payments figure the additional $132 million ICHEIC has committed to fund global social welfare programs for needy Holocaust survivors.

It also ignores Chairman Eagleburger's testimony that nearly two-thirds of the ICHEIC claims filed, those that do not name a specific insurance company, will be evaluated and decisions rendered by Spring, 2004 through a process ICHEIC has created that is not available through any other course of action. Finally, such references also overlook Chairman Eagleburger's publicly stated commitment that of ICHEIC's approximately $500 million in settlement funds, it will have spent more than 80% on direct claims payments and humanitarian needs by the time it closes shop.

Finally, I want to take note with a major misconception that I hinted at earlier .... too often members of your Committee seemed to reference "ICHEIC's decisions" on claims cases as if the Commission is the exclusive adjudicator on the 54,000 claims (falling within its jurisdictional scope) that it has received. In so characterizing ICHEIC, these members fail to recognize three fundamental truths.

Continued .....

First, under ICHEIC's organizational documents, it is the insurance companies that have the initial responsibility for resolving claims against policies that they issued. As I noted above, these companies can, should, and must do more (continuing intense pressure from Chairman Eagleburger) to increase the effectiveness and pace of their decisionmaking.

Second, only a small percentage of the claims received by ICHEIC name a specific insurance company as the issuing agency. Rather than rejecting such claims out-of-hand, ICHEIC established relaxed standards of proof that give claimants the benefit of the doubt. As relaxed as these standards are, there must still be some evidence, whether from the claimant or from the company's records, that connects the claimant to an unpaid policy. ICHEIC has worked with companies on processes by which they will "match" information in their files with individual's claims to increase evidence available on a given claim.

Third, the Commission spent considerable time in its early years establishing the process by which all claims would be handled and given that benefit of the doubt. It is only since November, 2002 that ICHEIC has finalized its valuation guidelines, and since this summer that it has completed settlement agreements with all ICHEIC companies and the German insurance industry. Thus, we are only now at a stage that ICHEIC can fully and fairly marshal all efforts to see that these claims are evaluated and decided with the necessary speed. Chairman Eagleburger is doing exactly that.

Let us not forget that ICHEIC represents claimants from around the world, not just survivors within the United States. Many of these claimants lack access to the legal channels that several American claimants have found so convenient. As I mentioned, there are a vast majority of instances where claimants are unable to identify a specific insurance company, a basic requirement if they were to pursue their claim in the courts rather than through ICHEIC. Rather than being denied, ICHEIC has established an equitable process by which these claims will remain eligible for humanitarian payment funds. Of the $500 million ICHEIC collected from global insurance companies a substantial sum will go to the neediest of recipients.

Certainly, I too wish there were more payments, more quickly. I absolutely wanted the companies involved in this process to work faster, be more productive, and have the sincere intention to resolve the old claims. However, since the inception of ICHEIC, the Commission is finally at a point where its full attention can be focused on getting claims decided and payments made promptly; putting aside attention that now will be diverted to the lawsuit filed in California against it.

In closing, I plead with you to keep your energy and attention focused on the areas in which you can most ably help Holocaust victims and their heirs by working with ICHEIC to gain action that is needed by the European insurance companies. This should be action focused on deciding the claims before them so that thousands of claims could be settled in the immediate future.

Very truly yours,

Roman Kent

THE INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS

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October 23, 2003

The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I appreciate the opportunity to provide you with additional information as well as responses to questions posed to me following the Committee on Government Reform hearing on September 16. While the Committee has no direct oversight responsibility with regard to the International Commission on Holocaust Era Insurance Claims (ICHEIC), we share the same objective of ensuring that issues surrounding unpaid life insurance policies from the Holocaust era are resolved as thoroughly and expeditiously as possible. Your cooperation and attention are important in supporting our diligent efforts to further claimants' abilities to receive payment on previously uncompensated insurance policies, without misdirecting valuable resources away from reasonable efforts to identify and pay claimants.

Before responding to the specific questions you have presented, I first would like to address some general points as well as those directed to specific issues raised in the public record. First, I want to make it abundantly clear that any individual can file a claim with ICHEIC, whether or not they find a family name on a published list; anyone who believes that a family member may have had an uncompensated European Holocaust era insurance policy should file a claim with ICHEIC before December 31, 2003. ICHEIC will put its own research system to work to find all available information to see if there is any possible policyholder or beneficiary that matches the claimant's information and leads to a previously uncompensated policy.

Measuring ICHEIC's success by the total number of policyholder names that companies have made public – rather than by the publication of names of policyholders who were likely to have been Holocaust victims that have been made public – places the emphasis on an objective that will not further ICHEIC's mission, which is to maximize the matches between claimant and policyholder names so that the previously uncompensated insurance policies held by victims of the Holocaust can be paid to the proper beneficiary or heir.

Second, I am aware that recently there have been calls for my resignation from certain elected officials in the State of California, including the California insurance commissioner, a position that makes him an ICHEIC member. I would note that I find it extraordinary that he

would choose to take up this issue publicly rather than address it with me directly, in any one of our several conversations to date since he assumed his office. Let me say unequivocally that I have absolutely no intention of stepping down as ICHEIC's chairman. I made a commitment to ICHEIC and to the claimants it serves to ensure that valid Holocaust-era claims are paid, and I will see this process through.

ICHEIC continues to work diligently to identify areas in the claims process that need improvement. In my September 16 testimony I outlined several areas in which we have made progress, as well as detailing our future priorities. Much remains to be done, and we are working to address each of these obstacles as we focus on ensuring that every ICHEIC claim receives a fair evaluation in the most efficient and effective manner possible in accordance with established guidelines. Let me summarize ICHEIC's priorities over the next year:

- Working with companies to see they have all information needed to process claims, and to ensure they receive requested information and documents in a timely fashion (which includes improved cooperation with outsourced claims handling services and implementation organizations);
- Continued verification to ensure that claims decisions are made in accordance with ICHEIC guidelines (which includes working cooperatively with companies so that problems are corrected and misunderstandings resolved in a timely manner);
- Ongoing reconciliation efforts on claims-specific information;
- Finalizing the majority of ICHEIC audits of the Member Companies;
- Focusing on internal matching procedures and following up as appropriate with companies in an effort to ensure that as many claimants as possible receive payments on previously uncompensated policies;
- Working with ICHEIC companies and the Generali Trust Fund to ensure that sufficient resources are available to increase the speed of processing claims and in accordance with ICHEIC guidelines; and
- Continued improvements in communication for purposes of accountability and transparency.

Third, there are those who would advocate the use of the U.S. judicial system as the best means of successfully addressing historical injustices. While I respect the views of those who advocate legal action, and I do not dispute the importance of the independent judicial system in this country, I do not believe that it presents an adequate option to successfully pursue payment of uncompensated Holocaust-era insurance policies. In contrast to litigation, ICHEIC's claims process is provided at no cost to ICHEIC claimants, regardless of their ability to pay for legal services. ICHEIC's relaxed standards of proof recognize that Holocaust-era claimants possibly may not have the typical proof that might be required in a courtroom to prove contractual obligations. The ICHEIC process avoids the legal defenses, such as statute of limitations, that could be asserted in a legal proceeding. ICHEIC also allows claimants to submit claims that do not name a particular insurance company to ICHEIC for processing. In this regard, I am unaware of the likelihood of an individual filing suit against an unknown entity and successfully gaining some sort of relief. Finally, ICHEIC's archival research efforts have provided valuable additional evidence and documentation, which is used to support claims on claimants' behalf.

Fourth, ICHEIC's mandate is to facilitate the payment by the Member insurance companies of valid policies in accordance with the terms of the policies. This requires the matching of a claim with a participating company, the researching of the policy records by the relevant company, and for a valid claim the payment of the policy amount, using ICHEIC Valuation Guidelines which take into account both the substantial post-World War II devaluations of the European currencies and an annual interest amount.

Fifth, in response to the criticism of ICHEIC's so-called "Balkanized" approach to reaching separate agreements and arrangements with ICHEIC companies and outside entities, I must emphasize that these have vastly expanded the opportunities available to claimants to have their claims thoroughly investigated. Because of these partnerships, ICHEIC grew from having only five Member companies to an organization that works with the entire insurance industries in the Netherlands, Germany, Belgium and Austria. These arrangements also allow existing compensation systems that were set up by sovereign national governments and endorsed by their local Jewish communities to be incorporated into a global approach to the resolution of Holocaust-era insurance issues. Furthermore, many of these partnerships were solidified with the support and encouragement of governments that did not want their industries embroiled in lawsuits or subjected to sanctions or regulatory actions that could damage economic and political relationships with the United States.

ICHEIC is working to ensure that implementation of these agreements and operational arrangements proceeds in a manner that is both claimant-friendly and consistent with what has been agreed. We are working to improve cooperation with outsourced claims handling services, insurance companies, relevant national funds and government bodies in an effort to overcome obstacles to processing claims and to improve the speed at which decisions are reached. To achieve this goal, we meet three times a year with representatives of Member insurance companies and our outsourced claims processor, hold regular progress meetings with the German Foundation and GDV, and engage in ongoing dialogue with individual company representatives to address operational and claims-specific issues. This is in addition to our regular meetings and consultation with U.S. regulators and representative Jewish organizations.

Finally, in response to criticisms that ICHEIC is unwilling to make the necessary changes that will better serve claimants, we are focusing all our efforts on meeting the challenges that are before us and making the ICHEIC process more claimant-friendly. We stand ready to review recommendations that any ICHEIC entity may make with respect to evaluation of claims and will give such recommendations due consideration. In the course of doing so, however, I am not inclined to reopen issues that have previously been addressed on the basis of consensus and considered closed. There were valid reasons underlying past decisions, and instead of rehashing closed issues, we must forge ahead and ensure that all parties in this process fulfill their obligations and work to see that claimants are well served.

As you may be aware, on September 25, 2003, ICHEIC was sued in a state court in California. The lawsuit seeks to compel ICHEIC to change its operating procedures, including extending the period for filing claims. ICHEIC considers the suit to be without merit and intends to vigorously defend itself. I would point out that defending this lawsuit will be a drain on both

ICHEIC's finances and other resources, to the detriment of ICHEIC claimants and humanitarian programs.

Individual Claims (Questions 1 and 2)

ICHEIC has received the information presented at the hearing on claims from five Holocaust survivors, and we have taken thorough steps to examine each of those claims. They highlight both specific and systemic issues that are leading us to make changes to streamline and speed up the claims process, and to improve communications with claimants.

Let me state from the outset that I am angered and frustrated at the length of time it has taken to make decisions on these claims. Unfortunately, however, due to the high volume of claims received and the time and effort it took to construct a system to evaluate these claims, the process takes longer than anyone had anticipated when the ICHEIC claims outreach program was launched. This is not an excuse, but rather a fact, and it is precisely this matter of timing that we are working to address and speed up with all ICHEIC entities.

Furthermore, ICHEIC is currently developing a communications plan to keep claimants adequately informed about their claims, while at the same time bearing in mind the related administrative concerns. This requires establishing a balance between being responsive to claimants in such a way that communicates meaningful updates to them and taking into consideration the considerable costs associated with administering such contact, which contributes to the administrative expenses for which ICHEIC has been so fiercely criticized.

ICHEIC is aware that company and implementing organization letters that convey decisions to claimants are not always clear, easily understandable or for that matter very sensitive to the claimants. We have worked to address such issues previously, and we will continue to work on them. As part of the decision verification process that has been instituted in the ICHEIC London office, we are working with the various ICHEIC entities to ensure that all communication with claimants uses clear language and reflects appropriate thought and sensitivity to their situations.

Below are summaries of each claim identified at the September 16 hearing.

Zev Jalon

With regard to Mr. Jalon's specific claims, the relevant insurance company, Riunione Adriatica di Sicurta Spa (RAS), has informed ICHEIC that it was necessary to coordinate with German federal and state compensation authorities about possible compensation obtained after World War II. The company has just recently received confirmation that a postwar compensation proceeding involving the insured individual had indeed taken place, but it did not cover insurance assets. We understand, therefore, that RAS is close to making final decisions on Mr. Jalon's claims and anticipates communicating with Mr. Jalon about these claims before the end of October. ICHEIC will follow up with RAS as well as with Mr. Jalon and other interested parties to ensure that the decisions are conveyed within the time frame indicated.

Esther Berger Lichtig

Unfortunately, as is the case with many claimants, Mrs. Lichtig has not received many updates about the status of her claims due to the volume of claims being handled by ICHEIC and participating companies. Her claim did not name a specific company, thereby making its investigation inevitably more complex than if it had named a company; rather than one specific insurer, her claim must be investigated by all participating companies that operated in Germany, or approximately 70 different insurers. During the course of its investigation, one such company, Generali, contacted her for further information because they thought they might be able to find a match with their records; after further research, however, Generali was unable to match Mrs. Lichtig's claim.

Mrs. Lichtig's claim remains on hold while further matching investigations are conducted on German records. ICHEIC is working closely with the German Insurance Association to implement the matching exercise that is called for under ICHEIC's agreement with the German Foundation and the German Insurance Association. When these efforts have been completed, we should be able to communicate more information to Mrs. Lichtig about her claim. However, at the present time, we are unable to provide an exact time frame for completing the investigation of this claim, which does not name a specific company.

Iga Pioro

Generali declined Ms. Pioro's claims on the basis that the policies do not show up in the 1936 Generali register or any records thereafter. The correspondence conveying these decisions should have provided a more thorough and understandable explanation for denying the claims, which I will do below.

The 1936 Generali register that is referenced in the correspondence refers to a set of records – which was created in 1936 for financial reserving purposes – containing information on extant policies. After 1936, only additions and deletions were usually printed as an economy measure, but Generali has done extensive rebuilding work and cross-referencing to its policies database and databased ledgers. Printouts of these lists survive for 1936 to 1944 and have been databased for Generali branches in a number of countries, including Poland. ICHEIC's Audit Mandate Support Group accepted this databased 1936 list as being complete for negative evidence purposes in deciding a claim relating to those countries; in other words, if a policy is not listed in this database prior to the beginning of the Holocaust era in a particular territory, then, in the absence of evidence to the contrary, the company can conclude that it was paid out, paid up, cancelled or otherwise terminated prior to the start of the Holocaust era, and thus decline the claim.

It would appear that the company did follow ICHEIC guidelines. The deemed start date for the Holocaust era in Poland is 1939. Generali declined Ms. Pioro's claims on the basis that the policies do not appear in the 1936 register or any records thereafter.

Felicia Haberfeld

Mrs. Haberfeld submitted four claims, but only one could be processed with an MOU company, namely Generali. Generali made an offer on the claim in January 2001 in the amount of $500. This offer is currently undergoing further review between ICHEIC and Generali to determine if the original offer made should be increased in accordance with the final ICHEIC Valuation Guidelines that were issued in November 2002.

Mrs. Haberfeld's other three claims related to entities operating in Poland that are not affiliated with any ICHEIC companies and which were subsequently nationalized. These claims may be eligible for payment under the ICHEIC humanitarian payment process, which we anticipate will begin issuing decisions in early 2004. We will continue to advise you on developments with these claims.

Fanny Matalon

Mrs. Matalon appealed the initial decision made on her claim against Generali. Under the Generali Trust Fund's (GTF) appeals process – which is separate from ICHEIC, in accordance with the April 2001 agreement naming the GTF as the implementing organization for all claims made against Generali – the appeal was decided in Mrs. Matalon's favor in May 2003, unless Generali could provide evidence to the contrary within 45 days. After an unexplained delay, and following repeated efforts by Mrs. Matalon, the Washington State Insurance Commissioner and ICHEIC to ensure that this decision is carried out, as is called for under the agreement, the GTF issued a letter conveying an offer to Mrs. Matalon in a letter dated October 21, 2003. We will continue to follow up with the GTF to ensure that payment is made in a timely manner.

Israel Arbeiter

There has been no correspondence sent to Mr. Arbeiter regarding his claim, which did not name a specific insurance company but did name Poland as the country where the policy was issued. ICHEIC's standard practice is to send claims that do not specify a company to all participating companies that operated in a given country for investigation. All relevant companies to date have investigated their records but were unable to find a match with Mr. Arbeiter's claim. This claim also is being reviewed under the ICHEIC humanitarian payment program, where again, we anticipate starting to issue decisions in early 2004. We will continue to advise you on developments with this claim. The point is well taken, however, that this claimant has waited a considerable period of time for resolution of his claim. We hope to bring closure to Mr. Arbeiter's claim, as well as those of many other claimants, through the humanitarian payment process.

Oversight, Verification of Decisions, Monitoring Group (Questions 3, 10, 12, 13, 18)

Insurers are required to comply with ICHEIC standards in investigating claims. These include the ICHEIC relaxed standards of proof, Valuation Guidelines and five audit standards

whereby the companies go through a rigorous audit process. Stage 1 of the audit process essentially is an archives and systems review. Stage 2 of the audit process, covering the processing of claims, is about to begin for those companies which are audit compliant for Stage 1 (e.g., those companies for which the archive and systems review has been completed).

In the Stage 2 audit, each insurer's database of claims processed will be statistically sampled and the processing of the claims tested. During the Stage 2 audits, which cover the actual processing of claims by the insurers, the independent auditors will be instructed to refer any decisions which they regard as doubtful first to the company and, if necessary to ICHEIC for further investigation. The auditors will also be required to report the number of decisions that were reviewed and changed by the companies as a consequence of their referrals.

In addition to the audit process, further oversight of insurance companies and the way they process claims is part of ICHEIC's infrastructure. ICHEIC has raised 483 queries and questions with relevant companies as a result of the review in January 2003 of 2,200 decisions, which I outlined in my September 16 testimony. To date, companies have made 208 top-up offers to bring the original offer amounts in line with the final ICHEIC Valuation Guidelines that were issued in November 2002. Queries that remain outstanding are currently being followed up with the respective companies.

Since the January review, ICHEIC's London office has checked 500 declines and 1,125 offers that have been made by the companies. By applying knowledge of ICHEIC's relaxed standards of proof and Valuation Guidelines, members of the claims team can verify that companies are making decisions in keeping with the relevant guidelines, that pertinent evidence is not ignored, and that responses to claimants are comprehensive and clear. As part of the verification process, each decision, whether an offer or a denial, must be justified by the company in question. If there is no justification or reason given for a company denying or making an offer on a claim the claims team will query such a decision with the company and ask that they supply a reason for their decision or otherwise re-evaluate the claim. Once the reason for a decision is received, this will be checked against the relaxed standards of proof and Valuation Guidelines by the claims team in the usual manner. If there are any further queries with such a decision, they will also be raised with the company in question. The claims team has developed a system to track and follow up on these queries at regular intervals.

Decisions will continue to be verified on a rolling basis, and a system has been instituted to ensure that all decisions made since the beginning of the ICHEIC claims process are verified to be in accordance with ICHEIC procedures. The claims team also will conduct a separate and ongoing verification exercise that focuses specifically on well-documented denials. This has been established to ensure that "flagrant disregard by companies of evidence supporting claims" does not occur. As this verification is being conducted on a rolling basis, no time line has been agreed for the completion of this work, since it will continue for as long as companies continue to make decisions on claims.

The process described above has been designed to ensure that insurance companies follow ICHEIC guidelines for every decision that they make. Previous difficulties with companies not responding to queries in a timely manner will be addressed through follow-up at

regular intervals. If a query to a company is not resolved within the established time frame, it again will be raised with the company. Should a query remain unanswered for an unacceptable amount of time, we will take steps to apply pressure to the companies where necessary, thus ensuring the continued effectiveness of the claims team as a means of receiving prompt responses on the issues about which they inquire.

We have been working with the Generali and the Generali Trust Fund to ensure that they follow ICHEIC guidelines with regard to providing thorough explanations of why claims are denied, as well as in other areas. Unfortunately, it is accurate that this has not always been the case in the past, and we are pressing for rectification. The dialogue with regard to this and a number of other issues related to Generali and the Generali Trust Fund is ongoing, and we hope to reach satisfactory resolution soon.

With regard to the actions of other participating ICHEIC companies (i.e., aside from Generali and the Generali Trust Fund), at this juncture we hold the view that inconsistent application of claims guidelines and improper denials appear to stem from the genuine mistakes of individual company assessors, rather than from a systematic attempt to flout previously agreed procedures by the companies as a whole. I say this based on the rather random and varied nature of mistakes found by the claims team during routine verification of decisions (i.e., no one guideline is being "ignored" wholesale) and in the fact that companies are generally responsive to such queries with either an amended decision or a further explanation of their original decision.

I recently have asked Lord Peter Archer of Sandwell to conduct another Monitoring Group exercise, following on from the original effort that he led in 2002. The two areas in which I would find Monitoring Group review and evaluation particularly helpful are as follows:

- To evaluate the claims verification process that we have designed and are implementing in the ICHEIC London office. Since some form of verification was a central recommendation of the Monitoring Group last year, it is necessary to assess whether the system we have put in place is working in the manner and with the effect that the Monitoring Group envisioned.

- To examine how effectively and efficiently ICHEIC member companies and the Generali Trust Fund are matching all possible information from their databases with information ICHEIC and claimants provide, to generate the most possible information with which to evaluate a given claim.

Efforts are underway to develop a work plan for the Monitoring Group, which again will consist of representatives of U.S. state insurance regulators and Jewish organizations, as well as company representatives should they elect to participate.

Publication of Lists, Archival Research, Claims Filing Deadline (Questions 4, 6 and 7)

With regard to publication of lists of policyholders who were potentially victims of the Holocaust, I must correct for the record the mistaken impression that the ICHEIC MOU establishes an "obligation for companies to disclose Holocaust-era policies issued from 1920 to 1945." Paragraph 4 of the MoU begins as follows:

> *The IC shall initiate and conduct an investigatory process to determine the current status of those insurance policies issued to Holocaust victims during the period of 1920 to 1945 for which claims are filed with the IC...*

It then continues:

> *...As part of the audit mandate, the IC will address the issue of a full accounting by the insurance companies and publication of the names of Holocaust victims who held unpaid insurance policies.*

If such a broad obligation did exist, it would be impractical and be of limited value for the following reasons:

- The numbers of policies issued during the period 1920 – 1945 would run into tens of millions and the cost of databasing from old microfiche, film and paper records would be prohibitive;
- The pre-war Jewish proportion of the population in the ICHEIC's Audit Standard 1 list of countries ranged from 9.7% in Poland to 0.1% in Italy. If one assumes, in general, a propensity to insure by Jewish communities of two times population in terms of policy numbers, then between 80% and 99.8% of such a listing would serve no purpose;
- Some of the companies simply do not have the records, given the ravages of war, the passage of more than 60 years and the destruction of documents in the normal course of business.

Furthermore, the targeted approach which ICHEIC has undertaken to find and make known the names of policyholders who were likely to have been Holocaust victims is in keeping with ICHEIC's mission, which is to help identify and pay the previously uncompensated insurance policies of Holocaust survivors and the heirs of those who did not survive. Mass publication of policyholder names – names that have no conceivable relationship to the Holocaust – would likely result in thousands of unrelated claims inquiries that would nonetheless need to be handled fully in accordance with ICHEIC's claims procedures. It also would cause further delay in settling the claims of Holocaust survivors and victims' heirs who have waited far too long for some measure of justice. Furthermore, it would significantly increase the financial costs required to administer the claims process.

The initial work performed by Yad Vashem for ICHEIC in matching the list provided by Generali with the lists of Holocaust victims contained in their database was completed in

November 1999. Yad Vashem did a series of runs comparing the two sets of data according to different criteria:

1. Exact matches in the names and dates of birth
2. Good matches using spelling variants, such as East European conventions in patronymics, female endings, and other suffixes, plus obvious spelling errors
3. Matches on names and name variants only, without dates of birth.

ICHEIC published the resulting 8,740 policyholder names which were found to be full or probable matches on its website in April 2000. An additional 12,005 names were found to be possible matches, and it was agreed that Yad Vashem would input additional information, to be supplied by Generali, to refine that list. However, a dispute between Yad Vashem and a subsidiary of IBM over software licenses held up further work and was not resolved until July 2001. Following resolution of this matter, Yad Vashem resumed work on the broader run based on names and name variants only.

At the time this issue was relevant to the then-ongoing negotiations (which began in mid-2000) with the German Foundation and the German Insurance Association. Until those negotiations were completed and the requisite work to compile a list of German Jewish policyholders, it was not accepted by all parties that a name-only match was useful to the claims handling process, because without essential supporting information, no claim based solely on identity of names would be regarded as satisfying ICHEIC's relaxed standards of proof. Only when the publication of the fuller German Jewish policyholder list of 360,000 names in April 2003 was it agreed that the publication of names would serve a purpose in its own right as a method of outreach. However, there is still no question that a claim must have more information than is contained in a match with the website lists in order to satisfy these relaxed standards. As I stated in my September 16 testimony, simply finding a name on a list does not mean that there is a previously uncompensated policy in existence. Further investigation of the claim according to ICHEIC claims handling procedures must be undertaken.

The remaining 35,000 names resulting from the Yad Vashem exercise were published on the ICHEIC website in August 2003 and covered those matches between the Generali list of policyholders and Yad Vashem's lists of Holocaust victims which did not have a date of birth on one set of records or the other.

A final matching exercise involving Generali's Italian portfolio and a list of Italian Jewish residents recently has taken place. We are in the process of finalizing the results for publication on our website by the end of this month. While the exact number of matches has not yet been finalized, we anticipate that there will be fewer than 800 additional policyholder names published.

With regard to additional investigation into certain Eastern European archives, ICHEIC is working with the State Department to press certain Eastern European governments to make their archives available to ICHEIC researchers. ICHEIC staff has recently consulted with archival experts to determine the likely locations of historical records that have not yet been examined for purposes of providing additional evidence in the claims process. We are working with the State

Department's Special Envoy for Holocaust Issues to formulate appropriate high-level requests to Polish, Hungarian, and Romanian archival and governmental officials to press for their full cooperation. As I mentioned in my testimony, one area where Congress could be helpful is in passing a sense of Congress resolution to put further pressure on these governments.

Any additional information that ICHEIC is able to obtain through further research into Eastern European archives will be used in our internal matching process to provide as much evidence as possible in an effort to assist in the matching of claims filed with policyholder information. Let me reiterate that anyone may file a claim with ICHEIC regardless of whether they find a family name on a published list. Individuals who believe that a family member may have had an uncompensated Holocaust-era European insurance policy should file a claim before the filing period ends on December 31, 2003.

Criteria used by Companies (Question 5)

The criteria established for an "exact match" is exact spelling of surname, given name and date of birth. As described in my September 16 testimony, we also use Soundex matches for names and different formulations for close date of birth. The example cited in your question would not be a good match, and except in exceptional circumstances, only a possible match.

This kind of possible match does not meet the ICHEIC's stated standards. However, in such a case, the quality of the information needs to be taken into account. If, for instance, the first and last names occurred frequently, the city was large and the dates of birth bore no resemblance and were maybe 30 years apart, the claim might be denied absent any other information. On the other hand, if the names were rare, the city or town small and the dates were close in time or differed by one or two digits, the quality of the match would be very much higher and might well be accepted. The quality of the name matches is also relevant – whether they are exact, close or merely possible.

Each company has its own claims assessment team(s) working mostly with imprecise and incomplete data and employing various forms of analysis to account for name variations. For these reasons, the ICHEIC has prescribed only exact matches of first name, surname and date of birth as constituting a match. Attempts to prescribe any other combination could well have the effect of excluding a claim that did not meet them. This applies particularly to names that do not match exactly.

Reporting (Question 11)

The United States Government does not have oversight responsibility or authority over ICHEIC, which is an independent Swiss *Verein*. Furthermore, ICHEIC has no obligation to provide the detailed information required by this reporting provision and likely would not be able to do so, given data protection and privacy considerations. In fact, many of the claimants affected by this provision are not U.S. citizens and thus would have no connection whatsoever to the U.S. Department of State or the Congress. For these reasons, ICHEIC is not in a position to

be able to provide the information that would satisfy the State Department's reporting requirement.

Humanitarian Funds and related 8A Process, Berger compensation (Questions 8 and 9)

As I stated on September 16, 2003, in accordance with section 8A of the Memorandum of Understanding which established ICHEIC, we have established a humanitarian process by which victims of the Holocaust and their heirs will have the opportunity to receive humanitarian payments on insurance policies from the Holocaust era that cannot be attributed to any particular insurance company. Former National Security Advisor Samuel R. Berger is serving as a Senior Counselor to ICHEIC to develop criteria for evaluating these claims and otherwise advising on the process. His services are funded through ICHEIC humanitarian fund administrative oversight accounts, in accordance with the terms of the German Foundation agreement.

We have been exploring the possibility of an ICHEIC service corps for college age students. This idea originated from a meeting held in November 2002, which included a variety of representatives of Jewish Organizations that take part in the ICHEIC process and representatives of the offices of several U.S. insurance commissioners. The service corps, and any program that is ultimately funded by humanitarian funds received by ICHEIC, will be presented for the discussion and approval of the full ICHEIC.

We do not anticipate a competitive grant process for the allocation of remaining humanitarian funds. During 2003, ICHEIC canvassed the humanitarian community to hear as many voices as possible with regard to the greater Jewish communities' and U.S. insurance regulators' views about how the humanitarian funds should be spent. As a result of this consultation, ICHEIC made a 10-year commitment to fund $132 million in social welfare benefits, including home care for needy Jewish victims of Nazi persecution worldwide, and a commitment was made that most of the funds available for humanitarian purposes will be reserved for the benefit of needy Holocaust victims worldwide. Also, as a result of two meetings held with Jewish representatives and insurance regulators, and the information gathered from canvassing the broader community, a few ideas were presented for a small number of other worthy projects, one being the volunteer service corps. However, it is worth repeating that the volunteer service corps project, and any other proposal for funding humanitarian endeavors will be brought before the full ICHEIC for discussion and approval prior to the grant of any financial award.

Statistical Reporting and Appeals (Questions 14 and 17)

ICHEIC's improved statistical reporting format, which reflects significant efforts by Member companies and ICHEIC staff in verifying the figures contained therein, will be launched this week and thereafter will be made available on a biweekly basis. The report contains key details on claims processed, offers made and denials.

ICHEIC is in the process of developing a reporting format on the results of ICHEIC appeals, which will address concerns regarding consistency in the treatment of claimants. We expect to finalize the reporting format and content following consultation with the independent arbiters who decide the appeals. Because there is a linkage between offers accepted and appeals, we will be reporting information on the number and amount of offers accepted by claimants with the appeals report, which, when it is finalized, we would plan to append to the regular statistical claims report.

For a variety of reasons, I am unable at this juncture to provide an accurate prediction on the overall amount of money that will be paid out in claims when the ICHEIC process is complete. I am confident, however, that there are sufficient funds available to pay claims, related administrative expenses and still have funding available for assistance to needy Holocaust survivors and other humanitarian endeavors.

Budget (Question 15)

Of the total funds received from companies and through settlements, approximately $179 million is earmarked for claims payments. To the extent these funds are not ultimately used for claims payments, the amount remaining after all claims obligations have been satisfied will be available for humanitarian purposes. A further $192 million received is specifically designated for humanitarian purposes, including humanitarian claims payments (blocked accounts, top-ups, claims for which no company can be identified), as well as social welfare and other holocaust related humanitarian endeavors. Seventy-three million dollars is available for ICHEIC operating expenses and $22 million is available for any of the above mentioned uses and now resides in a trust, separate and apart from the other funds. To the extent that funds in this trust are not used for paying claims or administrative expenses, they will go to the humanitarian fund.

Website (Question 16)

ICHEIC has made all reasonable efforts to furnish all relevant information and documents to interested parties since its establishment. One tool by which we have made available materials, including claimant forms and ICHEIC's agreements with insurance companies, is our web site www.icheic.org. This week ICHEIC launched its entirely redesigned web site that offers user-friendlier access to information in a multi-lingual environment to our global readership and claimants.

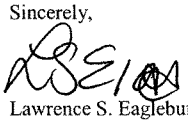
The new web site features multiple points of access to documents and useful material. Each reference to a document, agreement or memoranda will link directly to the target document (available in the universally-compatible PDF format). The site will feature an interactive timeline of ICHEIC's history (located in the "About ICHEIC" section), through which all documents can be accessed in their chronological order of release. The site will also offer a "Document Center," in which all available material will be categorized and posted online. At its launch, we anticipate that the following categories of materials will be available:

1. ICHEIC Quarterly Reports
2. Financial Reports
3. ICHEIC Agreements with Insurance Companies
4. ICHEIC Claims Packet Materials (in over 23 languages)
5. ICHEIC (Procedural) Documents
6. Organizational Outreach Materials

This section will grow organically as ICHEIC works to fulfill its mission and as new agreements, documents are prepared. 9th Insight, Inc., a Washington D.C. area-based design firm, designed and restructured the website for ICHEIC at cost.

I appreciate the opportunity to provide the Committee with this information.

Sincerely,



Lawrence S. Eagleburger
Chairman

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#1)
Committee on Government Operations
September 16, 2003

Publication of Policyholder Names

Question:

Many of the policyholder names listed on the ICHEIC Web site have come from the national archives of European countries. These archives have been an excellent source of information to identify policyholders. At the hearing Secretary Lawrence Eagleburger and Mr. Danny Kadden testified that additional archives in Poland, Hungary, and Romania, might contain information leading to the identification of additional policyholders. What efforts has the Department of State made to persuade the governments of these countries to make their archives available to ICHEIC researchers? What more could the State Department do? How could Congress help?

Answer:

Since the 1998 Washington Conference on Holocaust-Era Assets, the U.S. has urged governments and private entities to open archives pertaining to the Holocaust. Poland and Hungary are members of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research. Romania is a candidate country. All members of this Task Force are obligated to commit to open archives. There are nevertheless issues with the location of archival records in these countries, as well as access issues. We understand that ICHEIC has recently consulted with archival

experts to determine the location of historical records that could provide additional evidence in the claims process. We are working with ICHEIC to formulate appropriate high-level requests to Polish, Hungarian, and Romanian officials to urge their full cooperation. Members of Congress can help by raising this subject whenever they have the opportunity to meet with government officials and parliamentarians from these countries.

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#2)
Committee on Government Operations
September 16, 2003

European Privacy Laws

Question:

During the hearing, you testified that European countries and insurance companies cite privacy laws as the reason for their refusal to publish policyholder names. Has the State Department ever spoken to the governments of these countries about making exceptions to their privacy laws for the purposes of Holocaust-era insurance restitution? What more can the State Department do to encourage European countries to relax their privacy laws with respect to Holocaust-era insurance claims? Please identify those European countries that have claimed that their privacy laws could be violated by publication of policyholder names. Please summarize the grounds for those claims and explain whether the State Department agrees with those claims.

Answer:

European privacy laws have been an issue in our relations in a number of areas aside from insurance (for example, access to airline passenger name record data to screen for possible terrorists and other serious offenders), and virtually all European countries regard privacy laws as an important civil rights issue. Thirty European States are party to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, which requires parties to adopt domestic laws that protect privacy of data. Similar

obligations are imposed under the 1995 European Union Data Protection Directive, which also requires all European Union countries to have an independent enforcement body. Some countries including Germany also have officials or offices on a state or provincial level. It is clear that Europeans regard their privacy and data protection laws as important rights not to be tampered with lightly.

Despite these legal restrictions, the Special Envoy for Holocaust Issues has had some success in finding creative solutions that permitted claimants to obtain access to restricted data. France and Germany have both provided such access. After discussions with the German Insurance Association, ICHEIC was able to publish some 360,000 German policyholder names on its Web site in 2002.

We have not conducted an independent analysis to determine whether a specific exemption for Holocaust-era insurance restitution would be compatible with European privacy laws. The German Government, in its brief to the U.S. Supreme Court in AIA v. Garamendi (at pp. 12-13), provides some analysis to support its assertions that data privacy laws limit disclosures of insurance policy information.

Regardless of the legal question, however, the important policy question is how to ensure that holders of unpaid Holocaust-era insurance policies can be compensated.

Just this year, ICHEIC finalized an agreement with European insurance companies that allows for the public dissemination of more than 500,000 names of potential Holocaust-era policy holders in a manner that the companies have determined would not violate European privacy laws. Those names are available in a database on ICHEIC's web site, and have been vetted by Yad Vashem and other organizations. ICHEIC's current approach has the support of leading Jewish groups, including all of the victims' representatives who are part of the ICHEIC process.

Our objective is to ensure that Holocaust victims receive payments as soon as possible. The introduction into the ICHEIC process of the requirement that European insurers publish the names of millions of policyholders in pre-World War II Europe, the vast majority of which have no connection to the Holocaust, would have two negative consequences. It would further delay ICHEIC's processing of existing claims while it copes with the additional

paperwork, and it would add to the already significant overhead costs of ICHEIC. Requiring publication of such a list of eight to nine million names would ultimately increase administrative costs and diminish the amount of funds that would be available for assistance to Holocaust survivors, including humanitarian payments for any unsubstantiated claims.

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#3)
Committee on Government Operations
September 16, 2003

Access to Archives in Germany

Question:

Secretary Eagleburger also mentioned that ICHEIC is having difficulty gaining access to German state archives in Bavaria, Hesse, and the Rhineland Palatinate. What has the State Department done to facilitate access to these records and what more needs to be done? How could Congress help?

Answer:

Although this had been a problem until mid-September, we have recently been told by the Executive Director of the German Foundation that all 11 of the German states with relevant archives (the West German states) have opened them to ICHEIC. ICHEIC informs us that the state archives in Bavaria and Hesse have recently begun to cooperate fully with the German Foundation in researching prior insurance compensation records. With regard to Rhineland-Palatinate, we understand that this state is still requesting fees for undertaking such research. We are working with the German Foundation and the German Government to urge this State to provide these essential services at no cost, as there are

no financial resources available from which such fees could be paid. Members of Congress can help by raising this subject whenever they have the opportunity to meet with government officials and parliamentarians from Germany.

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#4)
Committee on Government Operations
September 16, 2003

ICHEIC Claims Handling Procedures (Israel)

Question:

Secretary Eagleburger also testified about the need to ensure that procedures used by the Generali Trust Fund (GTF) to process ICHEIC claims are consistent with standards used by ICHEIC insurance companies. However, the Committee is aware of complaints with a GTF procedure required by Israeli law that requires claimants to provide notarized statements and copies of their passports in order to verify their identity before a payment can be made. We understand this to be burdensome for claimants and it is inconsistent with ICHEIC's claims handling procedures. How can the State Department work with the Israeli government to address this issue in GTF insurance cases?

Answer:

We are consulting with ICHEIC on any inconsistencies that have been identified between the Generali Trust Fund's procedures and ICHEIC's claims procedures. We intend to raise this with appropriate Israeli government officials to ensure that any requests made by the GTF in the course of processing claims are not in contradiction to ICHEIC procedures or unduly burdensome on claimants.

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#5)
Committee on Government Operations
September 16, 2003

Legal Peace

Question:

As you and Ambassador Bindenagel have testified in previous Government Reform Committee hearings, the U.S. government, based on its agreements with Germany and Austria, is required to pursue legal peace for all German and Austrian companies that resolve Holocaust-era claims according to agreed upon ICHEIC guidelines. However, Secretary Eagleburger testified that the agreement for the Austrian General Settlement Fund to process insurance claims by ICHEIC standards is not complete. Should the U.S. Government seek legal peace for Austrian insurance companies if they are still not fulfilling their obligations to settle claims according to ICHEIC guidelines?

Answer:

The United States is obligated by its Executive Agreement with Austria to file a Statement of Interest recommending dismissal of all cases filed against Austrian companies, including Austrian insurance companies, in which a claim arising out of the Nazi era or World War II is asserted against such a company. That executive agreement is currently in force. As a practical matter, we know of no pending lawsuits against Austrian insurance companies in United States courts in which this would be an issue.

The Executive Agreement also obligates Austria to ensure that all insurance claims against Austrian insurance companies that fall within the scope of ICHEIC's claims-handling procedures will be decided on the basis of those procedures. We have no reason to believe this will not happen. Indeed, we understand ICHEIC is near an agreement with the Austrian General Settlement Fund that would allow claims on Austrian insurance companies to be adjudicated along lines similar to those that prevail in the ICHEIC process.

Under our agreements, Austria has undertaken to provide victims with certain additional payments. It has nearly completed payments of $150 million to victims for certain losses of household property, apartment leases, and small business leases. Austria is also obligated under our January 2001 Executive Agreement -- and under it own laws -- to establish a General Settlement Fund (GSF) of $210 million, of which $25 million is earmarked for Insurance payments. The GSF is now processing claims applications and will begin making payments once the Austrian Government determines that "legal peace" has been achieved. We have been assured by senior Austrian officials that Austria will fulfill its international and domestic legal obligations.

Questions for the Record Submitted to
Ambassador Randolph M. Bell by
Representative Henry Waxman (#6)
Committee on Government Operations
September 16, 2003

Office of Holocaust Issues

Question:

Upon your retirement, who will be named as your successor? On the issue of Holocaust-era insurance, what would you say are the biggest priorities for the Office of Holocaust Issues?

Answer:

Edward B. O'Donnell has been designated as the Special Envoy for Holocaust Issues to replace Ambassador Bell. Most recently, he was Director of the Department of State Liaison Office to the United States House of Representatives.

Our most important priority is to obtain prompt payments to Holocaust victims.

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