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THE HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2007 (H.R. 1746): HOLOCAUST ERA INSURANCE RESTITUTION AFTER ICHEIC, THE INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

FEBRUARY 7, 2008

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THE HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2007 (H.R. 1746): HOLOCAUST ERA INSURANCE RESTITUTION AFTER ICHEIC, THE INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS

Thursday, February 7, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 9:33 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank, [chairman of the committee] presiding.

Members present: Representatives Frank, Waters, Maloney, Ackerman, Sherman, Moore of Kansas, Capuano, Clay, Baca, Scott, Green, Klein, Mahoney, Wexler; Castle, and Shays.

Also present: Representative Ros-Lehtinen.

The CHAIRMAN. The hearing will come to order. To begin, the representative of the minority—one of the members of the minority is on the way up, but as soon as he gets here, I am going to ask unanimous consent that our colleague from the Foreign Affairs Committee, a major author of the bill, the gentlewoman from Florida, Ms. Ros-Lehtinen, be given by unanimous consent the right to participate as a member of the hearing. Is there any objection?

[No response]

The CHAIRMAN. There being none, the gentlewoman from Florida will participate as if she were a member of the committee. This is a very important hearing. It's particularly relevant for us to be doing this, because I think it's fair to say that this whole effort has been a result of congressional involvement. We are often told that we should stay out of foreign policy. That is in fact up to the Executive, and we may from time to time send them notes expressing our opinion, but we should not anticipate any significant weight being given to those expressions of opinion.

This is an example of why it is a mistake to pay attention to that argument. If it had not been for work that began in this particular committee under the chairmanship of our former member from Ohio, Jim Leach, things would not be nearly as far along as they are. Now they're not where they should be in the opinion of many, but they are somewhere, and they would not have been had there not been this intervention. I was grateful to one of the advocates,

and my constituent, Mr. Arbeiter, who mentioned in his statement that this began, I think it was about 10 years ago, with hearings that Mr. Leach convened. And we will continue that.

So this is a subject of particular interest to this Congress and to this committee. I cannot think of an issue, to touch briefly on the substance, that is more important than doing justice to the victims of the greatest crime in recent times, perhaps in all of history. And people should not be surprised when that insistence that justice be done as fully as possible motivates members of this body to the extent that it does and that it will.

There are obviously other considerations that come into play. But even considerations that have some impact in the normal course of events in my judgment shrink in their importance when measured against the need to provide justice to victims of the Holocaust. Obviously, the great majority of victims are beyond any recompense. They're beyond anything we can do. And that is a terrible and tragic fact. But it makes us all the more eager to make sure that those who are still here, those who did survive, that we do everything possible for them, that we not compound in even the most minor of ways the past tragedy by letting remain undone that which should be done.

I'm going to start now, because there is a great deal of interest in this, and a number of my colleagues want to make statements. We have a number of witnesses. I will ask people to be cognizant of the time, and I will begin with the gentlewoman from New York, the chairwoman of the Financial Institutions Subcommittee, Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman, and I'd like to be associated with your remarks. This is a very complicated and highly sensitive issue, and I hope that today's hearing will shed more light on how we can resolve the problems that still exist.

The International Commission on Holocaust Era Insurance Claims was established in 1998 to give Holocaust victims and survivors a way to settle their insurance claims. The agreement did not charge claimants to file a claim, and included relaxed standards of proof, recognizing that for many people, papers and documents were understandably destroyed by the Nazis. Over the years, I have participated in a number of Oversight and Government Reform Committee hearings on this issue, and have learned about the successes and the shortcomings of this program.

It has become clear that it was a positive step towards addressing Holocaust insurance restitution, but that much, much more is needed. Over a period of about 9 years, over $306 million was paid out to roughly 48,000 of about 90,000 claimants; 34,000 of those received $1,000 humanitarian awards. Though I firmly believe that intentions were good with this program, it has not achieved the goal of processing claims quickly and fairly for the survivors, the very people who are now running out of time.

I am a co-sponsor of H.R. 1746 because I believe transparency and justice are our primary obligations, which we should give to the survivors. When something doesn't function properly, we need to find a better solution. In this case, this bill offers a better solution. The bill would require insurers to disclose Holocaust era poli-

cies, and without an exhaustive list of policyholders, we will not be able to reach everyone affected.

The bill also establishes a Federal cause of action allowing individuals to pursue claims in U.S. courts. Survivors must not be denied the sole class of people who—they should have their day in court, and they should not be denied their ability to go into court. Too much has been taken away from them. This must not be another thing that is taken away from them. And I understand that there is some opposition. I look forward to hearing the testimony, but in the end, I believe strongly that we must not let obstacles get in the way of doing the right thing and helping the Holocaust survivors.

I yield back the balance of my time.

The CHAIRMAN. The gentlewoman from Florida.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. First of all, thank you for your kindness in allowing me to participate in the committee's hearing today. Certainly the Holocaust stands as one of the darkest chapters in human history.

Over half-a-century has passed since the world witnessed the atrocities committed by Hitler's regime, yet many Holocaust-related issues remain unresolved. One of these is the continued failure of insurance companies to pay Holocaust survivors or families of Holocaust victims for policies they purchased before or during World War II.

These insurance companies have for over 60 years refused to provide compensation under the insurance policies to Holocaust survivors or families of Holocaust victims. These companies argued that Holocaust survivors and their families do not have the documentation, such as a death certificate and insurance records. Concentration camps in which many of these Holocaust victims perished did not issue death certificates, and all assets and documents were confiscated from the Jews during that time by the Nazis.

For years, I have worked on the issues related to Holocaust-era compensation, and to address the issue of insurance policies specifically, my colleague, Robert Wexler, and I introduced H.R. 1746 in March of last year. Among other provisions, the bill requires insurance companies that do business in the United States to disclose the names of Holocaust-era insurance policyholders. Furthermore, the measure will allow Holocaust survivors or their heirs to sue the insurance companies in U.S. courts.

People often ask us why we introduced this bill and why we feel so strongly about this issue. Well, let me answer by reading one of the many letters that I received from Holocaust survivors, and this one is from Elizabeth Lefkowicz of Florida:

"Dear Congresswoman Ros-Lehtinen: My name is Elizabeth Unger Lefkowicz, and I am a U.S. citizen and a Florida resident. I was sent to the Auschwitz concentration camp in 1944 when I was 20 years old. During the Holocaust, I lost both of my parents, my grandparents, my two sisters, and a 2-year-old nephew. After the war, I found a document that was hidden by my father, Ignatz Ungar. This document contained his life insurance policy for 25,000 gold dollars. In 1945 when I presented the insurance claim to the insurance company, they requested a death certificate as a prerequisite to pay the claim. Without the death certificate, they said

the policy was invalid. A few years ago, the International Commission on Holocaust Era Insurance Claims revived our hope for justice with the insurance companies, and I filed the claim, Claim Number 77452, reference Ignatz Ungar Life Insurance. Unfortunately, this effort produced no results. I'm very glad that the Holocaust Claims Insurance Accountability Act, H.R. 1746 legislation has been introduced in Congress and if passed, the insurance companies doing business in the United States that profited from the Holocaust will be held accountable for their actions."

So Mr. Chairman, it is because of Ms. Lefkowicz and countless others who share her history and her tragedy, her circumstances, that Mr. Wexler and I introduced our bill. Unfortunately, today, obviously, we cannot bring back those who perished in the Holocaust, nor can we erase the pain and suffering from the memories of those who suffered these atrocities. However, we can work to bring about long-awaited justice to Holocaust survivors and their families. Because the number of Holocaust survivors who are alive decreases drastically every year, it is critical that Congress move expeditiously to pass H.R. 1746 and offer a level of closure to those who suffered immensely under Hitler's regime and then were shamelessly mistreated for decades by the insurance companies that sought unjust enrichment at the expense of Holocaust victims.

Thank you again, Mr. Chairman, for the opportunity to participate in the hearing.

The CHAIRMAN. The gentlewoman is welcome. And you never know when I'm going to show up at Foreign Affairs and make a speech, so I'm sure you'll remember that.

The gentleman from New York, Mr. Ackerman, who has been a strong advocate of justice in this area is now recognized.

Mr. ACKERMAN. Thank you very much. First let me thank you, Mr. Chairman, for holding this what I consider essential hearing before our committee and of course you're always welcome at our International Relations Committee as well. Special thanks to Ms. Ros-Lehtinen and Mr. Wexler for being the authors and initiators of this important piece of legislation that would finally bring some justice to so many people for whom justice has been denied.

The issues surrounding the question of Holocaust era insurance restitution are both immensely sensitive and highly complex. More examination yields less certainty, more questions, finer distinctions and unabating concern that not only has justice not been done, but that it may never be done.

While the principal of restitution is stark and clear and definitive, there are significant differences in the policies and behavior of the relevant European insurance companies, and among the countries in which they are based. There are differences based on the type of assets that were systematically stripped from Holocaust victims. There are differences in the scope of records, in the history of different firms, in the limits of privacy laws, and there are differences among the survivors, plaintiffs, and heirs.

And there are questions. There are questions about the scope of assets deserving restitution. There are questions about the transparency and the efficacy of the ICHEIC process. There are foreign policy questions. There are constitutional questions about the prop-

er role for America's foreign policy interests in the context of private civil litigation.

There are public policy questions about the role of the States and the Federal Government when it comes to insurance, moral questions about the rights of communities to speak for individuals, and philosophical questions about what justice means in so singular a catastrophe.

In this case, Mr. Chairman, the more that I learn, the less I seem to know. Accordingly, Mr. Chairman, I want to suggest that this hearing should be the first of a series. While we must recognize that many survivors are entering their last years, I believe the issue is too important and too complex for us to fall short in our due diligence. We need to act both quickly and correctly. We need to get this right.

Mr. Chairman, thank you again for bringing the matter before the committee, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Delaware.

Mr. CASTLE. Thank you, Mr. Chairman. I appreciate the opportunity to learn something about this issue. This is very complex for those of us who are coming in from scratch on this, and I have no particular opinion as to the legislation at this point.

But I do think the issue is of substantial importance, and I agree with Ileana and others as to the need to look at this to make a determination of what, if anything, we should be doing from a legislative point of view to try to help, particularly with the survivors of the Holocaust.

On the other hand, the complications of how to do that also presents some interesting questions, and that's why it is very hard to say that this legislation is absolutely the right course of action. I believe the hearing we are having today, which unfortunately I won't be able to take full part in because of other scheduling issues, is of vital significance in terms of developing exactly what our course of action should be.

I appreciate all of the witnesses who are here today and all of those who are participating, and I think we have a responsibility to try to learn all that we can in making a fair and good evaluation of where we are and what we should be doing. I realize that even among the witnesses there are some differences, and for that reason, we have a responsibility to try to sort this out and make sure we're going in the correct direction to try to alleviate a problem which we all agree is there.

So I appreciate, Mr. Chairman, the opportunity of participating and learning and hopefully arriving at a final resolution which will be in the best interests, particularly to the survivors of the Holocaust.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Florida, Mr. Mahoney.

Mr. MAHONEY. Thank you, Mr. Chairman. I appreciate you holding this important hearing today. I would also like to thank my colleagues from Florida, Mr. Wexler and Ms. Ros-Lehtinen, for their leadership on this important issue.

Mr. Chairman, I believe this hearing is of the utmost importance because we as a society owe survivors of the Holocaust the oppor-

tunity to have their voices heard. There is no greater way to honor the victims of the Holocaust than to let their stories be told.

This issue was first brought to my attention by one of my constituents, Mr. Alex Moskovic. Mr. Moskovic, who lives today in Hope Sound, Florida, as a constituent, is a Holocaust survivor from Zibronsk, Slovakia. In 1944, Mr. Moskovic, his parents, Joseph and Gittel Moskovic, and two brothers were deported to the Auschwitz Birkenau concentration camp. Mr. Moskovic was the only one of 41 family members to survive the Holocaust and during a torturous march through freezing weather, nearly 2 weeks on a cramped train where thousands died of hunger and the horrors of Auschwitz.

Upon his return to Zebronsk after the war, he found that his family's house had been destroyed. In 1947, Mr. Moskovic came to the United States where he established a successful career as an editor for ABC Sports. In fact, Mr. Moskovic was awarded numerous Emmys for his 30-year career.

After moving to Florida, Mr. Moskovic volunteered to work on the advisory committee of the Ruth Rales Jewish Family Services Board in Boca Raton, a nonprofit organization that provides members of the Palm Beach County community with counseling and an educational program. In addition, he is a member of the board of directors and executive committee of the Holocaust Survivors Foundation, where he has worked tirelessly on this issue.

I wanted to spend a few moments today talking about Mr. Moskovic's story because I believe it's important for the members of this committee to hear the stories of those fighting for restitution, whether it be through the International Commission on Holocaust Era Insurance Claims or other agreements.

Mr. Chairman, I hope that as a result of today's hearings, we have a better understanding of how the ICHEIC process worked, the promises that were made by the insurance industry, and the agreements reached by the U.S. Government. I am also interested in hearing what each witness thinks the impact of H.R. 1746, the Holocaust Insurance Accountability Act, will be on the process moving forward.

In the final analysis, gentlemen, right is right. In this case, this body needs to make sure that these claims are paid. To deny these benefits to Holocaust survivors on the basis of politics or administrative snafus only serves to trivialize the Holocaust itself. These unpaid premiums do not belong to the insurance companies. They belong to the survivors.

Again, thank you, Mr. Chairman, and I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from Connecticut wish to make a statement?

Mr. SHAYS. It will be a short one just to say that I agree and want to align myself with all of the speakers, particularly Ileana Ros-Lehtinen, and to say that as a Peace Corps volunteer, we had a lot of time to read, and I read all of Leon Uris's books. You can't read Exodus, Mila 18, particularly Mila 18 or Armageddon without realizing there is nothing to compare to the Holocaust. There is nothing. Nothing comes to the level of the Holocaust, this premeditated, factory system of annihilating people. And I just really be-

lieve that this is one of many hearings we have had so far in Congress. I really hope we're able to push a little harder and to see some action, overseas in particular. Thank you.

The CHAIRMAN. The gentleman from Florida, Mr. Klein.

Mr. KLEIN. Thank you, Mr. Chairman. Mr. Chairman, I come to this hearing with mixed feelings. On the one hand, I'm profoundly disappointed that it has taken so long for survivors to get an inkling of hope that their claims will be settled. And although there has been a lot of representations over the years and some action, we stand here today, 63 years after the end of World War II, and there are families and survivors who have never had any type of compensation for an insurance policy that was purchased during or prior to World War II.

I appreciate the fact that Chairman Frank, Congresswoman Ros-Lehtinen, and Congressman Wexler have brought this forward. I personally have been involved in Florida in Holocaust education and awareness and working with a lot of people in our community, who have needs, great needs because of their economic situation. The survivors who are here today appreciate your coming forward and bringing your stories forward.

But this is not just about stories. This is about what's right and what's moral. And as far as I'm concerned, we don't have to have long hearings, we don't have to have multiple hearings to get this issue resolved. This has been discussed; it has been debated; and it has been analyzed. And with the number of people remaining today, and the age of many of the survivors, the time is now to finish and do the right thing.

Thank you very much, Mr. Chairman.

The CHAIRMAN. The gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. First I want to thank you, Mr. Chairman, for holding this hearing on this long-overdue issue. It is very important that we continue to address this decades-long movement for fair and just equality for survivors of the Holocaust as it relates to thousands of still uncompensated insurance policyholders.

And even as the International Commission on Holocaust Era Insurance Claims was set up to address various issues involved and settle outstanding Holocaust-era policies, there are still today delays in participation of these insurance companies. Companies failed to provide the comprehensive lists of the policyholders' names, and as we know, these individuals' names are essential as Holocaust survivors and heirs often recall, that their families held these policies. However, they do not know the name of the companies that issued the specific policies.

These insurance issues facing Holocaust victims and their survivors are extremely complex, and efforts to provide restitution are certainly challenging at best. However, it is very, very important that we look into other ways to help speed up this process and maybe curb some of the frustrations being experienced by all involved. And that's why, Mr. Chairman, I'm very proud to support H.R. 1746, which would do some essential and very important things.

First, it would create a publicly available registry of insurance policies issued between January 30, 1933, and December 31, 1945,

to persons who were domiciled in an area controlled by Nazi Germany, and require insurers to file information on these policies with the Secretary of Commerce within 90 days of the bill's enactment. This is very, very important. And second, this bill would create a Federal civil cause of action for any claim arising out of such a policy.

This is a very, very important piece of legislation. It moves to correct one of the great omissions and one of the greatest sins of mankind's inhumanity against their fellow mankind.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and I associate myself with the remarks of the chair. I have had the opportunity to travel to Israel, and I visited the Holocaust Museum. And I assure anyone who questions why we are so concerned that if you have an opportunity to just visit one of the museums—we also have one in Houston, Texas—you will understand. Tears literally welled in my eyes as I saw the pictorial representations of the horrors and the atrocities that were committed.

We are truly embracing a circumstance where we cannot do enough. We really cannot. However, whenever you cannot do enough, you do have a duty to do all that you can. We must do all that we can to bring justice to the victims of the most horrific atrocity perpetrated upon humankind.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Florida, Mr. Wexler, is recognized, the sponsor of the bill and a major mover in having this hearing and in trying to get action.

Mr. WEXLER. Thank you very much, Mr. Chairman. I am deeply grateful to you for your seriousness of purpose in allowing us to have this hearing. I am also deeply grateful to my colleague and friend from Florida, Mrs. Ros-Lehtinen, for being a champion.

The two of us have worked very, very hard in bringing this issue forth, and there is opposition. What I would like to do, Mr. Chairman, is to talk about the specific facts relating to this bill, what the bill actually does, what the opposition is, and why, in my view, that opposition is not meritorious.

First of all, this bill essentially does two things. It mandates that insurance companies who do business in the United States publicly disclose all Holocaust era insurance policies. Why that should be debatable, why there should be controversy about whether or not insurance companies who have profited from the Holocaust should disclose their insurance policies in the United States sixty-some-odd years afterwards to me is not debatable. It should be disclosed, period. There should be no legitimate debate.

The second part of the bill is that those people who claim to have insurance policies are given an opportunity to go into Federal court and prove their claim. There are a couple of misnomers here. If we passed this bill today, Mr. Chairman, not a single Holocaust survivor would receive a penny. Not a single one, because they would all have to go into Federal court and prove their claim. Do they have a lower standard that they have to prove in Federal court than anybody else who walked into Federal court? No. They would

have to prove the same insurance-related evidentiary matters as everybody else. So what is the issue?

The issue is this: previously, we entered, the United States of America, into an ICHEIC process. And that ICHEIC process, to sum it up, has divvied out, according to Secretary Eagleburger, who is in fairness an opponent of this legislation, $306 million to the survivors of the Holocaust. If you add in the amounts of money that were given to the claims conference and other related organizations, $450 million has been distributed through that process. Now was that a fair amount? That should be the question everyone is asking.

If you use the amount of money estimated by the proponents of the bill, the assets available; in other words, the amount of the insurance policies that these companies hold, are probably about $17 billion. But even if you use the estimate of the opponents of the bill, if you use the estimate of Ambassador Kennedy, whom I have enormous respect for—he is a terrific man—the estimate is roughly $3 billion. So the opponents of the bill essentially are saying that even though $3 billion is rightfully owed to survivors of the Holocaust, $450 million has been paid, and that's it. Fifteen percent.

In other words, what the Administration is saying, what the opponents of the bill are saying is that 85 percent of the value of the insurance policies held by survivors during the Holocaust should remain with the insurance companies, period. And what they will argue is that legal peace was made, and that it's not fair, it's not equitable today to undo that legal peace. Well, there is a big problem with the argument of legal peace. How is it that insurance companies who have not fully disclosed their policyowners can take advantage of the agreement that was made by not having to pay out that which is rightfully owed, and those that are rightfully owed are penalized by the agreement? This can't possibly be an equitable conclusion.

So the question isn't whether or not we are abrogating the word of the United States Government. The question is, there are insurance companies who hold billions of dollars of assets rightfully held by the survivors of the Holocaust. And is this Congress in the last moments of these survivors' lives going to give them an opportunity to use our Federal judicial system to gain some measure of justice? If this bill does not pass, game over. Game over. Insurance companies keep 85 percent of the assets even using the insurance company numbers, the Administration numbers. They keep 85 percent of the assets that are rightfully owed to the survivors of the Holocaust and they don't—they are not required to disclose those policyowners that rightfully have a right to know who they are.

Thank you, Mr. Chairman.

[Applause]

The CHAIRMAN. There will be no demonstrations. None. Zero. We will now begin the hearing, and I am pleased to welcome the representative of the Department of State. I'm especially pleased to welcome the representative of the Department of State today, because I won't be able to do that tomorrow when we have a very important hearing on the signing statement issued by the President that would undercut the effect of our bill to strengthen the divest-

ment from Sudan, and the State Department has refused to show up.

But we are glad to have Mr. Kennedy. We will take what we can get from this Administration, and we won't ask you to defend that. We will ask you instead to discuss this position. So, Ambassador J. Christian Kennedy, who is a Special Envoy for Holocaust Issues at the Department of State, you are now recognized.

STATEMENT OF AMBASSADOR J. CHRISTIAN KENNEDY, SPECIAL ENVOY FOR HOLOCAUST ISSUES, U.S. DEPARTMENT OF STATE

Ambassador KENNEDY. Thank you very much, Mr. Chairman, and thank you to you and your colleagues for the invitation to be here today.

Thank you for holding this important hearing about issues concerning my office's main constituency, Holocaust survivors. We all agree that those who spent the Nazi era in concentration camps and ghettos or in hiding deserve not only our sympathy and moral support, but also a measure of justice in their lifetimes. Our office therefore supports the continuing general effort to obtain compensation for their suffering and restitution or compensation for their material losses.

Your hearing today deals with insurance purchased by Holocaust victims and the International Commission on Holocaust Era Insurance Claims, known as ICHEIC. Let me say that the State Department believes ICHEIC was very successful in dealing with the most difficult life insurance claims arising from the Holocaust; cases where the claimants had no documentation or only the scantiest of records.

Earlier claims payments programs starting in 1953 had already dealt with other life insurance claims. ICHEIC created a process that included archives, appeals, audits, payments to individuals totaling more than $300 million, and nearly $200 million to humanitarian programs administered by the claims conference. It is a signal achievement, and I know that you will hear much more detail from the next panel.

Since 1969, State Department negotiations with governments, companies, and nongovernmental organizations have made over $8 billion in new money available to Holocaust survivors and other victims of the Nazis. Because negotiation and conversation have been so successful in getting Holocaust victims and victims' heirs a measure of compensation, the Administration opposes H.R. 1746, which would make litigation the main vehicle for claiming unpaid life insurance proceeds. Litigation always bears great uncertainty for the litigants, and it takes time. Negotiation is faster, especially with well-meaning partners.

Holocaust reparations are part of our very strong relationship, bilateral relationship with Germany, for example. Thanks to ongoing negotiations and the strength of this relationship, Germany has made available 350 million euros in new pensions and one-time payments to survivors since March of 2007. March 2007 was the date when ICHEIC closed its doors after completing, successfully we believe, its very important task of processing the most difficult life insurance claims arising from the Holocaust.

ICHEIC succeeded because of voluntary cooperation between insurers, governments, American State insurance regulators, and Holocaust survivors organizations. It did not charge claimants for its work, and nearly 48,000 people received payments. ICHEIC compiled a list of 519,000 names of people likely caught up in the Holocaust who also probably had life insurance policies. This database was the result of careful research and cross-checking with Israel's Yad Vashem Museum.

The completeness of this database was driven home for me very recently. We received a few days ago a Gestapo document that included two names of Holocaust victims who were listed as owning life insurance policies in 1942. A quick check with ICHEIC's 519,000 name list showed that the names of both people were on that list.

Returning to the broader issue, ICHEIC undertook research across company archives and even international boundaries to complete its database. Its research also studied insurance markets extensively, for example, the number of policies per capita in given countries.

Most important, perhaps, is that dialogue and negotiation allowed ICHEIC to establish relaxed standards of proof in order to pay claims. And insurance companies cooperating in the ICHEIC process have agreed to continue using relaxed standards of proof to process new claims that might appear even after the extensive outreach that ICHEIC did.

The Administration is concerned that because H.R. 1746 favors an adversarial relationship of litigants over negotiation, the bill would undermine the many positive working relationships we have built over the years and discourage countries that haven't met their obligations to survivors.

Lastly, let me touch on ongoing business. Germany has paid Holocaust reparations totaling nearly $100 billion in current value, but we still have many pending issues there involving elderly survivors. My office is involved in conversations and negotiations with other countries, too, especially the new democracies in Europe, where much remains to be done.

In negotiating the bilateral executive agreements that supported the creation of ICHEIC, we promised legal peace if participating companies were sued in U.S. courts about matters relating to the Holocaust. This legal peace does not prevent U.S. citizens from bringing suit, but it does obligate the government to seek dismissals. Our partners expect us to uphold our word and see H.R. 1746 as a grave threat to legal peace. If we cannot keep our given word—our word given in negotiations that have borne so many positive results, future negotiations will be much more difficult.

The perceived inability to keep our word would undermine our capacity to continue helping survivors of the Holocaust and the heirs of victims.

Chairman Frank, members of the committee, thank you very much for your invitation to be here today. I will be happy to answer your questions.

[The prepared statement of Ambassador Kennedy can be found on page 111 of the appendix.]

The CHAIRMAN. Thank you.

Next, we will hear from the Assistant Archivist for Records Services of the National Archives and Records Administration, Dr. Michael Kurtz.

STATEMENT OF DR. MICHAEL KURTZ, ASSISTANT ARCHIVIST FOR RECORDS SERVICES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Mr. KURTZ. Thank you, Mr. Chairman. I'm honored to be here today, and thank you for the invitation to testify.

For the record, I would like to note that in the holdings of the National Archives, we have tens of millions of pages relating to all aspects of the Holocaust, and we have worked assiduously over many decades to make these records available. I was honored to serve as the first chair of the Interagency Working Group on Nazi War Crimes and I worked very closely with Congresswoman Maloney, who was the legislative leader of this effort.

Our concerns with the bill are of a practical nature, as the National Archives would be responsible for the creating and servicing of the registry, and we also have concerns about the funding. So, we tackle these issues from a practical point of view and ask the committee's consideration of these concerns.

First, the size and scope of the registry is unclear. And there is no firm number for the size of the registry. We estimate that there are potentially millions of names of individuals who could file claims, and submitting claims in a variety of different formats and styles and so forth, so it has been very difficult to estimate exactly what resources would be required. Our information technology experts roughly estimate the cost to be at about $28 million.

One of the major concerns that we have is that the National Archives is a small agency, and we are fully taxed at this point trying to implement an electronic records archives for the first time. So almost our entire IT staff is devoted to this, and so we would need a stable and secure source of funding. We estimate it would cost about $28 million to develop and maintain the registry over the life of the legislation.

Our concern for the funding is that we are unclear from the bill as drafted if the penalty fees charged against noncompliant insurance companies would be the main or sole source of the funding for the registry. If that's the case, if insurance companies do comply with the law, we would have responsibility for Web access to a potentially huge name registry, but we would not receive any direct monies to establish and maintain the registry.

So we strongly state the need for a stable, appropriated source of funding that would enable us to get the infrastructure created necessary to properly create and service the registry, and to hire the expertise, both information technology and archival expertise. There are a number of issues related to privacy and information security and things of that nature where we really would need experts to work with us.

This would be a new and separate line of business for the National Archives, and we would need the support of Congress with a clear, stable source of funding to be able to do this.

Mr. Chairman, thank you again for the opportunity to testify on this bill.

[The prepared statement of Dr. Kurtz can be found on page 142 of the appendix.]

The CHAIRMAN. Thank you. Let me begin my questioning. Ambassador Kennedy, I understand the State Department's concern with bilateral relations with Germany. Indeed, the German ambassador came in to see me. Does anyone think that the outcome of congressional deliberations on this bill will have any significant effect on overall American-German relations?

I must tell you, I'm of the opinion that the nature of the ties that bind us, the issues that might arise, really are of such magnitude that it's hard for me to see that the fate of this bill one way or the other would have any significant effect on our relations. Is there a serious concern about American-German relations if this bill passes?

Ambassador KENNEDY. Thank you for that very important question, Mr. Chairman. Let me answer in two parts if I may, one personal, and one broader. I have been very surprised at the depth of feeling from my German interlocutors on the subject of this bill both in the private sector as well as the official sector. This is something which they take with great umbrage.

In the second area, or more broadly, I think it's hard to envision a change in a relationship that has been collaborative, that has been based on negotiation, that has produced substantial results. I don't claim they're enough, that they're sufficient, but substantial results. It's hard to see how that would not have a negative impact on the relationship. In the broadest sense—

The CHAIRMAN. What kind of negative impact? I mean, what would you foresee?

Ambassador KENNEDY. Well, as I said in my statement, sir, we still have a number of issues to resolve involving Holocaust survivors, and that's of course the area that I worry about the most.

The CHAIRMAN. Well, would you see any—you are testifying on behalf of the Department of State.

Ambassador KENNEDY. I'm sorry?

The CHAIRMAN. Would there be any—there were suggestions from some that there might be a spillover into broader issues because the American-German relationship is a very important one in terms of Europe, NATO, and the economy. Do you see any broader negative implications?

Ambassador KENNEDY. Well, I think that would be speculative at this point. I know that the—in the area of Holocaust reparations, I think I can say clearly that there might very well be some very negative repercussions.

The CHAIRMAN. You mean they might stop cooperating in some areas where they're now cooperating?

Ambassador KENNEDY. Well, the—

The CHAIRMAN. I'd like to be kind of specific.

Ambassador KENNEDY. The companies certainly would not want to, I think, deal with an issue in the courts and also deal with it in negotiation. They would have to choose a venue.

The CHAIRMAN. So there are ongoing negotiations that would be broken off, you think? Or might be?

Ambassador KENNEDY. I think there is that risk, yes, sir.

The CHAIRMAN. And Dr. Kurtz, your issue went to two, as I read, one was the absence of an end date in maintenance of the record, and also the money. If we could meet—just one question. You mentioned $28 million. Is that an annual cost or a total cost?

Mr. KURTZ. That would be a total cost.

The CHAIRMAN. Total cost—$28 million?

Mr. KURTZ. $22 million for the creation and servicing of the registry, and about $2 or $3 million a year for ongoing maintenance.

The CHAIRMAN. All right. So we're not talking about huge sums. That is, it would be within the capacity of this Congress, if we were to pass the bill, to appropriate $28 million to take care of this. If we were, in fact, to accompany passage of the bill in some form with the $28 million, and give you enough time to hire, would that then be disruptive of your operations?

Mr. KURTZ. No. I don't think it would be disruptive.

The CHAIRMAN. Thank you. The gentlewoman from Florida.

Ms. ROS-LEHTINEN. Thank you, Mr. Chairman. Thank you, Mr. Ambassador. I wanted to ask you a few questions about the ICHEIC process and proper compensation for the victims and their descendants.

ICHEIC has been criticized for failing to review hundreds of thousands of relevant files. For example, ICHIEC's final report of external research indicates that when looking at the Central Property Office files of Slovakia, "more than 700 boxes or records dealing with the Ayrianization of Jewish firms in Slovakia were found." Over 700 boxes of records. And these files contained information about the assets of the firms or their Jewish owners. However, the researchers searched only what they call, "a small amount," of those 700 boxes, which provided information about 18 policies—18 policies. Would it be accurate to say to either of our witnesses actually that there were many files that ICHIEC did not examine containing information about Holocaust era insurance policies? And shouldn't the beneficiaries of these policies have a right to be compensated for their insurance policies?

Ambassador KENNEDY. Thank you very much, Congresswoman. I think that the point I'd like to focus on in replying is that if insurance policy documents come to light, and there will be a few, the members of the ICHIEC participating companies have all agreed to continue to use the relaxed standards of proof that characterize the ICHIEC process to process those claims.

So while ICHIEC has closed its doors, the committees—I'm sorry—the companies have said that they will continue to use those standards as they process the claims. And that's what I think is important from our point of view, that the people who have claims can still file them.

Ms. ROS-LEHTINEN. Thank you. That in no way answers the question, but on that issue that there will be a few insurance companies that have participated in the ICHIEC process have agreed, as you say, to continue to consider claims and use the ICHIEC's lower standard of proof. However, there are no oversight mechanisms. There is no way to appeal the decisions of the insurance company. And it seems as though the insurance companies will again be in full control of deciding who will or will not be compensated, as well as determining the amount of that compensation.

And considering that ICHIEC was established because the insurance companies failed—failed to act on their own—how would this voluntary process that you talked about offered by the insurance company, which lacks an appeals mechanism, which lacks oversight, will be at all effective in fairly resolving what you consider a few of these unpaid claims?

Ambassador KENNEDY. Well, in my conversations with people from the insurance associations, they have welcomed the idea of some oversight. I imagine that people here in the United States who have an issue, if their claim is not resolved, would still be able to go to the State insurance commissioners and to other entities that have real expertise in these matters.

Ms. ROS-LEHTINEN. Thank you. Your responses—well, it has often been argued that the court's proof requirements would be a lot more stringent than those used by ICHIEC's and that it is unlikely that many claims will turn out to be successful. And if that's the case, then I ask myself, why are the insurance companies so worried about litigation if there is not enough proof and the case will be quickly dismissed because of lack of evidence? So why not let the survivors have their day in court, have a judge or a jury decide rather than have an insurance company, again with no oversight, although they say that they would welcome it? That's a real stretch of the imagination. They have not done so yet. But what would be wrong with having the survivors have their day in court rather than have this insurance company or that insurance company whose interests lie in not paying, in having to pay as few policies as possible? That's how they make their money.

Ambassador KENNEDY. Thank you, Congresswoman. The bilateral executive agreement that we have, for example, with Germany, in no way infringes on the ability of someone to go into court and seek redress right now.

Ms. ROS-LEHTINEN. Well, yes, the U.S. Federal Government cannot forbid U.S. citizens from pursuing legal action against the insurance companies. However, it did commit to filing statements of interest encouraging dismissals of any legal action against European companies in the United States, and these statements have prevented lawsuits against European insurance companies brought by Holocaust survivors. And after seeing that only a fraction of the policies have actually been paid out by the insurance companies, and that the ICHIEC process ended without adequately addressing the issue of Holocaust era insurance policies, shouldn't the U.S. Government's statement of policy change in order to allow those who have been denied a fair opportunity to recover their insurance policy? To be able to bring their claims to court? I think that would be the fair thing to do.

Thank you so much for your time and generosity, Madam Chairwoman.

Ms. WATERS. [presiding] You're welcome. And you may answer the question.

Ambassador KENNEDY. Thank you very much, Madam Chairwoman. Let me take the two parts of your question separately, if I may. The government negotiated an agreement, and it has been the policy since those agreements were entered into that we would favor negotiation and dialogue to resolve Holocaust era claims be-

cause they are—negotiations has produced results rapidly. I think that is the point I would like to underline there.

And secondly, as I said in my testimony, in my written statement, we need to be able to continue to negotiate credibly with countries where there are still many, many issues to be resolved, hopefully in favor of Holocaust survivors and the heirs of the victims.

Thank you.

Ms. WATERS. Thank you very much. I will recognize myself for 5 minutes. Let me welcome our witnesses and just raise some very basic questions of you. I do not know all of the details of the establishment of the International Commission on Holocaust Era Insurance, so I'd like to ask you when this Commission was established, were you specifically given the ability to negotiate this legal peace deal that you negotiated?

Ambassador KENNEDY. The State Insurance Commissioners here in the United States in the mid- and late 1990's noticed a serious number of holocaust era claims that were not being resolved. They themselves started to talk about a mechanism that might deal with this, and this mechanism ultimately led to ICHIEC. At the same time, the U.S. Government, represented very ably by Stuart Eizenstat, began negotiations with the various countries involved, especially Germany.

Ms. WATERS. I understand that, generally. I want to know about the specificity of the authorization. Were you authorized? Was the Commission authorized to negotiate legal peace?

Ambassador KENNEDY. Well, the kind of legal peace that is offered, the commitment of the government to seek dismissals, is something that the negotiators felt was inherent in the executive's powers to reach.

Ms. WATERS. This was born out of the negotiations, but there was nothing specific in the establishment of the Commission that gave authority to negotiate and settle on the so-called legal peace. Is that correct? Would you accept that as correctly identifying what power you have or did not have relative to establishing this legal peace agreement?

Ambassador KENNEDY. Well, the agreement covered a number of things.

Ms. WATERS. Did it give you the authority to negotiate a legal peace agreement? Yes or no.

Ambassador KENNEDY. Well, first, I was not present in those negotiations.

Ms. WATERS. So you don't know whether or not that authorizes this?

Ambassador KENNEDY. The authority, I believe, is inherent in the executive ability, but not foreign relations.

Ms. WATERS. You think it's implied, but not specific. Is that correct?

Ambassador KENNEDY. I'd be happy to take that question, Madam Chairwoman.

Ms. WATERS. Do you know if anyone sought the opinion or support of Congress in the negotiation of that legal peace agreement?

Ambassador KENNEDY. Again, I'd like a chance to go back and review the record and get back to you Madam Chairwoman.

Ms. WATERS. Is it safe to say that Congress was not involved in that agreement? Do you know of any bill or resolution that was sought or passed in Congress that would support that agreement?

Ambassador KENNEDY. I know of no bill that was sought prior to the education, ma'am. I'm sorry—to the conclusion of the negotiation.

Ms. WATERS. So then this bill that's before the Congress today would be the first time that we have been engaged on that so-called legal peace agreement and we were not asked before to give an opinion to support to question that agreement that was made, even though the significance of this peace agreement is such that it would deny the opportunity for survivors to even address the issue. So given that it was that important, the Congress of the United States was not engaged on it at all.

Ambassador KENNEDY,. Well, Madam Chairwoman, I don't think the statement that we deny Americans the right to sue in court is quite accurate. The ability to deny Americans to go into court, the opportunity to go into court would be something very serious. Americans can go into court. Nothing in the executive agreement prohibits or prevents people. It simply states that the executive, that the government will seek dismissal on all valid, legal grounds.

Ms. WATERS. Okay, thank you. I think that's very clear, and I will now recognize, for 5 minutes, Ms. Maloney.

Mrs. MALONEY. Thank you very much and thank you for your testimony today.

Ambassador Kennedy, between 1933 and 1938, the Jews of Germany were obligated by law to deliver to the Nazi government declarations specifying all their property and assets. The duty to file such declarations was imposed on all the Jews of Germany with the clear intention being to use these declarations in order to confiscate all Jewish property and assets in Germany. This documentation is highly detailed, including real estate, money, insurance policies, tangibles, intangible rights and other assets held by German Jews prior to the holocaust.

However, this information will not be made public until 2018, and my question is, why not? Even the KGB has opened up the files of World War II. We in the U.S. Government, our most secretive agency, the CIA, has opened up its files, the Nazi War Crimes Bill that Dr. Kurtz and I worked so hard on, to learn and to go forward.

Why not? Why are they not opening up these files? This is quite a long, long time. These should be opened, and what are we doing as Americans and as the U.S. Government to ensure that Holocaust survivors get access to this very important information. There's absolutely no reason to keep this confidential. These people are entitled to this information and I'd like to know what steps have we taken to open up these files, to provide this information and transparency, and what should we do in the future?

Ambassador KENNEDY. Thank you very much for that important question, Congresswoman. There are a number of archival issues that have gotten alot of serious work over the last few years. We have managed, thanks to the leadership of the United States Holocaust Memorial Museum and my office, to get the International Tracing Service files located in Bad Arolsen transferred electroni-

cally to the United States where we believe survivors will have a friendly environment to work with at the museum.

There are archival issues in other countries, such as Hungary, where we have been dealing with our Hungarian colleagues asking them for specific files as well. My understanding is that the asset declarations which you mentioned, which were just one more inhumane and criminal tool that the Nazi's used in their depredations on Germany's Jewish population, are in the Bundesgard keep in the various German states and that parties who under European privacy law have a right to access can get at those, a specific file for say their family.

One of the frustrations in dealing with file issues, archival issues, for us in Europe is that our legislation is much, much more liberal, and European privacy legislation, I found out in my negotiations on the tracing service, is actually going in the opposite direction, and it's much more restrictive the lengths of time are frankly, excessively long, in this American's opinion.

I would be happy to raise this issue with my German counterparts and get back to you after my next trip to Germany.

Mrs. MALONEY. Well, we would appreciate you raising this issue in writing. To hide behind a privacy protection, when citizens, American citizens or citizens of the world, are trying to get information on their insurance policy that could help them, so this to me seems like a stonewall, a really unresponsive step.

You and I know how difficult it is to work through a bureaucracy. So to tell someone, "Oh, go to Germany and you'll get your file," that is like saying, "We're not going to help you at all." And I for one think that we should, as a government, request that this information be made available and public. And if they won't do it, then I think our country should do it along with other like-minded countries that feel strongly about justice.

These asset declarations, to hide behind a shield of we're protecting privacy laws, I think is ludicrous and comical. And I for one would like to join my colleagues in a congressional letter or possibly a congressional resolution that these files should be made public.

As I said, our government has opened our files. Argentina, even the former Soviet Union, has opened up the files of the war. And to keep private insurance information hidden until 2018 is just, I think, scandalous, absolutely scandalous.

My time has expired. I have a number of other questions, but I'll put them in writing. Dr. Kurtz, I do want to thank you for your hard work on the Nazi War Crimes Disclosure Act, the really brilliant work that you did with these archives, and I hope you get the opportunity to work on the asset disclosure declarations and other important archives for our country and the world. Thank you for your testimony.

Ms. WATERS. Thank you very much.

The gentleman from New York, Mr. Ackerman?

Mr. ACKERMAN. Thank you, Madam Chairwoman. I thank the panel for the good work that they have done to-date, the progress that they have made.

I sit here somewhat in disbelief, because it is very hard for me to process some of the things that I'm hearing, although I've heard

them many times. It seems to me that there is an inherent conflict between life and time. Time always wins, but justice should not fall victim in that contest.

In the closing days of World War II, Hitler put on a maddening rush, not to defend Germany, because that was all over, but to kill as many Jews as he could, to rev up the action in his murder machinery and put more people in the gas chambers and the furnaces just to destroy people—to run the clock on them. This is all about running the clock.

The insurance companies are in no way part of Hitler's machinery. They're a commercial industry motivated by making a profit. We should not confuse profit with greed. The people who were fortunate enough to be among the very, very few who escaped temporarily from that contest with time, should not fall victim today to our participation in helping with what motivated Hitler. These people are in a very close race. I don't have to tell you what their ages are; some of them are in this audience today. There are others too frail to come.

In international relations, it is very, very important that we keep our word, and sometimes we give our word in order to make progress. But there are higher issues and more important values that are really at stake here. What we have done, inadvertently I'm sure, in signing important agreements even in order to get compliance in issues where there should have been compliance out of a sense of morality, rather than negotiation, is to put an expiration date on justice.

That should not be allowed to stand, although arrived at honorably. There is no justice in our government going to court against U.S. citizens, seeking restitution for horrendous things that were done against them personally, against the people, against humanity. And to be able to prove their day in court without their government standing on the other side of the bar and saying we have to object because we signed a document at one point in time, I am not impressed that Germany has paid out a hundred billion dollars or a trillion, billion dollars. It is not what is paid. It is what is owed.

I think an awful lot is owed to these people, and it has nothing to do with money. It has to do with the dignity that so many were stripped of, the hope to get it restored to which they cling, and those principles, and those values, that we have to look at, that we have to fight for.

How do we go to court and stand up against those who seek restitutions before a court of law to be able to make their case and to say that they should be denied that opportunity because we signed a document. We gave away their rights and put our government in between them and the justice that they seek. I suppose that's the only question that I have.

Ambassador KENNEDY. Thank you very much for your remarks, and for your question, Congressman.

I think it is important to recognize that in the area of insurance, which we're discussing today, that ICHIEC basically took the hardest cases; and those were the ones that were left after the reparations and compensation programs started in 1953 that dealt with other insurance issues. Getting to that very difficult mechanism was the product of arduous negotiation that was undertaken by the

government and it included the slave labor foundation. ICHIEC was eventually joined to that.

So I can certainly share your frustration that we are probably going to have some people with claims that were not resolved, but I do honestly believe that those are very, very few and that the ICHIEC negotiation and the ICHIEC process was successful in answering those claims that had not been resolved in the earlier programs in the 1950s', 1960's, and 1970's.

Mr. ACKERMAN. If I may continue, Madam Chairwoman?

Ms. WATERS. Yes, you may, for one more minute.

Mr. ACKERMAN. I appreciate the progress made by the ICHIEC process, and it was important. It was extremely helpful. It's laudatory. But to say that because there was progress made with some, that others can be denied, is not really an acceptable argument.

I don't understand how our President would veto this bill. Those of us who are on both this committee and on the International Relations Committee, some of us have a hard time understanding how this would be disruptive to our relations with Germany—painful, yes—but not disruptive. There are too many other things at stake, and the people.

If I had to name a country that was more anti-Nazi than any other country in the world today, it would be Germany, because they know what the Nazis did. This is not about anything other than greed. Greed is the answer to the questions that my friends Mr. Wexler and Ms. Ros-Lehtinen and others on this committee have raised.

Why would somebody object to publishing the list? I mean, a lot of people are the heirs to things that are owed to them that don't know that their uncle or great grandmother, or grandmother or father had a policy unless they see it written down somewhere. This is about greed. This is about denial. This is another aspect of Holocaust denial, not that the Holocaust took place, but that people paid for policies. And because of greed, as a result of the Holocaust, had no way of knowing policies existed, assets were in place, that they were entitled. That is the answer to, why not? It is greed.

Ms. WATERS. Thank you very much.

Mr. Green, for 5 minutes.

Somebody gave me a list. You're next, Mr. Scott. Thank you. Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you very much, Madam Chairwoman.

This is a fascinating hearing dealing with one of the epoch parts of our history, world history. I think it's important to recall at this point a correspondence between Heidrich and his superior at the time, Himmler, just prior to Heidrich being assassinated in Prague.

And in that communication Heidrich, who was the henchman, the architect of this for Himmler, said this: "that it is not just the human worth that comes from this holocaust, or final solution, it is the wealth. It is the economic." And this is illustrated right down to the very taking of Jewish people's teeth during the holocaust. So we're dealing with a monstrous situation here.

Now, I want to ask about Bad Arolsen. I believe I'm pronouncing that right. Can you tell me about Bad Arolsen?

Ambassador KENNEDY. Thank you, Congressman. I'd be happy to talk about Bad Arolsen a little bit.

When the Western allies were storming into Europe at the end of the Second World War, they began finding, in addition to these horrific death camps and other places of mass murder, a lot of documentation and files that dealt with this issue. They were kept in the individual occupation zones for awhile. And then in the early 1950's, there was an agreement among the Western allies that we needed to put all this in one place, and find a way to help families use it for family reunification purposes, primarily.

There are three major groups of files at Bad Arolsen: one which is called the detention records, which is largely, well, it can be characterized by any contact with any of the police organizations, not the Gestapo, the Crepo and also deportations to concentration camps. It covers the whole apparatus of the death machine, shall we say.

Mr. SCOTT. Let me ask you: I only have a few minutes to follow this. But, in addition to all of that, is it not true that also with Bad Arolsen, there has been revealed evidence of corporate complicity, unrevealed insurance company involvement, pervasive IBM punchcards among the papers, and the secret Bad Arolsen repository, and that this has reignited the grassroot survivor campaign to recover the rightful Nazi-era insurance claims against this huge Italian company and insurance company Generali. And is there evidence of Generali's complicity in this?

Ambassador KENNEDY. Congressman, I have been asking questions like that of the archivists who know the Bad Arolsen's collections best on both sides of the Atlantic for over a year now. And I'm told that there is no systematic archive related to insurance.

I think it's possible, and in fact the case I talked about, the Gestapo document we received just recently, we will occasionally find traces of insurance-related information that comes out. But at this point, what's in Bad Arolsen, in addition to detention records, are slave labor and forced labor records, and then finally the displaced persons records.

And in those it's possible that there will be some, occasionally appearing document that deals with insurance, but no one who knows the collection well has been able to identify anything that would systematically reveal life insurance documents. There are some documents relating to medical and retirement insurance, which was another scam that the SS operated to build companies and then use that money for their own purposes.

But, when it comes to life insurance, casualty insurance, other than the random appearance of a document once in a while, there hasn't been anything yet. But it's something that we ask about constantly.

Mr. SCOTT. This Bad Arolsen, I don't think, has been examined thoroughly enough. I mean, if you look at it, they—or the repository of nearly 18 million, as a matter of fact, 17.5 million Jews, and non-Jews. Wouldn't you think that this alone gives renewed justification for this legislation?

Ambassador KENNEDY. Well, Congressman, as I say, I don't think that the collection at Bad Arolsen is going to be very useful for insurance recovery matters. It is just the nature of the files doesn't lend itself to that. There will be the occasional document that is helpful to a particular person, but it's not systemic.

The CHAIRMAN. No. Your time has expired. You can't ask another question.

Mr. SCOTT. Oh, okay.

The CHAIRMAN. We're over time. Did you want to finish answering? Are you finished?

Ambassador KENNEDY. Well, I think I finished, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Green?

Mr. GREEN. Thank you, Mr. Chairman, and I thank both of the members of the panel for appearing.

Mr. Ambassador, you have indicated that there is nothing that will prohibit victims from suing. Is this correct?

Ambassador KENNEDY. Yes, sir. That's my understanding.

Mr. GREEN. Let us please examine this statement, because in the United States, we have a concept known as open courts, which literally means that anyone can sue anybody for any thing at any time for any amount of money. It does not, however, mean that you will prevail. It literally means, if you want to sue, you may.

So to say that you may sue is not enough to give people a proper understanding of what will happen after the lawsuit has been filed. Is it a fair statement that the government would file pleadings indicating that there is a limitations problem?

Ambassador KENNEDY. Sir, our pleadings, generally speaking, have asked the court to dismiss on valid, legal grounds.

Mr. GREEN. Yes, sir. What—

Ambassador KENNEDY. On valid legal grounds. I'd be happy to check whether we have specifically cited in a particular case a specific reason like the one you know.

Mr. GREEN. Well, generally speaking, requests for dismissals that broad are not granted, because you have to be specific as to why general, legal grounds. And you're saying, "Judge, you become my lawyer and determine what my legal rights are and my legal grounds are." So generally speaking, that would not be sufficient.

And if you plead limitations, what you in essence are saying is this: The companies that we are suing, that to some extent created the problem, now get the benefit from the problem that they have created. They have put us in the position where we could not bring the action and now they're saying it's too late for me to bring the action.

That is in and of itself an injustice. It appears to me, and by the way, I think honorable people can have honorable disagreements, and I perceive you to be an honorable person. But it appears to me that this really is about more than money. It is about due process. It is about a desire to have an opportunity to know for myself what happened. It is about the desire to have discovery, to find out for myself what is in the record.

What's in the files? Has there been something secretive that someone, even my government, may know about and not tell me?

That's what due process gives you when you go to court, the ability to have your day and to understand what happened to the life that has been so horribly interrupted and so dastardly dealt with. It's just about that, and people in this country seem to cherish that right to have a day in court. So I would say to you as you make that comment, this is just about the comment that people have the

right to sue. If you would, I think it leaves something terribly necessary—missing—when you don't explain that right doesn't necessarily mean that it will be anything more than filing a lawsuit.

A final comment, because my time is about up: There was nothing that prohibited the Administration from working with Congress so that we could have in the final analysis an agreement that Congress was a part of, that the Administration was a part of, and that would have brought in all of the victims so that they could be a part of it in some way, because that's what's missing.

I think people live in this world where it is not enough for things to be right, they must also look right, and it doesn't look right to victims to have someone decide their fate without their input. I think that we should do more to dialogue before we get to this point.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Do either of the witnesses wish to respond?

Ambassador KENNEDY. No. I thank the Congressman for his time.

The CHAIRMAN. The gentleman from Florida?

Mr. MAHONEY. Thank you, Mr. Chairman.

And let me start out by thanking Dr. Kurtz for his testimony and the fact that the National Archives is up to the task as long as Congress is up to the money, and I'm glad to hear that.

Some quick questions for Ambassador Kennedy. Thank you very much for your testimony and representing the Administration's position here.

Now, my understanding is that $300 million in claims that have been paid out, roughly, represents about 15 percent of what the Administration thought was the potential pool. Is that correct?

Ambassador KENNEDY. Well, the current market value of the policies involved is something that economists have been struggling with since the end of the Second World War. It's very, very hard to do. I would say that for example if you pick your point in time and you can make calculations, now whether those calculations have any bearing on what finally happens to people, if I can give you an example.

Mr. MAHONEY. Well, you're using up some time. I mean, the point I'm just trying to make here is that, you know, I've seen estimates of 17 billion that you guys are saying is something significantly less, but whether it's the Administration's estimate or what other folks are saying is the total amount, it's a small percentage that paid off.

Ambassador KENNEDY. Well, I think if you look at ICHIEC dealing with the most difficult cases that were not resolvable in other fora, ICHIEC dealt with those cases. There were considerable other fora, starting in 1953 in Germany, that dealt with insurance reparations.

Mr. MAHONEY. Okay. Let me ask you a question. Do you know how much we spent on all the administrative costs to have ICHIEC operate for this period of time? How much money did we spend administering the program?

Ambassador KENNEDY. Well, the U.S. Government was not the funder of ICHIEC, the German insurance companies, the German businesses, and the German government.

Mr. MAHONEY. So the answer is, you don't know how much was spent?

Ambassador KENNEDY. You'd have to ask ICHIEC, sir.

Mr. MAHONEY. Well, the number I have heard is around $80 million.

Ambassador KENNEDY. Well, I think—

Mr. MAHONEY. I understand. The next question I have for you sir is that you made an argument earlier that you thought that it was better to use diplomacy, because diplomacy in this particular case will get a better result than by going to court.

Do I understand that to be one of your main points?

Ambassador KENNEDY. Generally speaking, yes, sir.

Mr. MAHONEY. So, given Mr. Wexler's point that only 15 percent of the claims had been paid, does the Administration consider diplomacy to be working?

Ambassador KENNEDY. Well, no amount of money that's recovered is ever going to make people whole for this horrific experience that they suffered losing their loved ones, the material depredations they suffered. We're not asserting that. I would just go back.

Mr. MAHONEY. So you're saying diplomacy didn't work in this particular situation?

Ambassador KENNEDY. No, I'm saying it does work, because ICHIEC dealt with those difficult cases that previous administrative processes had not been able to resolve.

Mr. MAHONEY. Okay, now let me ask you a question. I don't think you were back there in 1998 when they put this together, so it puts you at a disadvantage. I understand. But, you know, given all of your experiences of diplomat and everything, you know. And I'm just new to Congress so I'm just trying to figure this all out.

But it would seem to me that if you had a crystal ball back in 1998, that if you only thought that 15 percent of these potential claims would get paid out, would we have entered into an agreement in your estimation to spend hundreds of millions of dollars to get such a small result back in 1998?

Is that something that diplomats do in the Administration—I think it was the Clinton Administration—would have entered into if they thought that was going to be the result here?

Ambassador KENNEDY. Well, when the ICHIEC process was claims-driven, people had to file a claim for there to be a payment. I don't think anyone at the beginning of the process knew exactly how many claimants there could be. They knew that there was a large number of people who held, were victims, or caught up in the Holocaust and who held insurance policies.

But it was the excellent research that ICHIEC did after the process started, once it was established, that got us the results we have today. And I'd also note, as Chairman Eagleburger did in earlier testimony, that in every case, ICHIEC's estimates of what it needed were very much on the marker.

The CHAIRMAN. One last quick question.

Mr. MAHONEY. Okay. The only point that I'm trying to make here is that common sense tells you that a 15 percent result doesn't make sense. And your argument is that we entered into an agreement, okay? And that we should honor an agreement for a flawed process.

It's clear to me that the process that ICHIEC processed did not deliver the result. And if it didn't deliver the result, and it's not delivering the justice that these Holocaust survivors deserve, why would we then continue to want to support this failed policy? Why not do what's right for the Holocaust survivors and get these people paid?

The CHAIRMAN. Any response, Ambassador Kennedy?

Ambassador KENNEDY. Yes. I think the earlier compensation programs took care of probably the vast bulk of the unpaid insurance claims that were out there, so ICHIEC is dealing with what couldn't be handled easily without the research, without the very dedicated work that the staff at ICHIEC did.

Thank you, sir.

The CHAIRMAN. The gentleman from Florida, Mr. Wexler?

Has the gentleman from Missouri asked his questions yet?

Mr. CLAY. I have not.

The CHAIRMAN. All right, well, let me go to the gentleman from Missouri first, then the gentleman from Florida.

Mr. CLAY. The microphone isn't working over here.

Ms. WATERS. Could you move to the next one? Perhaps that would be better, Mr. Clay.

Mr. CLAY. That is better. Thank you so much.

Ambassador, with ICHEIC having finished their process, what assurances do you have that companies will continue to process Holocaust era claims?

Have you gotten any word back from insurance entities that tell you we will continue this process until it is complete?

Ambassador KENNEDY. Thank you for that very important question. I am in very frequent contact with insurance companies, with insurance associates in foreign countries, and we have received assurances from the companies that participated in ICHIEC that they will continue to process claims with the relaxed standards of proof that are similar to the ones ICHIEC used.

Mr. CLAY. Would you have a running tally of how many have come through since the end of 2004 or since the corporation shut down?

Ambassador KENNEDY. The German Insurance Association groups, I believe, 77 companies, we have a letter from the Association, a copy of the letter from the Association that it sent to this committee saying that they will continue to use relaxed standards of proof. I have similar assurances from Generali, which has a very significant company archive in Trieste.

We have received similar assurances from Austria is, I'd say, yes. We do have the basis to be optimistic.

Mr. CLAY. But no hard numbers of how many remain out there?

Ambassador KENNEDY. It's very difficult to estimate, Congressman. I will say that the German Insurance Association shared with me that between March 31st of last year, and the 1st of December of last year, they had received a total of, I believe, 72 new claims—less than 10 a month.

Mr. CLAY. For those claimants who have had their claims satisfied, what kind of reaction do you get from the Holocaust era survivors or their families?

Ambassador KENNEDY. Well, I think those that effected a substantial recovery are happy they did. Those who received smaller payments that they considered insufficient were probably happy they got the money they did, but wish they'd gotten more—normal human reactions.

Mr. CLAY. How about you, Dr. Kurtz? Any reaction to that?

Mr. KURTZ. I think the only thing I would say, Congressman, is that from the point of view of the National Archives, any access to records, any access to information related to the Holocaust or any of these other areas, is extremely significant and important, and our emphasis is always on access.

Mr. CLAY. Do you think it brings closure to the chapter for some of the survivors and their families?

Mr. KURTZ. To get these payments?

Mr. CLAY. Yes.

Mr. KURTZ. I think it brings partial closure. I think also from the point of view of closure, this comes also from historical accountability, and that is why I said what I said about access. Because the more of this information that is out, and people really understand not only what happened, but the whole effort to try to rectify what happened, this really provides closure, I think, in a broader sense.

Mr. CLAY. Well, thank you both for your response, and I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman from Florida, Mr. Wexler.

Mr. WEXLER. Thank you, again, Mr. Chairman.

I just want to say at the outset, I did not file this legislation with Mrs. Ros-Lehtinen to in any way minimize the achievements and the accomplishments of Ambassador Eizenstat and Secretary Eagleburger, which have been extraordinary. I stand in admiration and respect for what they have done. But I filed this legislation because what we are presented with today is the ultimate injustice, having proceeded through the ICHIEC process, which has expired.

And Ambassador Kennedy, I appreciate that you say insurance companies have voluntarily agreed to participate, even though there's no appellate process, there's no auditing process. I appreciate that they have voluntarily agreed to continue in some respects, but the process has expired, and we are presented with the ultimate injustice because what we have is a situation we're using the Administration's estimates and the estimates of the insurance companies, roughly 85 percent of the assets, the value of the assets of insurance policies from the holocaust era remain unpaid.

So the question is, do we let it lie? That's it? Game over? Or does this Congress participate in a remedy which allows yet one last chance? This is it—one last chance. This legislation is the last chance for those survivors who have not received an equitable result to get it. And what the position of the Administration is, is "no." They will not get it. The position of the opponents of the bill is "no." The Holocaust survivors are done. They will not get their last chance. Now, what's the inequity?

The inequity is because the victims of the Holocaust do not have their records. They burned. They were exterminated. They're in ravines. They don't have records. We talked about that often. Yes, there may or may not be something in Bad Arolsen, but there's one

place where there are records. The insurance companies have the records.

And yet, the insurance companies are not mandated. They have not provided all the records so that they can be viewed by everyone. If the insurance companies would provide the records, this issue would be largely over, but they haven't provided the records. So the next question is why is the United States Government putting itself in the position of protecting insurance companies who refuse to disclose records from the Holocaust era?

And with all due respect to a few of the leaders in the American-Jewish community who have called me and said, "Wexler, you're upsetting the apple cart. Stop doing it," they should also ask themselves how it is that they can sleep at night when they know that the effort here is simply to provide that insurance companies should disclose their efforts to give people a reasonable opportunity in Federal court. Let's see, Ambassador Kennedy, if we can agree on certain facts.

I think we agree that 90,000 claims were made in the ICHIEC process, correct?

Ambassador KENNEDY. That would be approximately right. Yes, sir.

Mr. WEXLER. Approximately 43,000 of those 90,000 claims received were rejected outright. Correct?

Ambassador KENNEDY. You'd have to ask ICHIEC about their process.

Mr. WEXLER. That's what their records indicate; 43,000 of the 90,000 were rejected outright. What their records indicate, maybe you can concur, is that 34,000 people received a humanitarian award of $1,000.

Would you agree?

Ambassador KENNEDY. That's right.

Mr. WEXLER. So that's 77,000 of the 90,000. The remaining 13,000 received an average of $16,000 in compensation.

Ambassador KENNEDY. I believe that's also right.

Mr. WEXLER. That's it. That's it. Six million people died in the holocaust. Thirteen thousand people have received compensation of more than a humanitarian token payment. That's the process we're defending here. That's the process that we're saying prohibits American citizens from going into court and having to fight their own government to get past the first I'm here to make a claim.

And I think it was Mr. Green and Mr. Cleaver who both brought out an extraordinary point, which is that it is a bit duplicitous to say we're not stopping people from suing. You're right. You can't stop them from suing, but the Administration is saying the moment you get into court, the forum of the American government is going to say we underwrote your ability to sue because we made an agreement with Germany. We made an agreement with other countries.

Could we also agree that all of the companies that hold Holocaust era insurance policies have not been before the ICHIEC process and their subsidiaries? Have they all been before that process?

Ambassador KENNEDY. I think all of the companies that probably were involved in European insurance markets or their successors,

because many of these companies existed, the vast majority took part in the ICHIEC process.

Mr. WEXLER. Vast majority—so there are some insurance companies and/or their subsidiaries who have not participated?

Ambassador KENNEDY. I'd be happy to try and get a list for you, sir, but I would assert that basically they participated.

Mr. WEXLER. Okay, well that is a legitimate difference of opinion then, because—

The CHAIRMAN. Finish up.

Mr. WEXLER. Because there are claims, I think, legitimate credible ones, that there are insurance companies and/or their subsidiaries who have not participated. But they, too, now are benefiting from this legal peace argument, which is then even a double, compounded, legal inequity.

Ambassador KENNEDY. Well, the legal peace argument applies primarily to Germany and Austria. Those are the two countries with which these agreements were negotiated.

Mr. WEXLER. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the witnesses, and we will now hear from the next panel.

All right, I need the room cleared, we have another panel coming up. So, please let's move quickly, let's get everybody seated quickly. Let's not block the aisles there. Would the witnesses please take their seats. I want to get this thing started.

Thank you, oh, we need everybody to sit down. We are going to begin in a minute. Let me just say that everyone will have whatever material he or she wants submitted for the record, so there will be no need to ask. We will also grant by unanimous consent, to which there is no objection, the right for everybody to submit.

I would also make a suggestion. We will consider ourselves thanked in advance. We probably save time, getting rid of five "thank you's." And we know what is in the bill, so don't summarize it. Tell us why you think we should, or shouldn't pass it, or we should change it. And we will begin with a constituent who has been a great source of advice, and inspiration on this issue to me, central to mine.

This is Mr. Arbeiter. Mr. Arbeiter is president of the American Association of Jewish Holocaust Survivors of Greater Boston. Mr. Arbeiter?

STATEMENT OF ISRAEL ARBEITER, PRESIDENT, AMERICAN ASSOCIATION OF JEWISH HOLOCAUST SURVIVORS OF GREATER BOSTON

Mr. ARBEITER. Thank you very much. Mr. Chairman, and members of the committee, my name is Israel Arbeiter, and I have lived in Newton, Massachusetts, since 1970. I retired from my business in 1995, but have remained extremely active, especially in the face of Holocaust survivors, including as a speaker in public schools, representative of survivors of several community organization in the Boston area, and as president of the Jewish Holocaust Survivors of Greater Boston, a position I was first elected to in 1950, and I have been president of all but 8 years of this organization.

I want to extend my utmost gratitude to Chairman Barney Frank, our own elected Member of Congress, and a real champion

of rights to everyone. Mr. Chairman, the survivors of our community regard you as a great friend, and consistent advocacte on our behalf. And with your permission, Mr. Chairman, I would like to express my most sincere thanks to members of your staff, for assisting in helping me to come here.

I appear here today with very mixed feelings. On the one hand, I appreciate the opportunity to address this committee to urge the immediate passage of H.R. 1746, the Holocaust Insurance Accountability Act of 2007. On the other hand, I am very distressed, and even angered, that 10 years after this committee first held a hearing in 1998, under Representative Jim Leach, on Holocaust survivor's insurance claims, and 7 years after I first testified in Congress in 2001, the insurance industry has managed to escape having to fully account for its handling of our family policies, and has retained so many billions that we survivors should have received decades ago.

Today, in 2008, there is no more time to talk. If Congress wants to do the right thing, passage of this insurance imperative with no more delays. The legislation would restore the basic rights of survivors. It isn't asking very much, really. Is it too much for Holocaust survivors to have the right to have access to American courts to sue insurance companies who cheated our families out of insurance proceeds?

Is it too much for Holocaust survivors to make decisions for themselves about property rights? Is it too much to require insurance companies who want to do business in the United States to disclose information about their customers, and give a complete account of their conduct during and after the Holocaust? I don't think so. I don't think it is asking too much to have the same rights as any other American citizen to hold insurers accountable.

The survivors I represent, and those I am in contact with everyday, are confused and frustrated, yet Congress will stand by and allow the status quo to prevail.

I was born in Plock, Poland, one of five sons of Isaac and Hagara Arbeiter. My father was self-employed as a custom tailor, and had two employees and an apprentice. He made a comfortable living. In order to protect his family in case something happened to him, my father purchased life insurance. Every week, an agent from the insurance company would come to our house and collect the premiums. He wrote the date and amount in a booklet that was given to my father for that very purpose.

I remember distinctly, when my siblings and I asked my father why this man was coming every week to collect money, we were told that payment was "for your future." Unfortunately, our future was anything but secure. In September 1939, World War II broke out, and Nazi Germany occupied Poland. On February 26, 1941, in the middle of the night, following the orders of SS storm troopers, we were ordered out of our homes, and required to leave everything behind, including the life insurance policies, paperwork, and the booklet in which the agents of the insurance company recorded my father's payments.

From there, we were taken to concentration camps. My parents, and my younger brother were later gassed in Treblinka. Two of my brothers and I spent the next 4 years in various concentration

camps, including Auschwitz. Then, by some miracle, the war ended, and I was liberated. After the war, I attempted to pursue my father's insurance policy. I tried to find out where it could be cashed since my father had died in the Holocaust. However, my efforts were unsuccessful.

When ICHEIC was created in 1998, Holocaust survivors and family members were promised a decent, total process to recover our fair value from these insurers from their massive theft. Instead, we have been victimized again by a commission process which has operated without any public accountability, far from the preying eyes of the United States legal system. Amazingly, it was populated by the companies that had managed to hold on to our money for 5 decades. This idea was an abomination, because companies were represented, but the survivors did not ask for their officials, insurance commissioners, or anyone else to negotiate for us.

Why, of all people, should the Holocaust survivors be the only ones whose property rights would be negotiated by others? In Italy, in 2007, after 9 years, ICHEIC closed its doors, and the results are terrible. It paid less than 3 percent of the amount of the insurance owned by European Jews in 1938, now, conservatively estimated to be worth $17 billion. Those of us who personally experienced ICHEIC inefficiency and arrogant behavior were certainly not surprised at this.

My experience is typical, and shows why H.R. 1746 is so important. In the fall of the year 2000, I learned that the creation of ICHEIC—I applied for a claim form, filled it out and sent it in. I soon received a—

The CHAIRMAN. Mr. Arbeiter, we are going to need you to move towards a close.

Mr. ARBEITER. I soon received a letter with the claim number 00067890, which stated that all member companies will investigate my claim, and they will report their findings within 90 days. A year after I filed, I had nothing. In 2001, I was asked by Congressman Henry Waxman to testify before the U.S. House of Representatives. I explained about my family history, my ICHEIC application, and the commission's failure to even follow on its rules.

Time, we all agree, was of utmost importance. I listened to ICHEIC Chairman Lawrence Eagleburger, government officials, and other members of ICHEIC who promised quick action—a process where rules are enforced and everyone gets a fair share. We were told to be patient, that the system was new, and would improve. Congress chose not to take any action in 2001, to give ICHEIC a chance to work. Ultimately, in 2003, I found myself—

The CHAIRMAN. I just want to update, get to a conclusion on the bill, we are running late.

Mr. ARBEITER. Okay. Some say that we should accept what ICHEIC gave us, because there was a deal to limit our rights to whatever ICHEIC decided. This is simply not acceptable. Ladies and gentlemen, no survivor I know asked anyone else to make any deals about our insurance policy, and no survivors I know were asked if he, or she agreed to any such deals. How did anybody presume to deny the history I am certain about, because I lived it?

I know my father had insurance, but whatever deal was made by ICHEIC failed to produce the fact, and I know that happened. So,

it is not disrespectful to say I am entitled to the truth. I am entitled, as a Holocaust survivor, to any information that these companies have, or that any other company has, that is relevant to our past.

Now, there is no more time to deny me the history, nor the histories of thousands of families. I will finish with this, and I thank you very much, Mr. Chairman.

[The prepared statement of Mr. Arbeiter can be found on page 63 of the appendix.]

The CHAIRMAN. Thank you, and your entire statement will be in the record.

Mr. Eizenstat, we will give you some extra time here.

STATEMENT OF STUART EIZENSTAT, FORMER SPECIAL REPRESENTATIVE OF THE PRESIDENT & SECRETARY OF STATE ON HOLOCAUST-ERA ISSUES

Mr. EIZENSTAT. I have an amended statement that I'd like to put in the record.

The CHAIRMAN. The record is open, for anybody who wants to put something in.

Mr. EIZENSTAT. My capacity as Special Representative of the President for Holocaust Issues during the Clinton Administration,—

The CHAIRMAN. There are going to be a series of votes. We will finish Mr. Eizenstat's testimony, and then we will break for vote. There are four votes, so we may be gone for the better part of the hour. Mr. Eizenstat, please go ahead.

Mr. EIZENSTAT. I negotiated agreements with the German, Swiss, Austrian, French and other European governments, resulting in payments of more than $8 billion in compensation to 1.5 million Holocaust survivors, their heirs, and heirs of those who did not survive, including Jews, and non-Jews, for slave labor, real estate, insurance claims, and art claims.

I testified time and again before this committee and others on these agreements, including the legal peace that was part and parcel of it, and got bipartisan support. None of the $8 billion would have been paid, or would have been possible, without in return, providing legal peace to the companies who paid it. These agreements were reached, not just on a bilateral basis between the U.S. Government, and the governments of these other countries. They were done in a complex set of negotiations with private sector representatives and corporations abroad and with the plaintiff's attorneys, class action lawyers who brought the bulk of these suits.

And with the World Jewish Congress, and with the Jewish Claims Conference, and in full recognition by the Congress, this committee, this chairman being ranking member, and with Chairman Leach. The bill that is currently drafted threatens the integrity of the U.S. Government's long-standing policy of resolving Holocaust-era claims through negotiation and not litigation. I want to explain why that was our principle. The reason was that we wanted to have flexible rules of evidence. We wanted to have ICHEIC, which was created by the insurance regulators, do the research, not lawyers, for the claimants.

We wanted to have low burdens of proof, not the high burdens of proof that would exist in courts. The ICHEIC process emerged from the impetus provided by insurance regulators in a number of States. In the spring of 1998, those commissioners, and Holocaust survivor organizations, invited the Administration to support an international commission to resolve unpaid Holocaust-era claims, and asked us to use our diplomatic efforts with European governments and companies, to bring them into the process.

We agreed, ICHEIC was created, and the Administration had an observer on ICHEIC. We were not full members, because it was a State-led process. Our support for ICHEIC was premised on our interest in obtaining justice quickly. We knew that there was a time window, that litigation would be costly, uncertain, and subject to all sorts of defenses—statue of limitations, post-war agreements, and rules of evidence. And that this would consign Holocaust survivors to an endless and fruitless search for justice.

And so what we did, whether it was slave laborers, people who had their properties taken, people whose art was stolen, is to adopt administrative processes that could move quickly in the lifetime of these people, and that is what the ICHEIC process was all about. It was done, by the way, also not only with the participation, all these negotiations, with Jewish organizations, and Holocaust organizations. It was done with a representative of the state of Israel, and with the prime minister of Israel being directly involved, and informed of the negotiations.

We had to involve, and perhaps, the most difficult part of the process was the insurance issue, because insurance was regulated at the State level, and yet, we had to merge our broader negotiations with Germany over slave labor and other issues, with this issue. We felt that to ensure the inclusion of the broadest possible number of companies, and countries, that State insurance regulators had influence only over those European insurers who could be subject to the jurisdiction of a U.S. court. And that meant only those doing substantial amounts of business here. We wanted a broader universe of insurers involved.

And therefore, the ICHEIC process allowed us to get insurance companies engaged in paying into this process, who were not subject, and wouldn't today be subject to the jurisdiction of these courts. We took a number of steps to support the ICHEIC process. I testified in 1999 before this very committee, saying that we continued to believe ICHEIC was the best vehicle for resolving Holocaust-era claims. We reiterated that numerous times, and I wrote a letter to Mr. Eagleburger, who is chairman of ICHEIC, stating "that it was the foreign policy of the United States that ICHEIC should be recognized as the exclusive remedy for resolving all insurance claims relating to the Nazi era, because courts were not a satisfactory, timely and appropriate way to do it."

Now, it is very important to understand what was done, and what wasn't done in the negotiation with the Germans. We created a German foundation, funded with 10 billion Deutsche Marks, half by the German government, half by the private companies. The private companies included thousands of German companies, including insurance companies. The insurance piece was the most difficult piece to negotiate because the German insurers, led by

Allianz, said that they would not contribute to our overall 10 billion Deutsche Mark pot, unless they, along with all other German companies, including the Daimlers, and the Siemens and the others who were slave labor employers got their legal peace.

Now, what did legal peace involve? It is very important to understand. We had this 10 billion Deutsche Mark. We had to divide that 10 billion Deutsche Marks between slave laborers and forced laborers, who got 8.1 billion. A future fund for tolerance programs got 700 million. More went to property, and we agreed after very difficult negotiations, to pass through to ICHEIC 550 million Deutsche Marks to ICHEIC, for them to administer. But the condition of that was that Allianz, and the German insurance companies, as the other German companies, the slave labor employers needed to have legal peace. What did legal peace involve?

They demanded, initially, a piece of legislation of Congress to cut off the rights of people to sue. We said that is not possible. They wanted an executive agreement that would cut off the rights of people to sue. We said that was not possible. What we did agree to was a statement of interest. To say that it was in the national security interest of the United States that the cases be dismissed, in return for the payment of 10 billion Deutsche Marks. And that statement of interest simply said it was in the interest of the United States, the U.S. Government, with the full understanding of the Congress, to promote that dismissal.

If there were valid legal grounds found by a court to dismiss the case, that was the single most contentious part of the negotiation. They said, "Well, that leaves a huge loophole, the courts have to find a valid legal ground for dismissal." And we said, "That is exactly right, that is the most we can give, and that is what legal peace is going to mean, in return for your 10 billion Deutsche Marks." And that is what ended up happening.

The CHAIRMAN. You need to wind it up.

Mr. EIZENSTAT. I'll wind it up. Here is what I would suggest. I have particular concerns about access to court issues, because it cuts directly against the understanding that we have reached after painful, long, difficult negotiations with these companies. It would totally vitiate the understanding that we reached in broad daylight—

The CHAIRMAN. We have the point, but we do ask you to finish.

Mr. EIZENSTAT. There is a part of this legislation on the registry that I want to talk address. I am concerned about the fact that people may not know, and may not be paid for their policies. And here is what I would suggest. Instead of a registry, which runs against certain privacy rules in Europe, I would suggest the following: That Congress pass in legislation, a mandated requirement that all companies doing business in the United States submit period reports of their post-ICHEIC claims processing to the Congress, and to an appropriate office of the Department of State, stating the number of claims submitted, the number granted, the reasons for refusal, the amount offered in compensation, to vindicate the public interests in ensuring that companies live up to their commitments, while still respecting our agreement and the privacy rules of European companies.

They should do so according to the rules submitted by ICHEIC, the loose rules. I would go a step further, and suggest that all potential claimants be told that they can file claims through the German Insurance Association, GDV, and that insurance associations distribute those claims to the appropriate German companies. And those companies would be obligated to search their files to see if there was a match, and then to report, on an annual basis to the Congress and to the State Department, on their results. This, to me, would be a more appropriate way of dealing with it, than vitiating agreement—

[The prepared statement of Mr. Eizenstat can be found on page 102 of the appendix.]

The CHAIRMAN. We are over time, and we have a vote. So, we will recess, and come back when we are through voting.

Mr. EIZENSTAT. Mr. Chairman, may I just ask, I am supposed to be—

The CHAIRMAN. We are over time.

Mr. EIZENSTAT. I understand. How long do you anticipate we should—

The CHAIRMAN. It is going to be about 40 minutes—4 votes. If you have to leave, we understand that.

[Recess]

The CHAIRMAN. Sorry, the delay, in part, was to commemorate the victims of the Tennessee tornadoes, which took longer than anticipated. We will resume, and we are now up to Mr. Dubbin; is he not here yet? Then, we will move on to Ms. Koken, and we will get back to Mr. Dubbin.

Ms. Koken, why don't you begin.

STATEMENT OF DIANE KOKEN, FORMER VICE-CHAIRMAN, ICHEIC, AND FORMER PENNSYLVANIA INSURANCE COMMISSIONER

Ms. KOKEN. Chairman Frank, and members of the committee, thank you for the opportunity to appear before you today. I appreciate the committee's efforts to examine the issues underlying the Holocaust-era insurance claims, including the work of ICHEIC, in the context of considering this legislation. ICHEIC's mission was to identify, and compensate previously unpaid Holocaust-era insurance policies. Under the leadership of former Secretary of State Lawrence Eagleburger, ICHEIC resolved more than 90,000 claims, ensuring that over $306 million was offered to Holocaust survivors and their heirs for previously unpaid insurance policies.

Of this amount, more than half went to individuals who were unable to provide policy documentation or identify the company that may have issued the policy. The commission also distributed more than, or nearly $200 million more for humanitarian social welfare purposes, largely to honor the memory of heir-less claims.

I hope to help you to understand why, and how the commission approached its mission, and how the organization was structured around that mission. As a former president of the NAIC, and vice chair of ICHEIC, I participated in this process from its earliest days. I was joined in this effort by insurance regulators from all parts of the country who deserve even greater recognition for much of the work of ICHEIC. In particular, is the work of New York, and

the late Neil Levin, who perished on 9/11, and Glen Pomeroy, former president of the NAIC and North Dakota insurance commissioner.

Credit also goes to the NAIC for their efforts to resolve the complex issue of unpaid Holocaust-era insurance claims. Through the participation of a diverse group, ICHEIC offered recourse to thousands of individuals who would not otherwise have had the opportunity to pursue their claims. We only came to appreciate the challenge we worked through with the undertaking. We were creating a process to address claims that were over 70 years old, from more than 30 countries, with more than 20 languages and currencies with no relevant value, and with little documentation.

To start, we researched the pre-war, and wartime insurance market, and then invested heavily in extensive global outreach. We utilized all means available, and emphasized that anyone, regardless of the documentation they possessed, who thought that they were entitled to a Holocaust-era insurance policy, should file a claim.

We established an agreement on relaxed standards of proof, and created valuation standards that could be calculated without usual policy documentation. We also developed an extensive research database, and a matching system. Furthermore, we instituted a separate, but related humanitarian claims payment process for unnamed, unmatched claims, and for claims on Eastern European companies that had been liquidated, nationalized, or for which there really were no present-day successors.

One of the commission's first priorities was to gain a clear understanding of the overall volume, and estimated value of potential claims. Glen Pomeroy, brother of your colleague, Earl Pomeroy from North Dakota, co-chaired a task force to explore these issues. The Pomeroy task force, utilizing outside experts, guided the commission in deliberation on how to assess appropriate settlement amounts across the markets in Europe, which ultimately resulted in overall settlements of approximately $550 million.

ICHEIC's archival research was similarly critical to build on the information provided by claimants constructing an ICHEIC research database that ultimately could be matched with the company's information. As a by-product of this research, ICHEIC published the names of 519,000 potential Holocaust-era policyholders on its Web Site. Finding a name on a list, published by the commission, was neither necessary to file a claim, nor proof that a previously unpaid claim existed.

We recognized that our credibility depended on adequate oversight. For this reason, ICHEIC established four important processes: One, a two-stage, independent, third party audit for the claims review processes of each participating company and partner entity; two, an executive monitoring group that could conduct real-time evaluations of companies and the ICHEIC claims operations; three, an in-house verification process to crosscheck every decision on every claim that named a company; and four, an appeals process that allowed for any named claimant to have a decision by a company reviewed.

The successful settlement of ICHEIC claims, coupled with restitution efforts during the immediate post-war period, and the ongoing work of existing entities to resolve the remaining unpaid in-

surance policies within their respective jurisdictions addresses a preponderance of the pre-war insurance market. In addition, at ICHEIC's concluding meeting, every company that was a member of the commission, as well as the 70 companies of the German Insurance Association, through its partnership agreement with ICHEIC, and the Sjoa Foundation reaffirmed their commitment to continue to review, and process claims sent directly to them, which was confirmed by company letters.

The work of the commission was unprecedented, yet we were able, through amicable and inclusive dialogue to voluntarily adopt a new approach towards the resolution of unpaid Holocaust-era insurance claims for the benefits of survivors, and their families, and those who did not survive. In the end, for me, it was about the people, and their stories, and about justice. The commission could not resolve the wrongs done by the Holocaust, as that debt is incalculable. However, our efforts could bring some measure of justice to the lives of thousands of survivors, their families and the families of those who perished. Thank you.

[The prepared statement of Ms. Koken can be found on page 128 of the appendix.]

The CHAIRMAN. Thank you, Ms. Koken.

We now go to Sam Dubbin.

STATEMENT OF SAM DUBBIN, ESQ., ATTORNEY, MIAMI, FLORIDA

Mr. DUBBIN. Thank you. My name is Sam Dubbin, and I am an attorney from Miami, Florida. I would like to explain to the committee how I got involved in this matter.

Mr. CHAIRMAN. Mr. Dubbin, we have a limited amount of time, and your background may or may not be relevant to what we do on the bill.

Mr. DUBBIN. I understand.

Mr. CHAIRMAN. Use your judgement, but you don't have—

Mr. DUBBIN. I got involved because when I returned to practice law in Miami in the late 1990's, I was approached by a number of Holocaust survivors, elected leaders of survivor groups who were very concerned about the way deals had been made, and discussions were done over their rights. And many of them talked about insurance policies. And the survivors, and I went to our legislators. And in the State of Florida, legislation was passed that provided, based upon the testimony that the insurance commissioners had heard that—because everybody recognized that today would be difficult, or in the 1990's it would be difficult for survivors to be able to know about a claim.

The legislation in Florida, like the legislation in several States, required the publication of names, and it allowed survivors to go to court with a 10-year window. And the 10-year window was extremely important, because to have to litigate the statue of limitations under the circumstances would be an undue burden to impose upon people who obviously have been denied that information for years.

So, it was the heartfelt outpouring of desire for truth, and for reconciliation for history, and the ability to reconnect with what their families had lost, from Holocaust survivors, that got me in-

volved. I filed a number of lawsuits against certain insurance companies. I was one of the lead counsels in the Hungarian Gold Train case in which we were able, with the help of Members of Congress, including many people on this committee, to get a just resolution. And that was through the courts.

And that is because the survivors had the ability to speak for themselves. It is the denial of that ability to control their own rights through the courts of the United States that is the greatest abomination really of what has happened over the last 10 years. I want to remind the committee that those who are opposing the legislation talk about legal peace. What is legal peace?

Mr. Eizenstat has said, in his book, that during the negotiations over whether German industry would pay slave and forced laborers for the torture that they inflicted on them; he said, in effect, that before they would make those payments, they insisted that the United States wrap insurance into that overall agreement at the 11th hour.

Now, whether or not it is appropriate to negotiate by executive agreement payments about slave labor, which is a different kind of legal claim than a documented insurance claim, remember the policies, the documents are there, in most cases. The companies have the documents in most cases. The re-insurers have the documents in most cases.

So, why there should be a legal or moral nexus between slave labor payments and the property claims, like insurance claims, is a very serious, fundamental policy issue that this Congress should look at. It is also clear, from Mr. Eizenstat's book, that the Germans demanded that the President agree to abolish people's rights to sue for insurance policies. It was equally clear that the President does not have the authority to do that, and that the German then, in effect, gambled that the so-called "legal peace" that was agreed to, would somehow prevail in the courts.

And the Solicitor General, Mr. Waxman, evidently wrote a letter outlining that, under no circumstances, did the United States have the ability to abolish people's rights to sue for insurance policies. So, the agreement provided, that was in the "foreign policy," that they would file a statement of interest that it was in the foreign policy interest of the United States, for cases to be dismissed on any valid legal ground.

Today, it is the interpretation of that, in the courts, that has caused the problem. It is the courts' interpretation of the executive agreements that now bars survivors from going to court. They said it is not the agreements that matter. So, when the State Department says here that we didn't agree to keep people out of court, that is disingenuous, because the courts have said there is a Federal policy that operates separately from these executive agreements, from the language of the agreements, that they have relied upon to bar Holocaust survivors and heirs from access to the courts for insurance claims.

So, those who now oppose the legislation want to give Germany more than it was able to bargain for, in connection with that executive agreement. Now, so, the question is who decides Federal policy about how Holocaust survivors' rights ought to be determined in the United States of America. The question is, did the President

have the authority to negotiate away the rights of survivors to go to court, as a practical matter?

The language of the agreement is more restrictive than what they have obtained today. The courts have interpreted that as embodying a policy. This is not about foreign policy, this is about international commerce, and it is about access to the courts of the United States. And those are areas that this Congress has jurisdiction over, pure and simple. And to the extent that there is an argument that there is a foreign policy element to that, there is no case, and no principle where, in the absence of a grave international crisis, and congressional authority, that based upon the President's word alone, people have had their rights to go to court denied.

But that is the effect of the agreement, and the subsequent court decisions. That is why the access to courts provision of this legislation is so important. So, that leaves to the Congress the question of who sets policy about whether or not companies that do business in this country, who sold insurance to people who live here today—and believe me, these policies, as I put in my statement, they were very explicit, when Victoria, and Generali and the others sold insurance, it said, "You can collect this policy anywhere in the world where you demand payment."

And that meant something very special to Jews in Europe in the 1930's, because they sure hoped they would be somewhere else, or thought they might be, when it came time to collect. So, this is not about foreign transactions, this is about global companies at the time. They had assets in the United States at the time, and people today want to redeem those policies. These are contract rights, and to think that there is one class of people in this country today who do not have the right of access to courts, to obtain compensation for contracts that were sold to their parents under, admittedly, unusual circumstances.

But those circumstances, as you have heard from many people, shouldn't justify the denial of access. If anything, it should demand more favorable treatment, such as the publication of names, which is justified under the conditions, and the statutory extension of the statue of limitations. Is Congress willing to abide by the executive's judgement? There are two questions. Legally, there is no question that Congress has the authority. Morally, do you accept the judgment that, as a condition of allowing the German companies to make slave labor payments, that people's insurance rights should be obstructed the way they are? That is a decision for Congress to make.

I would just close by saying ICHEIC, in spite of the accomplishments that it had, and there were some, its overarching purpose was to limit the financial exposure of the insurers, and the moral exposure of the insurers. And by that, I mean there are records that show what the companies did when the Nazis came to collect people's policies. Those files exist, and the survivors have a right to know what someone who sold their parents insurance did at the time the Nazis came knocking, what they did to identify their Jewish customers. That is as much a part of this as the compensation. And for that truth, and frankly, for fair compensation to be denied as a result of those transactions, is really a travesty, and it is not

the kind of thing that this Congress should associate itself with, as far as, the policy of the United States of America.

[The prepared statement of Mr. Dubbin can be found on page 66 of the appendix.]

The CHAIRMAN. Thank you.

Next, we will hear from Roman Kent.

STATEMENT OF ROMAN KENT, CHAIRMAN, AMERICAN GATHERING OF JEWISH HOLOCAUST SURVIVORS

Mr. KENT. Thank you, Chairman Frank, and members of the committee, for allowing me to appear here. I am a Holocaust survivor. I received a bachelors degree in the Lodz Ghetto, and I received a Ph.D. degree in Auschwitz. Presently, I am chairman of the American Gathering of Jewish Holocaust Survivors, and officer of the Conference of Jewish Material Claims Against Germany, known as the claims conference.

I participated in the negotiation leading to the establishment, and was commissioner of, the International Commission of Holocaust-Era Insurance Claims, known as ICHEIC. I also participated in the negotiation involving the German foundation, and am presently also involved in the ongoing claims conference negotiation with the German government, which has provided hundreds of millions of dollars annually for Holocaust survivors.

For 25 years, I fought for justice, in memory of the Holocaust survivors. For this reason, I believe that I have a unique perspective from which to comment on the issues which are the subject of this hearing. At the outset, I want to highlight three key points. First, the ICHEIC process has concluded, however, insurance companies which worked with ICHEIC continue to accept and process Holocaust-era insurance claim, applying ICHEIC standard in their decision, at no cost to claimants.

In addition, a number of organizations, including the Holocaust Claim Processing Office of New York State, will assist survivors filing such claims at no charge. Second, H.R. 1746 would generate huge expectations among survivors that will not be met. The cost in time—above everything time—and effort required to engage in litigation will be excessive, if not prohibitive.

Even if European data protection hurdles could be overcome, the mandatory publication of the companys which work with ICHEIC, of all policyholders name will, at that point, yield little new information regarding policyholders who were victims of Nazi persecution.

Third, H.R. 1746, by effectively reopening previous agreements, will certainly, and I want to emphasize the word "certainly," damage ongoing negotiation with Germany, among others, and will put at risk hundreds of millions of dollars in crucial funding, which is required now, for the Holocaust survivors.

Since the beginning of World War II, and for the next 60 years, few survivors recovered the proceeds of their unpaid Holocaust-era insurance policies. They faced enormous obstacles, including the resistance of insurance companies to pay or even give a fair hearing, the virtual impossibility of obtaining relevant documents, and the statue of limitations. Moreover, many companies were no longer in

business after the war. A communist regime banned any sort of recovery for survivors in many countries.

Clearly, there was a vacuum in post-war insurance resolution effort. No effective forum existed. This is precisely why the ICHEIC agreements were reached. ICHEIC developed a process and methodology to identify and compensate previously unpaid individual Holocaust-era insurance claim, at no cost to claimants.

Working with the insurance companies that had agreed to participate, ICHEIC made great strides to fill this void, and attained a measure of justice for claimants, which up to that point, had not existed. However, only five European companies, which signed the agreement to work with ICHEIC, and the German companies, which were part of the German foundation agreement, provided funding for ICHEIC. ICHEIC received no other funds from any companies which were part of the European insurance market.

Nonetheless, ICHEIC developed a special process to make payment, even for policies issued by such companies. Moreover, many complications arose with the companies that did work with ICHEIC. For example, the different data protection of privacy law of Germany, Italy, France, and Switzerland had to be addressed individually. ICHEIC also developed a liberal approach towards evidence to make it possible, and easier for claimants to recover.

Only a small percentage of claims named a specific company, and fewer still included any documentation linking the policy to the specific company named in the claim. Yet, ICHEIC did something no court would do, and developed a way to pay claimants who did not produce an insurance policy, or name a specific company.

Thus, to address the ineffectiveness of lawsuits, ICHEIC became the first, and indeed, the only one organization to offer Holocaust victims, and their heirs, a way to pursue Holocaust-era insurance claim at no cost, without regard to any statue of limitation, even if the policy in issue could not be produced. An assertion had been made on a number of occasions that less than the 5 percent of the total value of Jewish Holocaust-era insurance policies was paid through the ICHEIC process. This is a figure without any solid basis.

As I have noticed, ICHEIC paid claimants for insurance policies issued by companies in Eastern Europe which no longer exist. Beyond that, the ultimate percentage of the Holocaust-era insurance market, paid through ICHEIC, depends on the valuation of Jewish purchases policies in question, and that, in turn, will vary depending on which values out of the broad range of possibilities, are used in the relevant calculation.

The factors involved in the complex calculation required included the following: One, the total pre-war face value of all insurance policies in the local currency at the time; two, the Jewish share of such policies; three, the propensity of Jewish individuals to purchase insurance in greater numbers and at a higher value than the rest of the population; four, an adjustment for policies which were paid; and five, the method used to convert the value of unpaid Holocaust-era policies in today's value.

There is no single correct measure for any of these factors. The final conclusion one can reach, will radically, and I say radically differ, depending on which values, out of the extensive range of

possibilities, were selected for their relevant component factors. To summarize, was ICHEIC perfect? Hell no. Excuse me for saying, "Hell no." Let me correct it by saying clearly not.

The CHAIRMAN. I would instruct the recorder that "Hell" can stand.

Mr. KENT. Thank you, Mr. Chairman. Nothing, nothing can remedy the wrongs perpetrated during the Holocaust. The life of one child, and one-and-a-half million children, and I was a child, cannot be measured in dollars and cents. The most that can be achieved is an imperfect justice. Imperfect justice on this planet, we do not have a perfect justice on this planet yet. I hope maybe sometime we will. Yet, as imperfect as ICHEIC was, what it accomplished was without precedent.

One, ICHEIC provided a forum for all of—

The CHAIRMAN. We have to speed this up, Mr. Kent.

Mr. KENT. Yes, one more minute please. ICHEIC provided a forum for Holocaust-era insurance claims where before, practically speaking, there was nowhere to go. Second, ICHEIC did not charge survivors, nor was it bound by any statue of limitation. Third, ICHEIC paid on policies issued by insurance companies which no longer exists. Four, insurance which worked with ICHEIC, continued to accept, and process claim, while the Holocaust Claim Processing Office will assist applicants with filing claims. Fifth, based on ICHEIC research, an archive consisted of over 520 most likely Jewish insurance policy holder, is now available to survivors, historians and other researchers.

And finally, about $600 million of Holocaust-era insurance policy was paid to policyholders, and heirs, and to programs benefiting survivors, and it was paid based on ICHEIC's standards. ICHEIC—

[The prepared statement of Mr. Kent can be found on page 119 of the appendix.]

The CHAIRMAN. That will have to do Mr. Kent.

Mr. KENT. Yes, I just—

The CHAIRMAN. You said another minute, and we are over that.

Mr. KENT. I do appreciate, I just have to finish it though.

The CHAIRMAN. You have 10 seconds.

Mr. KENT. I cannot do it in—

The CHAIRMAN. Then we will get back to you in the questioning. We are going way over on all these, and I did try to advise you.

Mr. KENT. Can I just finish my conclusion?

The CHAIRMAN. No, we will get to you in the questioning.

Mr. Zabludoff?

STATEMENT OF SIDNEY ZABLUDOFF, FORMER CONSULTANT, CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, INC.

Mr. ZABLUDOFF. Thank you for allowing me to present the facts relating to the restitution of Holocaust victim assets. My basic conclusion after examining the issue for more than 10 years is that extraordinary events require extraordinary solutions. Clearly, the murder of two thirds of continental European Jewery and the compensation of nearly all Jewish assets by the Nazis who were collaborators was such an event. Despite the extraordinary circumstances, only about 20 percent of the stolen property and other

assets has been returned, as of 2007. Two bold actions could be taken to rectify this sizeable and unconscionable shortfall. They are the passage of H.R. 1746 and ensuring that the remaining unpaid stolen assets are used to assist needy Holocaust survivors.

In the first case, H.R. 1746 would help restore to Holocaust victims or their heirs the value of policies never paid by insurance companies or companies. This amount is conservatively about $17 billion in today's prices.

The bill's important first step is to ensure the names of policyholders are published. ICHEIC started this process, and some 500,000 names were placed on its Web site. Germany produced about 80 percent of these policyholder names. In the ICHEIC context however, the German list was of little use since it was made public only a few month before ICHEIC's filing deadline. For all other countries, the number of Jewish policyholders published is minimal. The most notable shortcomings are in Hungary, Poland, and Romania, all of which had large pre-Holocaust Jewish populations. Even in most west European countries, the number of published names is extraordinarily small. To deal with the shortcoming, non-German archives need to be further examined, and most importantly, companies doing business outside Germany should publish the names of the policyholders.

The proposed legislation also provides victims and their heirs a means to receive a fair value for policies taken out in the Holocaust period. This recognizes that there is still a long way to go for life insurance companies to meet their Holocaust era obligations. At most, about 11 percent of the fair value of outstanding policies was paid during the post-war and ICHEIC years. H.R. 1746 provides the last opportunity to increase that percentage.

Again there are differences between Germany and other countries. Germany is the only entity that has pledged or continued to accept claims and pay them under ICHEIC guidelines. There are, however, very serious negative aspects of the seemingly benevolent action. The German Association will not accept claims that do not name companies. This is an enormous drawback. Nearly all the 400,000 German names of policyholders listed on the Web site do not indicate a company name, and ICHEIC experience clearly demonstrates that two thirds of the claimants did not know the company name. Thus this German action is of little benefit to the claimant.

Also on the downside is the method Germany insisted upon in using in determining a policy's current value. It produces an amount that is only about 15 percent of similar valued policies paid under ICHEIC guidelines for all other West European countries. In special arrangements with other European countries ICHEIC achieved little in settling claims. A number of these shortcomings are illustrated in my written presentation.

The chief reason for ICHEIC's problems were inept governance and poor management. Governance became akin to secret diplomacy in which those who ran ICHEIC relied heavily on dealing only with those who favored their views, while making promises to others that were not fulfilled or long delayed. Judge Michael Mukasey succinctly summed up the problem when he described ICHEIC as "the company store."

But no matter what steps are taken to find claimants, many policies will remain unpaid. Those working on ICHEIC and other restitution efforts recognized this outcome from the start. This is because whole families were wiped out by the horrific events of the Holocaust, leaving only distant relatives with knowledge of their policies, especially when dealing with events over half a century ago. It is also understood that many records no longer exist. For example, the extensive search of life insurance records in Germany yielded about 8 million policies, or only about a quarter of the policies outstanding in the late 1930's.

Recognizing this fact, ICHEIC attempted at one time to calculate the overall value of policies, called the top down approach. The companies would then pay the difference between the overall estimate and the amount actually paid to claimants to a fund that would support needy survivors and other causes. This approach, however, was quickly forgotten as ICHEIC proceeded, and relatively small amounts were provided for such a humanitarian fund, mostly under the accord with Germany. Insurance companies failed completely to deal with this issue.

This brings me to my last point. Besides pressing individual claims, I would suggest an international remembrance fund to support needy Holocaust survivors who are in their autumn years. Currently, there are approximately 600,000 Holocaust survivors worldwide, and actuarial data indicate that the number will decline sharply during the next 10 years.

A review of available studies indicates that there are numerous survivors who lack adequate income to meet their daily expenses and health requirements. For example, one study of the United States indicates the income of more than half of the survivors falls within the poverty or near poverty bracket. Clearly, what is urgently required is an in-depth study to determine more precisely the likely financial requirements of needy survivors.

Simultaneously, we must reach a global accord to establish an international remembrance fund. This will require innovative financial structure, but again extraordinary measures are essential in dealing with an extraordinary event, such as the Holocaust.

Thank you.

[The prepared statement of Mr. Zabludoff can be found on page 148 of the appendix.]

The CHAIRMAN. Thank you. Before we get to the questions, we have received several letters. I will read them into the record.

The World Jewish Congress expresses its position on H.R. 1746—it says that negotiations in the future will be irreparably harmed.

The B'nai Brith International expresses reservations and asks that we take these considerations into account: "We worry that the legislature will unfairly raise the hopes of survivors without being able to satisfy the negotiations," It also expresses concerns about future negotiations.

The American Jewish Committee says that the bill could adversely affect similar negotiations in the future, and says that it believes current measures are adequate.

And the Anti-defamation League says that H.R. 1746 is unnecessary and does not serve the needs of Holocaust survivors, nor answer the credibility of agreements on these matters.

They will be made a part of the record. The record remains open if others wish to submit anything, and copies of these letters will be available, if anyone wishes to comment on them.

One technical question as to timing, Mr. Eizenstat. When did this all finally get done? The agreement? You referred to a period of my being the ranking member. I became the ranking member in 2003.

Mr. DUBBIN. In 1998, February 12—

The CHAIRMAN. Well, I said Mr. Eizenstat, Mr. Dubbin.

Mr. DUBBIN. I'm sorry.

Mr. EIZENSTAT. I testified in September of 1999.

The CHAIRMAN. Yes. I was not the ranking member. I just wanted to—I know that Mr. Leach and I—he was the chairman. You said I was the ranking member. I didn't become the ranking member until of January of 2003. Mr. LaFalce was then the ranking member.

Mr. EIZENSTAT. You are correct.

The CHAIRMAN. Let me raise one question for those who are opposed to the bill. Mr. Zubludoff referred to the fact, and I'm told by some of the staff, that there is a different response from countries. That Germany, in fact, has been more responsive than some of the others. If we don't do anything legislatively, what can be done about those countries that have not been responsive? I'm told the Netherlands, Austria, and maybe Switzerland. Is there something that can be done about countries which have not been responsive, even if you think the terms were acceptable? Any of the three?

Ms. KOKEN. Well, I would only mention that with regard to ICHEIC, we did archival research in quite a few countries. And we entered into agreements—

The CHAIRMAN. Do you disagree with the notion that there has been a differential level of response?

Ms. KOKEN. I do believe that in many of those countries there are mechanisms in place—

The CHAIRMAN. No. No. Ms. Koken, I'm sorry, but I'm tired. I have been here all day. That's not what I asked you. I'm sure there are mechanisms. Do you agree or disagree that there has been a differential level of response?

Ms. KOKEN. I believe that some of those countries have not completed their work yet in their process.

The CHAIRMAN. Okay. Is that just a timing thing? They were busy that day and couldn't get to it? I mean why are some slower than others?

Ms. KOKEN. The two countries that I know that have not completed would be Switzerland and Austria, and they are still working on their processing. I would not be an expert—

The CHAIRMAN. All right. I don't mean to be rude, but if you're not, don't answer the question. I was unfair to the Netherlands apparently. I guess the problems are in Austria and Switzerland. Mr. Kent, did you want to respond to that about Austria and Switzerland?

Mr. KENT. Yes. I would like to first, with your permission, finish what you said—

The CHAIRMAN. If you can do it in 30 seconds, Mr. Kent. You had over 10 minutes for a 5-minute period.

Mr. KENT. I am extremely concerned that the legislation would certainly—this was your question—certainly damage critical ongoing negotiations, especially with Germany, involving hundreds of millions of dollars in Holocaust-related compensation, which is needed now, not tomorrow or next year, but now. I also feel that the support the United States Government provides Holocaust survivors will be undermined as other governments lose faith in the ability of the United States to keep its promises. Reimbursement—

The CHAIRMAN. No. I'm sorry, Mr. Kent. That's enough. You're abusing the privilage of the committee. You had over 10 minutes. I've listened a lot. I now want to get to the questions. What about Austria and Switzerland? Are they a problem, and if they are do we—do they get left undone?

Mr. KENT. I cannot tell you. But Eastern European countries, yes. We have spent over $31 million to pay claims for Eastern European countries. You, as the Congress, can do something. You can help us to collect from them the money. That you, as Congress, could do.

The CHAIRMAN. Okay. And that's an important point. But I still went to get back to—does anyone have any response to the question that even within the terms of this agreement, Austria and Switzerland have not been responsive, I'm told. And if people think that is not true, they should tell us. Can we do anything about it? Mr. Zabludoff?

Mr. ZABLUDOFF. You raised the question about Austria and Switzerland, and in the case of Austria, they allocated $25 million for life insurance. That was in relationship to ICHEIC. Because it was only $25 million, they have just sent out notices—or fairly recently—that they are only going to pay 15 percent of that, because they don't have the money.

The CHAIRMAN. All right. Well then let me raise that question to people who are opposed to the bill. Where does that leave people who have a claim against Austria, even under this procedure?

Mr. ZABLUDOFF. People have—

The CHAIRMAN. No. I don't mean—

Mr. ZABLUDOFF. I'm sorry.

The CHAIRMAN. A strong argument has been made that Germany has acted in good faith and made a deal, but there are other countries. And the question is, what do we do about these other countries?

Ms. KOKEN. Well, I would say that ICHEIC did pay a number of the claims of the Austrian, about $10 million, because we wanted to make sure those claimants were not left behind. But I might suggest that might be a level of inquiry for this committee, is to ask each of the countries to set out what they have done. I know in—

The CHAIRMAN. That's not my question. My question, is can we do something to make them do it? You're saying we made good because Austria wouldn't. Is that what ICHEIC did? Yes, Mr. Eizenstat?

Mr. EIZENSTAT. The issues that I have raised, and perhaps Mr. Kent as well, refer—

The CHAIRMAN. Please answer my question or else we'll pass on.

Mr. EIZENSTAT. I'm answering the question.

The CHAIRMAN. No. I'm talking about Austria and Switzerland.

Mr. EIZENSTAT. —Refer only to those companies that have participated in ICHEIC or adopted ICHEIC policies. It did include certain Swiss and Austrian companies. If there are Eastern European companies that did not participate in ICHEIC the legal peace issue—

The CHAIRMAN. I understand that. But with regard to Austria and Switzerland, maybe again—

Mr. EIZENSTAT. There are a number of Swiss companies that—Winterthur and Zurich, and so forth, which were part—

The CHAIRMAN. Are there companies in Austria and Switzerland as a whole? And are they doing less than they should be under the agreement? Because the fact that some companies are doing well doesn't answer the question about others. It's not a trick question. I'm trying to get information.

Ms. KOKEN. I guess the question is the agreement, when you refer to the agreement. With regard to ICHEIC, the companies all applied the standard equally. So to the extent that Zurich and Winterthur were in ICHEIC, we're very satisfied with the work that they did.

The CHAIRMAN. What about all of the other companies? You just said that Austria was not living up to its agreement.

Ms. KOKEN. To the extent that there are separate entities that were created, the Swiss Bank settlement, which is what the Swiss are participating in. And the Austrian, they haven't completed their settlement work, so we can't say—

The CHAIRMAN. What's the timetable? When are they going to do it? We have been doing this for a long time.

Ms. KOKEN. That's a good question. That's a very good question.

The CHAIRMAN. Well, that sounds to me like some problem might be—

Mr. KENT. Mr. Chairman, if I can say something to you. Several years ago, I testified here in the Congress, and I told them if you want to do something, that means if the Congress wants to do something, stop giving licenses to the insurance companies that do business, and do nothing to help Holocaust survivors. Unfortunately, I must tell you it's easier to sit here and hear the critics. But Congress didn't do anything about it. I gave them a strict report—

The CHAIRMAN. Well, I don't remember that. I would say this, though. Excuse me, Mr. Kent, I'm going to respond. Congress doesn't license insurance companies. The States license insurance companies. I will look into that specifically. But I don't know what licensing that we at Congress would have been involved in. In fact, my European friends complain to us all the time that if they want to sell insurance in America, they have to go to 50-some-odd different jurisdictions. So I don't believe the Congress has been allowing that, but I will look further into what you said. Still, I am somewhat disappointed. I thought I was asking a fairly straightforward question about a differential level of compliance, and whether or not that's something that needs to be addressed. We'll now move on to Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you. Thank you, Mr. Chairman, again for letting me participate. One multi-level question for Mr. Dubbin, if you can answer in the allotted time. Some opponents of H.R. 1746 have stated that it is premised on inaccurate estimates of the unpaid value of Holocaust victim's policies. Secondly, that it violates deals to provide legal peace for German and other insurance companies that participated in ICHEIC. And thirdly, that H.R. 1746 isn't likely to produce enough successful claims by survivors to justify the political cost of the ill will that it would engender among foreign governments whose insurance companies profited from the Holocaust. If you could refute those, or not refute them.

Mr. DUBBIN. On the value, Mr. Zabludoff, who participated in the ICHEIC group analysis—there was a consensus that at the time the value of—there was a consensus about what the value of Jewish policies was. He calculated the amount that had been paid after the war in various programs and then taking the remainder, which was slightly under $600 million, he multiplied that by the yield of a 30-year U.S. bond, from 1938 until the present. And with that he got—in 2004—$15 billion. Now it's $17 billion. A 30-year bond yield is extremely conservative, because most insurance companies invest it in stocks, real estate, and other much more high-yielding investments. So there is no dispute about the underlying numbers.

And ICHEIC never undertook to go to the next step, which was to take the value in 1938 and bring it up to current levels. So the $17 billion figure is very solid. But if you, as Mr. Waters said, if you accept the $3 billion level, what ICEIC paid out would still only be 15 percent. But under Mr. Zabludoff's conservative numbers, which are not challenged in any—I have not seen a theoretical objection, or a factual objection to what he said.

The second question was legal peace. The U.S. Government does not have the power to waive a citizen's right to go to court. Germany demanded that. They were told that they couldn't have that. What the United States agreed to do was very limited, and it said that we will file statements of interest in court, which would say that it's in the foreign policy interest of the United States Government for the case to be dismissed on some—if there is a valid legal ground for doing that. And the Germans accepted that, understanding that they were not getting everything they asked for.

So today to say that we agreed that survivors would not have the right to go to court is disingenuous. In fact, it's giving the Germans more today than they bargained for then. And the reason it's necessary is because the courts have interpreted that commitment more broadly than the language the Germans were actually able to negotiate for. Because the courts have said, "It doesn't matter what the language in the agreement says (which is limited) we think there is, addition to the language—in addition to the contractual language, there is a 'Federal policy' of the Executive Branch that Holocaust victims' insurance policies should be resolved in a non-adversarial setting."

So the question for you is now, because the legal landscape is clear, do you agree with that policy? Does Congress agree that someone today, who has a piece of paper from Generali or Allianz, which was denied through ICHEIC, do you agree that person should not have the right to go to court and have a judge force the

company to disgorge all of the relevant information? Because I can tell you from ICHEIC experiences, and I can give you many examples, those companies were able to deny claims without providing the information to the claimant, so you have a star chamber system where the claims were denied. The rules might have said one thing, but the practical application was thousands of people were denied claims without getting any documentation, including people—

Ms. ROS-LEHTINEN. If I can interrupt you because our time is limited.

Mr. DUBBIN. So the last question is the cost-benefit analysis.

Ms. ROS-LEHTINEN. Right.

Mr. DUBBIN. I don't believe that human rights are subject to a cost-benefit analysis. The right to go to court, to pursue your documented insurance claim or to pursue a company you believe sold you a policy, if you can convince a lawyer to bring that case, in the United States of America, it is a fundamental human right. It is enshrined in the U.S. Constitution and in the constitutions of every State. And to say that we are not going let some people be able to avail themselves of that right because of what other groups did—and by the way, I don't care what groups sat in the room. Izzy Arbeiter, David Mumbelstein, Jack Rubin, Alex Moskovic, and hundreds of survivors whom I personally have come in contact with did not authorize any organization, did not authorize the State Department, did not authorize the Secretary of the State, did not authorize the President to negotiate for their insurance rights.

Ms. ROS-LEHTINEN. Thank you. Thank you, Mr. Chairman. And although I'm not a member of this committee, and you've been very kind to me—

Mr. EIZENSTAT. May I respond to this—

Ms. ROS-LEHTINEN. Excuse me. Mr. Chairman, I will ask a member of the committee if they could introduce for the record some of the letters that I have gotten from constituents who—

The CHAIRMAN. Yes. I have been informed Mr. Wexler will also be putting material into the record. Anyone who wants to can get it. Mr. Eizenstat?

Mr. EIZENSTAT. Congressman, the good faith of the United States Government is at stake here. We negotiated in the open with congressional understanding and support $8 billion worth of agreements. Companies paid billions of dollars for slave labor payments, for insurance, for a variety of other claims, in return for which we gave a legal peace agreement, which the courts have upheld. And we did say it was in the foreign policy interest of the United States to dismiss claims, if there was a valid legal ground. That is what the Germans accepted. That's what we gave them. The courts in their own wisdom, including the United States Supreme Court, have upheld that. If we now try to vitiate that, the whole negotiation posture that we took would be undercut. The whole reliance that companies which had paid billions of dollars—and governments, the Austrian government contributed; the German government contributed, would be vitiated. This involved not just their private sectors .

Second, this is not an all or nothing thing. I have suggested in my testimony that we should hold the companies who have pledged

to continue to honor claims on an ICHEIC basis with loose rules of evidence, which would not have existed in court. Mr. Dubbin's remedy would have left—if we would not have gotten this $8 billion, he would have been trying to bring a class action approved back under rules of evidence when they didn't even names of insurance companies oftentimes, let alone the policies themselves. That's why we set this administrative process up.

What I suggested is let's hold the companies to their commitment to continue to handle claims in an ICHEIC-like process. Force them to report to the Congress and to the State Department. Hold oversight hearings. Get the German Insurance Association to submit regular reports on the number of claims that were filed and so forth. So there is something that can be done here.

Mr. KENT. I fully agree with Secretary Eizenstat but Chairman Leach and Chairman Frank I will ask you to do something now. I really would beg you to do something. Close your eyes, Members of Congress. Don't see me as I look right now. You should see me right now, as you talk in your bill, as the needy survivor who needs help. This is what we talking about. The needy survivors who need help, and let us consider for a second, I am here as one of the survivors, the only one except Izzy Arbeiter, who happens to be a good friend of mine. I would like to see what is the motivation of the bill.

The CHAIRMAN. I'm sorry Mr. Kent, that's not something that we're going to go into at this point. I will tell you this, I believe the motivation to be that members of the committee feel that they can do things to help people, but the motivation of individual members is not the subject of the hearing. I'm sorry, and I understand your anguish Mr. Kent, but there is a limited amount of time. You have had a great deal of time to speak but getting into an examination of the motives of the members is just not something we're going to do.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Secretary and all, I want to thank you for your testimony. Because time is of the essence, I'd like to start with you Mr. Secretary. You indicated that there was and is, I think, congressional understanding associated with this agreement. Could you please explain what congressional understanding means?

Mr. EIZENSTAT. Yes, sir. I testified time and again before this committee, before Senate committees, before the House Foreign Relations Committee, before the Senate Foreign Relations Committee, and before the Senate Banking Committee about these and other agreements, about legal peace, about what we were trying to do, about what we were trying to accomplish in very extensive hearings. Now, no one sought legislation because legislation wasn't appropriate. We did this under the foreign policy powers of the President of the United States. But we did it in full consultation.

Second, it was not done in a dark room with a few parties. We had plaintiff's attorneys. Not Mr. Dubbin; he didn't want to participate. We had dozens of plaintiff's attorneys, the best class action lawyers—Mel Weiss and others—around the country. Bob Swift in Philadelphia, people in Washington, major class action lawyers who decided to drop their cases because they realized that those cases did not have much of a chance and indeed the two major slave

labor cases were dismissed by judges on the grounds of statute of limitations problems. We had major Jewish organizations who participated in negotiations. We had representatives from the State of Israel and we brought the Congress into it by our testimony. So this was done in very broad daylight. Obviously, the actual details were done in private negotiations, but this was not an unknown quantity that was just dropped on the Congress or dropped on survivor groups. They were part and parcel. The American Gathering, The World Jewish Congress, and The Jewish Claims Conference were all involved in every stage of the negotiation.

Mr. GREEN. Did Congress ever have an opportunity to in some way sign off on the agreement that was—

Mr. EIZENSTAT. They had every opportunity if they wanted to object because I testified. I laid out what the agreements were. If they had any criticism, they weren't heard. What I heard was praise and bipartisan support for doing something promptly. The courts wouldn't have permitted it. If you look at these cases, what court in the world would have granted jurisdiction to companies that didn't even do business here? What court would have allowed payment of policies when the claimants didn't know the names of the companies? When there wasn't evidence? I mean, of course the tragedy is that there was no evidence because it was burned along with the people.

Mr. GREEN. Let me intercede for just a moment. I think you raised a good question. Mr. Durbin?

Mr. DUBBIN. Dubbin, yes.

Mr. GREEN. Would you—excuse me, I'm sorry for—would you please respond to the question that was just posed about the courts?

Mr. DUBBIN. Of course. Well, let me address a couple of the points if I might. The lawyers who sued the German companies who were part of those negotiations had filed suits on behalf of individuals, so those cases had not been certified as a class action, and that is important. They voluntarily dismissed their cases, their individual cases, but they said at the time they dismissed them that the court should satisfy itself at the end whether or not the German Foundation is capable of providing compensation to insurance claimants.

So now you are looking at, even those lawyers understood that this was still contingent on a successful outcome. Now several Members of Congress, 47 to be exact, wrote letters to the Attorney General in the year 2000 rejecting the notion that insurance claims estimated to be worth billions could be satisfied by the arbitrary $300 million Deutsche Marks set aside in the German Foundation Agreement. They said they were shocked to learn that the recent slave labor settlement between the U.S. Government and Germany included insurance. That's what members of the Congress said and what the Justice Department responded by saying was, "Hey we didn't waive anybody's rights. We were just going to file a limited statement of interest." That's what the Assistant Attorney General for legislation said.

And he also said that if this doesn't work out, we reserve the right to revisit our views on the constitutional issues. So Congress objected in the only way they could at the time. It is true that they

could have passed legislation, but the fact of the matter is there were objections from Congress and the Justice Department attempted to solve those objections by saying if this doesn't work—

Mr. GREEN. Let me intercede. I have one more question I have to ask Mr. Zabludoff. Is that correct, am I pronouncing your name correctly, sir? Please forgive me. You mentioned congressional—pardon me, that claims that do not have—can not name an insurance company, you spoke about that and how they would be rejected. Would you and this is my final question so could you please explain that again for me?

Mr. ZABLUDOFF. Sure. In the case of Germany, Germany did publish a lot of names; 400,000 names, 360,000 names were from the German Accord and was published by the German authorities. Another 40,000 came from ICHEIC archives, so you have about 400,000 policies all together. Now the real problem is that when you look at that list, it doesn't list the company. So you have to name a company the GDV which is the German overall of regulator of companies. They basically said you have to name a company but the list doesn't show the company so how could you do that? And we know from ICHEIC experience that two thirds of the people who sent in claims did not—from years and years before—did not know the name of the company. So how could you expect a claimant to know the name of a company?

Mr. GREEN. My time is up, sir.

Mr. DUBBIN. May I have 15 seconds? Because Congress did in 2003 pass the Foreign Affairs Authorization Act of 2003 which required the State Department to get reports from ICHEIC about its performance, and for 4 years ICHEIC refused to provide the State Department anything even though statutorily mandated by Congress.

The CHAIRMAN. Mr. Green, do you want to finish up with him?

Mr. GREEN. Thank you, Mr. Chairman now that you're back.

The CHAIRMAN. We have been joined by our colleague again from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. There has been a lot of discussion here about how we did the best we could under current law. We're in the business of changing laws here in Congress and I have approached this from a consumer protection standpoint. Neither the State Department nor the Jewish Claims Conference has a responsibility to make sure that people in the 27th District are not sold life insurance policies by grave robbers, pirates, or their affiliates. That is a responsibility of myself and my colleagues on this committee and there are so many reasons why somebody might buy an insurance policy. Their family would be unaware of it, and they might lose all contact with the company, and then according to the company's own records, they have an insured who is 100 years old, 110 years old, or 120 years old, and there has been no claim.

Mr. Eizenstat, would you ever buy a life insurance policy from a company that didn't have it as its policy that if there had been some great social disruptions so families and records were destroyed that they wouldn't put up on a Web site your name on your 100th birthday so that your next of kin could make a claim, but would instead want to in effect be grave robbers, to hope that 100

years would pass after your birth, 200 years, or 300 years, and there just wouldn't be any claim.

Mr. EIZENSTAT. The answer is "no" and that is not what happened here, Congressman Sherman; 519,000 names were published on a—

Mr. SHERMAN. Well I'm not just talking about the victims of the Holocaust here. We have the victims of the Armenian genocide but we have millions of people who are not targeted for genocide whose families were destroyed in World War II and you have all of the consumers in the United States. Why would any company not post on a Web page the name of an insured under the following circumstances; the insured is over 90 years old and the company hasn't any contact with them or their family for 30 years. Why wouldn't we require that of domestic companies, international companies, World War II companies, World War I companies, Ottoman Empire companies, companies that sold policies in Poland or Albania. Why wouldn't we require that of anybody who would come into my district and say we have clean hands, we should be allowed to do business in the United States?

Mr. EIZENSTAT. That's certainly not what this legislation does. This legislation is applied to European insurers who have privacy laws that preclude them in their own countries from doing so but the way in which that was avoided to the extent possible was that of their 8 million—

Mr. SHERMAN. Excuse me, Mr. Eizenstat. I have such limited time. So these companies get privacy laws passed in their own countries. You know, a lot of insurance companies get—

Mr. EIZENSTAT. Mr. Sherman, of the 8 or 10 million policy holders, those were all given to the ICHEIC process. They were used by Yad Vashem to vet out—

Mr. SHERMAN. Mr. Eizenstat, you're giving me the details of what was done and I'm asking a much broader consumer policy issue because what you're describing is a policy that did nothing for Albanian families or Armenian families.

Mr. EIZENSTAT. Well I'm not here to—I can't answer a broad consumer question. I'm here to defend an agreement which got $8 billion for survivors in return for legal peace.

Mr. SHERMAN. I'm not here to—

Mr. EIZENSTAT. I'm not an expert on consumer protection for insurance policies.

Mr. SHERMAN. I'm not here to attack that agreement. I'm here to say that we ought to have an overall policy starting with the Holocaust of requiring placing on the Web the names of insureds whose families obviously are owed money. These are folks who are well over 90 years old. They have lost attention and your response is well, these companies might have to comply with privacy laws in their home country.

I can't imagine a home country privacy law that wasn't there at the behest of the insurance company if its sole effect is to simply deny the payment to families where the insured is 100 years old, or 110 or 150 years old.

Mr. EIZENSTAT. No, sir. My response was that 519,000 names were supplied after they were vetted of 8 million by Yad Vashem.

Mr. SHERMAN. I thank you for your work. I would hope that this would be the first step in requiring us to use the new technology of the Web to publish the names of those insureds. I can't see how a life insurance executive could go to sleep at night knowing that they have in their files unclaimed policies of insured people who obviously died in the World War II era and they still have not made payment.

The CHAIRMAN. Mr. Arbeiter wanted to respond in part to that question.

Mr. ARBEITER. Yes, Mr. Chairman, I keep hearing here about legal peace, legal peace for Germany, for the insurance companies. What about justice for the Holocaust survivors? What about the insurance policies that were written on behalf of our parents, our families who were murdered.

The CHAIRMAN. Mr. Arbeiter, I appreciate that. That's substantial, I mean we understand that. I want to ask Mr.—if the gentleman had concluded—two questions, one to each side. The privacy issue is concerning and I would ask the proponents of the bill what if I am somebody in the Netherlands who doesn't want my family's insurance policy out there for everybody to see. What's our response to that? I mean there is a legitimate privacy concern. So as I understand it, we're talking about putting everybody's insurance policy on there. What if I had a relative I didn't like and I didn't want her to know that I had an insurance policy? What's our answer to that, Mr. Dubbin, Mr. Arbeiter?

Mr. DUBBIN. Well, this bill calls for policies that are over—that were issued prior to 1945 to be published. Those are—to think that is going to infringe on anyone's current privacy rights, I think, is a stretch. You know, our State Treasurer puts out names of dormant bank accounts and things all the time. I mean I think it's fatuous to make that argument from the other side because insurance companies control—we know that those privacy laws are there to protect much deeper, darker secrets. Mr. Eizenstat said they published 519,000 names. They managed to publish those names, okay, even though there were privacy—

The CHAIRMAN. Okay, let me ask you this, is this only uncollected claims?

Mr. DUBBIN. The legislation calls for all policies to be published. All of the policies that were sold. The reason for that—

The CHAIRMAN. Including if they were collected on or not?

Mr. DUBBIN. Right.

The CHAIRMAN. Because they might have been collected—well, I understand your argument but I would disagree with your dismissal of those as fatuous.

Mr. DUBBIN. I retract that statement, Mr. Chairman. I think it's not—

The CHAIRMAN. You have retracted, my advice; leave it with the retraction. Don't characterize any further. But I have to tell you, I think that is a legitimate issue that we have to take into account. Mr. Kent, did you want to comment on that?

Mr. KENT. Yes, Mr. Chairman.

The CHAIRMAN. On the question of the privacy.

Mr. DUBBIN. I'd like to see the law.

Mr. KENT. Just in privacy. I give you an example of the United States. I mentioned that we have about $30 million of policies that we paid out and we want to collect the money. Now, the privacy law in the United States is right now—we cannot get the names of the people because they are right now subject to United States privacy laws. So I cannot even collect the money here that we paid out, ICHEIC paid out, because of the privacy laws.

The CHAIRMAN. You can't collect from Austria?

Mr. KENT. But from Poland, from Czechoslovakia

The CHAIRMAN. I understand, yes, from other countries. All right thank you. Let me now ask, on the other side if I'm not as—my memory is not as refreshed about law school and I haven't ever practiced law. But on class action suits, in general, in the United States, I am a member of a class that has suffered harm. A class action suit has been brought in which I have had no involvement. I have not been given the option of opting out, am I precluded, Mr. Eizenstat or Ms. Koken, am I precluded by the results or do I retain a separate to right to sue? Ms. Koken?

Ms. KOKEN. In the ICHEIC process—

The CHAIRMAN. No, no, no, I know my diction isn't great. But let me try again. In general, in the United States, if there is a class action suit brought and I'm a member of the class that suffered the harm but I was not involved in the suit. I was not given a chance to opt out, am I concluded under American law by the results of that class action suit? Mr. Dubbin you may be the only practicing lawyer among us, so—

Mr. DUBBIN. If the suit—if the settlement is subjected to a rule 23 fairness process where there's notice to the class of the terms of the settlement and the judge approves it as being fair, and then it's either appealed and the Court of Appeals upholds it or if it's not appealed, then if you're a member of that class you are precluded. Now that's what happened in the Swiss Bank case but that did not happen—

The CHAIRMAN. Under the rule 23, what is the rule 23 procedure?

Mr. DUBBIN. That's the rule that authorizes class actions.

The CHAIRMAN. What's the procedure that they would have to go through? Notify me and I can opt out, is that what—

Mr. DUBBIN. The rules says that all class members who can be identified through reasonable effort need to be given—

The CHAIRMAN. Right, it's one thing to get notice. What can I do with the notice? Can I opt out?

Mr. DUBBIN. You can opt out.

The CHAIRMAN. Okay.

Mr. DUBBIN. It has to inform you of your right to opt out.

The CHAIRMAN. So there is—you are concluded only if it can be reasonably assumed that you were notified and declined to opt out?

Mr. DUBBIN. And there was a full rule 23 fairness process—

The CHAIRMAN. Mr. Dubbin, if we all knew what rule 23—

Mr. DUBBIN. —only the Swiss Bank case did that—

The CHAIRMAN. Excuse me.

Mr. DUBBIN. I'm sorry.

The CHAIRMAN. If we all knew what rule 23 was, we wouldn't be going through this step by step. Stop with the specific—I want to

get this done clearly. In general, if you were notified, and had a chance to opt out, and you didn't opt out, you are precluded? But if you did not get that notice or if you opted out, you are not precluded?

Mr. DUBBIN. The law says that—

The CHAIRMAN. But did make a good effort to—

Mr. DUBBIN. Right. If the court says the notice was reasonable under the circumstances, you could be precluded even though you didn't get notice.

The CHAIRMAN. Right, but the error made about Mr. Eizenstat.

Mr. EIZENSTAT. Just to clarify, as Mr. Dubbin correctly said here, the Swiss Bank case was such a class action settlement. It did preclude it. But the others did not. They're subject to this, but they did not preclude you—

The CHAIRMAN. But the question then is, why should some Holocaust survivor who did not agree with the settlement be precluded from pursuing his or her rights independently?

Mr. EIZENSTAT. They are not precluded. They can still sue, but they would be subject to the statement of interest.

The CHAIRMAN. Statement of interest by whom?

Mr. EIZENSTAT. By the United States Government pursuant to our agreement and—

The CHAIRMAN. Okay, so they would be, in effect, precluded?

Mr. EIZENSTAT. And the court could—

The CHAIRMAN. Would that in fact preclude them?

Mr. EIZENSTAT. It effect—

The CHAIRMAN. Come on, yes or no?

Mr. EIZENSTAT. The courts have said yes.

The CHAIRMAN. Okay, well that wasn't so hard was it? Just to say yes? Okay, then that's what I disagree with, at least that's my other issue. That is, a government-to-government deal takes away my right to sue if I don't like what the government did and those are offsetting, troubling concerns. I do think privacy is real, but I also think the principle of me being precluded by a deal that the government set, because you know, when governments make deals, let's be clear, governments have a lot of interest at stake. We're told by the German government, for instance, and the State Department argued this as well, that what is at stake here is not this particular deal, but German American relations in general. That if we were to allow something which the Germans feel violates the deal, it maybe does violate the deal. Because I don't think you're not violating it if the people aren't bound by it, that can affect other things. So that's the point that I make. What's the justification for precluding the rights of people who didn't like the deal when they were part of it?

Mr. EIZENSTAT. They were—if we had not done this legal peace in the way we did it and the limited form which we did it, which of course is accepted, we wouldn't have gotten $8 billion in—

The CHAIRMAN. And I understand that and I'm glad that you did but why should that stop other people from also—

Mr. EIZENSTAT. Because then the companies wouldn't have paid the $8 billion if they had known they were going to pay $8 billion, and they would still be subject to suit—nobody in his right mind would have done that.

The CHAIRMAN. Then maybe what you should have told them—

Mr. DUBBIN. Mr. Chairman.

The CHAIRMAN. No, I'm going to finish. Maybe their lawyer should have told them that there was a possibility that this wasn't going to be final. Mr. Kent.

Mr. KENT. I can answer your question from a practical point of view. Just recently we have a recent agreement, part of the agreement from the German government. They are giving right now to survivors $150 million; 50,000 survivors are going to get $3,000. I have meetings with the German Ambassador and people who came from Germany to our office and they told me point blank, Mr. Kent, why should we make any agreements with the Jewish side for Holocaust survivors if we cannot depend on the word of the—

The CHAIRMAN. I'll give you the answer that I would give them. I'll call them up and I'll tell them, here's the deal—why should you make the deal? Because your country, not you personally, did the most vicious thing in the history of the world and if I were you I would lean over backwards to fix it, and I must tell you this, I will live up to this agreement. I'll urge other people to do, but I don't speak for every one of the victims and I would tell you this, if you're going to tell me that you think this is the right thing to do but because 100 people or 1,000 people disagree, and you're mad at them—you're going to deny the money that you think you ought to give to these other people. That's not nice. That's what I would tell them.

Mr. KENT. I talked to the German government and the German Foundation was not signed for a few months because I said to the Germans that I will not sign, as a Holocaust survivor, an agreement unless we will get a full apology from your government. So the money—I agree with you, is not the key issue for me.

The CHAIRMAN. I'm not saying the issue is—I would say to them you do the right thing because it's the right thing, and you hope you get the best. But you don't say I'm only going to do the right thing and by that get immunity from every other possible victim. And you know what I think that they are probably in reality than they are in the negotiations. In a negotiation situation, we tend to be a little nastier than we might be in the reality. Sometimes we threaten to do things that we're not really going to do because you know, we'll see what happens. Is there any further—

Mr. SHERMAN. Mr. Chairman, I do think privacy is important but if we were to limit this—

The CHAIRMAN. Well, let's not debate this among ourselves. The committee can do that.

Mr. SHERMAN. I just need 20 seconds.

The CHAIRMAN. Very quickly.

Mr. SHERMAN. Okay, if we were to limit the bill to those policies where the company hadn't had any contact with the insured or the family for 20 years—

The CHAIRMAN. That's mark-up talk.

Mr. SHERMAN. Okay, sorry.

The CHAIRMAN. No, those are areas that with the bill and everybody should understand, this does not come before us as yes or no. This is a bill which is subject to amendment. There are two different sections. There are different countries. I am certainly con-

vinced that further action is relevant, but we will have a lot of conversations with people and any of the issues that anyone listening feels could be further elaborated upon, please feel free to elaborate. Yes, Ms. Koken, you get to have the last word.

Ms. KOKEN. I know it's risky to do this but I would say that I would want to point out that there was matching done of these records against all of the archival research so that we would be sure that we—

The CHAIRMAN. You said that already. Didn't somebody say that already?

Ms. KOKEN. I don't know.

The CHAIRMAN. I thought somebody did. All right, go ahead.

Ms. KOKEN. And that through that process we were able to also, in our Pomeroy report, get to these heir-less claims so that that was dealt with and I would also ask that I could put into the record—

The CHAIRMAN. No, you don't have to ask. Anybody who wants to put anything into the record can put it in.

Ms. KOKEN. Okay.

The CHAIRMAN. That's the—Mr. Kent, what is it?

Mr. KENT. I'd just like to say in many times I heard here reports about the 15 billion, 200 billion and so on and I'd like to say Willard Rogers said that there are three lies. There is a lie that is a big lie—

The CHAIRMAN. Mr. Kent you already said there was no reality to the numbers. If this is repitition of things already said—

Mr. KENT. Yes, and I'd like to add to it. I was for a few years with Mr. Zabludoff of the Commission. He never said to me—

The CHAIRMAN. That is a whole new subject that we're not going to get into now and start a whole new debate. You all had a lot of time; nobody was held to the 5-minute rule. The hearing is adjourned.

[Whereupon, at 1:44 p.m., the hearing was adjourned.]

A P P E N D I X

February 7, 2008

REMARKS FOR
FINANCIAL SERVICES COMMITTEE HEARING ON H.R.1746
HOLOCAUST INSURANCE

Ileana Ros-Lehtinen
Ranking Member
Foreign Affairs Committee

The Holocaust stands as one of the darkest chapters in human history.

Over half of a century has passed since the world witnessed the atrocities committed by Hitler's regime. Yet, many Holocaust–related issues remain unresolved.

One of these is the continued failure of insurance companies to pay Holocaust survivors or families of Holocaust victims for policies purchased before or during World War II.

These insurance companies have for over 60 years refused to provide compensation under the insurance policies to Holocaust survivors or families of Holocaust victims.

These companies argued that Holocaust survivors and their families don't have the documentation such as death certificates and insurance records.

Concentration camps in which many of the Holocaust victims perished didn't issue death certificates and all assets and documents were confiscated from the Jews during that time by the Nazis.

For years, I have worked on the issues relating to Holocaust-era compensation and to address the issue of insurance policies specifically, my colleague Congressman Wexler and I introduced H.R. 1746 in March of last year.

Among other things, the bill will require insurance companies that do business in the U.S. to disclose the names of Holocaust-era insurance policy holders.

Furthermore, the measure will allow Holocaust survivors or their heirs to sue the insurance companies in U.S. courts.

People often ask me why I introduced this bill and why I feel so strongly about this issue.

Well, let me answer by reading one of many letters I have received from Holocaust survivors.

This particular one is from Elizabeth Lefkovits of Florida.

> "Dear Congresswoman Ros-Lehtinen,
>
> My name is Elizabeth Ungar Lefkovits and I am a U.S. citizen and a Florida resident. I was sent to the Auschwitz concentration camp in 1944 when I was 20 years old. During the Holocaust I lost both of my parents, my grandparents, my two sisters, and two year old nephew.
>
> After the war, I found a document that was hidden by my father, Ignatz Ungar. This document contained his life insurance policy for 25,000 gold dollars. In 1945, when I presented the insurance claim to the insurance company, they requested his death certificate as the prerequisite to pay the claim. Without the death certificate, they said the policy was invalid.
>
> A few years ago, the International Commission on Holocaust Era Insurance Claims revived our hope for justice with the insurance companies and I filed my claim (Claim #77452, reference Ignatz Ungar life insurance). Unfortunately this effort produced no results.
>
> I am very glad that The Holocaust Claims Insurance Accountability Act of 2007 (H.R. 1746) legislation has been introduced in Congress and if passed, the insurance companies doing business in the U.S., that profited from the Holocaust, will be held accountable for their actions."

It is because of Ms. Lefkovits and countless others who share her history and circumstances that I introduced this bill.

Unfortunately, today we cannot bring back those who have perished in the Holocaust, Nor can we erase the pain and suffering from the memories of those who survived these atrocities.

However, we can work to bring long-awaited justice to Holocaust survivors and their families.

Because the number of Holocaust survivors who are still alive decreases drastically every year, it is critical that Congress move expeditiously to pass H.R. 1746 and offer a level of closure to those who suffered immensely under Hitler's regime and then were shamelessly mistreated for decades by the insurance companies who sought unjust enrichment at the expense of the Holocaust victims.

Testimony of Israel Arbeiter
Before the U.S. House of Representatives
Committee on Financial Services
February 7, 2008

My name is Israel Arbeiter. I have lived in Newton Massachusetts since 1970. I retired from business in 1995, but have remained extremely active, especially in the affairs of Holocaust survivors, including as a speaker in public schools, a representative of survivors to several community organizations in the Boston area, and as the President of the Jewish Holocaust Survivors of Greater Boston, a position I was first elected to in 1950, and I have been president for all but 8 of the intervening years. I want to extend my utmost gratitude to Chairman Barney Frank, our own elected member of Congress and a real champion of the rights of everyone. Mr. Chairman, the survivors of our community regard you as a great friend for your consistent advocacy on our behalf.

I appear here today with very mixed feelings. On the one hand, I appreciate the opportunity to address this committee to urge the immediate passage of HR 1746, the Holocaust Insurance Accountability Act of 2007. On the other hand, I am very distressed and even angered that 10 years after this committee first held a hearing in 1998 under Jim Leach on Holocaust survivors' insurance claims, and 7 years after I first testified in Congress in 2001, the insurance industry has managed to escape having to fully account for its handling of our family policies, and has retained so many billions that we survivors should have received decades ago. Today, in 2008, there is no more time for talk. If Congress wants to do the right thing, passage of this measure is imperative with no more delays.

This legislation would restore the basic rights of survivors. It isn't asking for very much, really. Is it too much for Holocaust survivors to have the right of access to American courts to sue insurance companies who cheated our families out of our insurance proceeds? Is it too much for Holocaust survivors to make decisions for themselves about their property rights? Is it too much to require insurance companies who want to do business in the United States to disgorge information about its customers and give a complete accounting of its conduct during and after the Holocaust? I don't think it is asking for too much to have the same rights as any other American citizen to hold insurers accountable. The survivors I represent and those I am in contact with every day are confused and frustrated that Congress would stand by and allow the status quo to prevail.

I was born in Plock, Poland, one of five sons of Isaac and Hagara Arbeiter. My father was self-employed as a custom tailor, and had two employees and an apprentice. He made a comfortable living. In order to protect his family in case that some were to happen to him, my father purchased life insurance. Every week, an agent of the insurance company would call up on our house and collect the premiums. He wrote the date and amount in a booklet that was given to my father for that very purpose. I remember distinctly when my siblings and I asked my father why this man was coming every week to collect money, we were told that payment was security for your future.

Unfortunately our future was anything but secure. In September 1939, World War II broke out and Nazi Germany occupied Poland. On February 26, 1941, in the middle of the night, following the orders of SS storm troopers, we were ordered out of our homes and required to leave virtually everything behind, including the life insurance policy paperwork and the booklet in which the agents of the insurance company recorded my father's payments

From there we were taken to concentration camps. My parents and my younger brother were later gassed to death in a camp at Treblinka. Two of my brothers and I spent the next 4 years in various concentration camps, including Auschwitz. Then by some miracle the war ended and I was liberated.

After the war, I attempted to pursue my father's insurance policy. I tried to find out whether it could be cashed in since my father had died in the Holocaust. However, my efforts were unsuccessful.

When ICHEIC was created in 1998, Holocaust survivors and family members were promised a decent, thorough, open process to recover a fair value from these insurers for their massive theft.

Instead, we have been victimized again by a "commission" process which has operated without any public accountability, under Swiss laws, far from the prying eyes of the U.S. legal system. Amazingly, it was populated by the companies who had managed to hold onto our money for 5 decades. This idea was an abomination, because the companies were represented but we survivors did not ask federal officials, insurance commissioners, or anyone else to negotiate for us. Why, of all people, should Holocaust survivors be the only ones whose property rights would be negotiated by others?

In early 2007, after nine years, ICHEIC closed its doors and the results are terrible. It paid less than 3% of the amount of insurance owned by European Jews in 1938, now conservatively estimated to be worth $17 billion. Those of us who personally experienced ICHEIC's inefficient and arrogant behavior were certainly not surprised at this awful result.

My experience is typical, and shows why HR 1746 is so important. In the fall of the year 2000 I learned about the creation of the ICHEIC. I applied for a claim form, filled it out, and sent it in. I soon received a letter with the claim No. 00067890, which stated that all member companies will investigate my claim and report their findings within 90 days. A year after I filed the claim, I had heard nothing.

In 2001 I was asked by Congressman Henry Waxman to testify before the U.S. House of Representatives. I explained about my family history, my ICHEIC application, and the commission's failure to even follow its own rules.

Time, we all agreed, was of the utmost importance. I listened to ICHEIC Chairman Lawrence Eagleburger, government officials, and other members of ICHEIC, who promised quick action, a fair process where rules are enforced, where everyone gets a fair shake. We were told to be patient, that the system was new and would improve. Congress chose not to take any action in 2001, to give ICHEIC a chance to "work."

Unbelievably, in 2003, I found myself testifying before Congress again. I explained that I still had not received any response from ICHIEC. I was joined by others who documented the Commission's failings.

I begged Congress not to allow the insurance companies to retain that which rightfully belongs to us, the survivors. I asked how our Government can allow others to profit from what was one of the greatest atrocities in human existence – especially these multinational giants who also profit from the American insurance market. The frustration I felt on both those days has become deeper with each passing month that my fellow survivors and I have been left waiting for a resolution.

Even with this criticism from those of us who were personally affected by these failures, Congress did nothing in 2003.

After ICHEIC closed down in March 2007, and to this very day, I have still not received a formal response to my claim. All I have received was a letter offering me $1,000 as a "humanitarian" gesture. But the survivors are not seeking "humanitarian" gestures. We are demanding simple justice. We are demanding that the insurance companies be required to make complete disclosures of their records. We are demanding to be able to speak and act for ourselves if we are not satisfied with the company's conduct. We are demanding discovery under the supervision of an American court, not the protection given by the ICHEIC participants who agreed to allow the companies to keep everything secret. We are demanding that a judge and jury decide whether the companies acted properly toward us in connection with our insurance.

Some say that we should accept what ICHEIC gave us because there was a deal to limit our rights to whatever ICHEIC decided. This is simply not acceptable, ladies and gentlemen. No survivor I know asked anyone else to make any deals about our insurance policies, and no survivor I know was asked if he or she agreed to any such deal.

How dare anyone presume to deny the history I am certain about because I lived it. I know my father had insurance, but whatever "deal" was made for ICHEIC failed to produce the facts as I know they happened. So, it is not to disrespect anyone involved in ICHEIC to say I am entitled to the truth. I am entitled as a Holocaust survivor to any information that these companies have, or that any other company has relevant to our past. Now, there is no more time to deny me my history, nor the histories of the tens of thousands of families whose insurance information remained concealed in spite of ICHEIC.

There is one more thing I would like to say today. I serve on the board of the Jewish Family Services of Greater Boston, which assists survivors with low incomes. Every month when we meet, we never have enough funds available to provide for the needs of Holocaust survivors in our community. I am not talking about luxuries, I am talking about food, medicine, dental care, rent, utility bills, home care, walkers, wheelchairs, eyeglasses, and other basic needs. This is a tragedy and we are not alone in Boston. There are over 40,000 survivors in the U.S. who live below the poverty level, and another 40,000 who are too poor to provide their basic needs.

It is time for Congress and the national leadership to catch up with the realities of survivors today and take decisive action to rectify these awful conditions.

The starting point is enactment of HR 1746, which will at long last provide for the historic and financial reckoning so many survivors deserve and need today.

The insurance companies treated me with silence and bureaucratic letters that made no sense. We were promised a fair and transparent process, promises that were never fulfilled. In the end, most of us recovered little or nothing of our family's stolen assets, but companies and governments feel entitled to "legal peace."

There should be no legal peace for companies without moral peace for the survivors. As I said in Congress in 2001, please, please do not allow the insurance companies retain that which rightfully belongs to us. We cannot allow others to profit from what has been one of the greatest atrocities in human history.

Commissions don't work. Please, just give us back our rights.

Statement of Samuel J. Dubbin
United States House of Representatives
Committee on Financial Services
February 7, 2007

My name is Samuel J. Dubbin. For the past decade I have had the privilege of representing Holocaust survivors and family members of Holocaust victims in attempting to recover assets looted by a variety of governments and global businesses. My firm was one of three that successfully represented Hungarian Holocaust survivors in the Hungarian Gold Train case against the U.S. Government. We also represented a coalition of American survivors who attempted to make sure that U.S. survivors received a fair share of the Looted Assets funds from the Swiss bank settlement to deal with the crushing poverty among American survivors. I have also represented several survivors and heirs and beneficiaries with claims against European insurance companies, through the grass-roots Holocaust Survivors Foundation USA, Inc.. In fact I was in this room in February 1998 when Chairman Jim Leach held the first hearing on Holocaust survivors' insurance rights.

It would have been inconceivable at that time to believe we would be back here talking about the very same problem that incensed so many members of Congress in 1998. Yet here we are, and despite the justified outrage over the insurers' avaricious conduct toward the victims of history's greatest crime, the insurers have retained over 97% of their unjust enrichment, and hundreds of thousands of policies remain unpaid, and worse yet, they remain hidden in the vaults of the insurers never to have been disclosed even to the families of those who entrusted these financial giants with their families' financial security. The final indignity for survivors is that the American court

system by no legislative action become closed off to survivors whose insurance companies failed to pay. This most basic right – to hold businesses accountable for their breach of contracts to provide insurance – has tragically been held not to be available for one class of human beings in America – Holocaust survivors.

HR 1746 is essential to require the insurers who wish to do business in the American market to open their records, publish the names of policyholders from the pre-war era, and allow survivors and heirs to bring actions in court if the companies refuse to settle on reasonable terms. It also provides a 10 year window for such suits since so many survivors and heirs have no knowledge of the fact that these companies sold their parents or grandparents or aunts or uncles insurance in the dark days before WWII. Yes, even darker days would come.

Let me be clear about what is at stake. It is money, yes, because the insurers profited outrageously from the Holocaust and turned their backs on those who trusted the companies' supposed integrity. But this law is also about the truth. And the current system, the status quo represented by the ICHEIC legacy, has permitted the companies to hide behind the secrecy of an unregulated and extra-legal process, chartered in Switzerland and headquartered in London, and make decisions about Holocaust survivors' rights with no governmental or judicial oversight. The few times Congress has knocked on the door to see what ICHEIC was doing, ICHEIC told Congress to get lost. ICHEIC refused to answer serious questions in Congressional hearings, and refused to provide information required by statute. Now, its defenders say this regime should be sealed with the imprimatur of the U.S. Congress as an acceptable framework for the rights of the victims of history's greatest crime. The survivors I represent urge you in

the most heartfelt way not to allow the bureaucratic and political focus opposing HR 1746 to substitute for a decent respect for the financial and human rights of Holocaust survivors.

HR 1746 would require insurance companies doing business in the United States who sold policies (directly or through an affiliate) must publish the names of policyholders from that era. It would also restore state court rights of action and provide a right of action in federal courts for survivors and heirs when companies refuse to settle on acceptable terms, with treble damages and attorneys' fees and costs for successful claimants. The legislation provides a legally enforceable remedy that survivors and family members have right to control themselves. It places survivors where they would have been in 1998 had state laws passed to allow insurance consumers to pursue their traditional remedies against the companies that profited from the Holocaust at the expense of the families of the victims. Without legislative relief, the hundreds of thousands of unpaid policies worth $17 billion in 2007 dollars sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Generali, Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, and others.

The survivors I represent are only asking Congress to restore the rights they always assumed they had and that no legislative body or even executive branch action purported to deny them – the right to have their injuries redressed in the courts of this country. They do not regard ICHEIC as an evil in of itself nor do they intend any disrespect for the intentions of many who participated there. However, given that ICHEIC was the foundation on which their rights have been eviscerated, it is necessary to discuss the background of the creation and operation of ICHEIC. That unhappy story is

rooted in the tragic events intertwined with the Holocaust, the greatest crime in human history.

History

Insurance was one of the few means available for people to protect their families, both in western and eastern Europe. Banking systems were not safe (e.g. no FDIC insurance) and currencies were unstable between the world wars. People could and did however purchase insurance from domestic branches or subsidiaries of global insurers such as Allianz, AXA, Swiss Life, Winterthur, Generali, RAS, Victoria, Munich Re, Swiss Re, Zurich, Basler Leben, and other insurers still in business today (or whose portfolios have been acquired by extant companies). Frequently, these policies were purchased in US Dollar denominations.

One of the key selling points of many policies was that the insured contracted for the right to receive policy proceeds "wherever they requested" in the world. There is ample evidence that the companies emphasized this feature in their sales to Jews who were increasingly living under the dark clouds of Nazisim in Europe. For example, the policies of Victoria of Berlin provided: "From the first day that the insurance becomes effective, the insured person has the right to change professions and residence and he may go to any other part of the world. Such changes will not affect the validity of the policy in the least, which will continue to be in effect as before." Evidence of similar provisions is abundant in the record that has developed, limited though that is considering ICHEIC's secrecy.[1]

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[1] Generali's marketing including its sales brochures and the policies themselves, highlighted the availability and value of overseas assets – including assets in America – that would ensure the customers' ability to collect their benefits outside of

When the Nazis came to power in Germany in 1933, they carried out a comprehensive scheme to identify and confiscate the property owned by the Jewish people. Known as the Aryanization of Jewish property, this included the forced redemption of insurance policies with short-rating which yielded much needed cash to a Depression-era Nazi machine, and proceeds such as accumulated cash values and prepaid premiums. Jews were required to report to the Nazi authorities their property and personal valuables, including insurance policies. Coupled with the Germans' comprehensive census data identifying residents according to their Jewish identity, including having up to one Jewish grandparent, and laws that prevented the pursuit of livelihood, these human beings were targeted by the Nazis for death and despoliation.

The rape of Jewish insureds in Europe was exacerbated by the fact that German and Austrian census data identified Jewish residents and their assets, together with the collection of such data in territories that became occupied, and pointed the way for the Nazi regime to use the Gestapo to target certain individuals in certain towns to be forced into signing over their cash and other assets such as insurance policies. The plaintiffs who sued the twenty or so major European insurance companies in the late 1990s alleged that the insurers and their affiliates (including reinsurers) participated in and benefited financially from the confiscation of Jewish-owned insurance policies ("short-rating").

After World War II, as Holocaust survivors and their families struggled to reconstruct their lives, insurers refused to honor the policies it had issued to insure property the Nazis seized and the lives of those who perished before firing squads and in

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Czechoslovakia if they so requested. *Buxbaum v. Assicurazioni Generali*, 33 N.Y.S.2d 496 (N.Y. Sup. Ct. 1942); *Kaplan v. Assicurazioni Generali*, 34 N.Y.S. 2d 115 (N.Y. Sup. Ct. 1942).

Holocaust death camps. They stymied their former customers with evasions and denials such as demanding original policy documents, demanding death certificates, denying the existence of policies, denying that they had records of policies from that period, claiming that their its assets were confiscated or nationalized by post-war communist governments obviating its obligations to Jewish Holocaust victims, and other bogus or legally deficient denials that frustrated Holocaust survivors and the children of Holocaust victims for decades.[2]

In 2002, the Government of Switzerland published the Bergier Report, also known as the Independent Commission of Experts Switzerland, Second World War (ICE) which addressed several areas of Swiss corporate and governmental complicity and profiteering from Holocaust victims. Its report on insurance is disturbing but not surprising. For example, despite the fact that Swiss insurers had nine (9) percent of the German market, "In 1950 the Association of Swiss Life Insurance Companies reported that its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime so that their entitlement to claim under the policy had become dormant." Bergier Report, at 465. The Report also showed:

> Immediately after the war, on 27 June 1945, representatives of the four Swiss companies which had issued life insurance policies in the Reich discussed in Zurich how they might avoid claims from Jewish emigrants for restitution of such confiscated policies. A large part of the discussion was characterized by a decidedly aggressive tone. In a subsequent memorandum, one of the companies concerned, Basler Leben, stated: "Jewish insurance holders aimed to compensate their despoliation by the Third Reich by despoliating Switzerland of its national wealth."

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[2] There is evidence that one or more companies (or a number of its affiliates and subsidiaries) was a mutual company at the time of the war. If so, then in the demutualization process the policyholders, who ICHEIC would pay a scant fraction of their "insurance values," would be denied much greater sums owed in that the policyholders would be the owners of the company.

Bergier Report, at 460.

When testifying before this Committee in1998, Allianz AG Board Member Herbert Hansmayer sought the committee's compassion for Allianz's devastation during and after WWII: "Like the rest of the German insurance industry, life insurance companies, such as our German life insurance subsidiary Allianz Lebensversicherungs AG were bankrupt or near bankrupt at the end of the war after having to invest in government bonds that became worthless when Germany was defeated. Allianz Leben also held properties that were lost or destroyed I war-ravaged Germany." Transcript of February 12, 1998 Hearing before the House of Representatives Committee on Financial Services.

But Mr. Hansmayer's plea was contradicted not long after that hearing by a detailed article in the Wall Street Journal in November 1999, which explained how the company had attained such power in the German financial world: "Allianz picked up the core of its stock holdings after World War II. At a time when German companies were desperate for capital, Allianz was one of the few sources of cash to rebuild the bombed-out country. As German corporations regained momentum and became global players, Allianz continued to invest and maintain its influence in boardrooms. Steinmetz and Raghavan, "Allianz Eclipses Deutsche Bank As Germany' Premier Power, *The Wall Street Journal*, November 1, 1999.

In the 1990s, after high-profile disclosures and revelations about European corporate and governmental theft of Jewish peoples' assets from the Holocaust, survivors began speaking publicly about family insurance policies. State insurance regulators

began examining the conduct of insurers in the U.S. market who did business during the Holocaust. Congressional committees held hearings as well. While a small number of victims and heirs actually had scraps of paper describing a facet of an insurance relationship, most recalled statements by their parents that the family had insurance in case of disaster, or recounted their memories of agents who came calling regularly to collect a few Pengos or Zloty or Koruna from their parents. Others described reticent post-war recollections by parents who survived Auschwitz only to be "beaten" by insurers out of large sums of money.

ICHEIC Formed

In 1998 several States passed legislation requiring European insurers who did business in their states to publish names of unpaid policies from the Holocaust era and to pay claimants based on liberal standards of proof, and extending the statute of limitations. Congress was poised to pass similar legislation when the foreign governments and industry persuaded non-survivor Jewish organizations and insurance commissioners to create an "international commission" to standardize the process and avoid "costly, protracted litigation, etc." It was called the International Commission for Holocaust Era Insurance Claims (ICHEIC). The Commission consisted of six companies, three "Jewish organizations" (the Claims Conference, the WJRO, and the State of Israel), three state regulators. Former Secretary of State Lawrence Eagleburger was appointed Chairman.

Mr. Eagleburger has stated that ICHEIC was chartered under Swiss law and headquartered in London to avoid the reach of U.S. courts' subpoena powers.

Decisions were to be made "by consensus," with Chairman Lawrence Eagleburger breaking any ties when necessary. Congress stayed its hand from enacting legislation.

Five years later, after several reported scandals in the *New York Times, Los Angeles Times*, and *Baltimore Sun*, the *Economist*, and other media, Chairman Eagleburger admitted to the House of Representatives Committee on Government Reform (September 2003) that the ICHEIC had spent far more in administrative expenses (including first class travel) than it paid to claimants. Survivors appeared at this and other hearings and told horror stories of multi-year waits for responses from ICHEIC, denials without any explanation other than "no match found;" demands for information that no claimant could be expected to know; and denials even in the face of evidence that policies existed because the companies maintained, without proving, that they had no evidence of an active policy; etc. Again, Congress took no action.

These prior legislative efforts apparently were overcome by the argument that the ICHEIC should be allowed to complete its work. When Congress mandated (Section 704 of the 2003 Foreign Relations Reauthorization Act) that ICHEIC provide certain information about its operations to the U.S. State Department, ICHEIC refused to cooperate. Remarkably, State took no further action. Neither did Congress. Unfortunately, ICHEIC completed its "mission" in March 2007 and the results are catastrophic.

There were 875,000 estimated policies outstanding in 1938 owned by Jews. And while western countries conducted limited restitution of policies for extremely low values, by 2007 the amount that was unpaid from the $600 million in value in force in

1938 was conservatively estimated to be worth $17 billion. This is conservative because it uses a 30-year U.S. bond yield to bring get to current value, whereas insurance companies also invest in equities and real estate.

When ICHEIC closed its doors in March 2007, ICHEIC had paid less than 3% of the value of the policies outstanding. Several hundred thousand policies remain unaccounted for. The body paid out $250 million in recognition of insurance policies, it paid $31 million in $1,000 "humanitarian payments" (which insulted survivors and made them feel like ICHEIC was calling them liars), and allocated another $165 million for "humanitarian projects" through the Claims Conference, which included funds for summer camp programs and college programs in addition to social services for survivors in need. So, even if you aggregate all of the money to about $450 million, ICHEIC generated in total less than 3% of the money stolen from European Jews' insurance funds.

ICHEIC's costs of operations exceeded $100 million, but the exact cost has not to my knowledge been widely published. Even to this day, Congress has not examined ICHEIC's operations despite this terrible track record. ICHEIC operated in virtual secrecy for nine years, disclosing only the barest minimum of information about its processes. Particular concerns about ICHEIC's operations are examined below.

Litigation Stymied

As noted above, prior to ICHEIC's creation, dozens of survivors filed lawsuits against about twenty (20) European-based global insurance companies including several class actions that were consolidated in federal court in New York.

In 2003, the United States Supreme Court held in the *Garamendi* case that Executive Branch actions supporting ICHEIC preempted traditional state law powers to regulate insurers' practices for their handling of survivors' policies. In that case, several members of Congress filed *amicus curiae* brief with the Supreme Court which opposed the extension of Executive power urged by the Administration. Subsequent court decisions have dismissed survivors' suits against Italian insurance giant Generali, even though there is no executive agreement between the United States and Italy. However, in ruling in favor of the industry and against survivors' interests, the courts have noted that Congress had not legislated on the subject of Holocaust era insurance policies.

HR 1746 is therefore Congress's chance to exercise its proper role , under its authority to regulate international commerce and prescribe Federal Court jurisdiction, in the recognition of Holocaust survivors' rights (and the rights of heirs) to sue insurers who fail to pay policies they sold to Jews in Europe before WWII.

Without legislative relief, the hundreds of thousands of unpaid policies worth $17 billion in 2007 dollars sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Generali, Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, and others.

Arguments Against HR 1746

Opponents of HR1746 have coalesced around three (3) major arguments: (1) it is premised on inaccurate estimates of the unpaid value of Holocaust victims' policies; (2) it violates "deals" to provide "legal peace" for German and other insurance companies who participated in ICHEIC; and (3) it isn't likely to produce enough successful claims by

survivors to justify the political costs of the ill-will it will engender among foreign governments whose insurance companies profited from the Holocaust.

HR 1746 estimates are accurate and conservative. Led by ICHEIC Chairman Lawrence Eagleburger's October 15, 2007 Statement to the House Foreign Affairs Committee, opponents claim the legislation is based on the "erroneous allegation" that ICHEIC paid less than 5% of the total amount owed to Jewish Holocaust victims and heirs. The Preamble to HR 1746 states that of the conservative estimate of $17 billion in unpaid policies in 2006 values, ICHEIC succeeded in paying only $250 million for policies. The $260 million is indeed less than 5% of the total owed. It also paid $31 million, in the form of $1,000 "humanitarian payments" to 31,000 individual claimants. So, for purposes of this analysis, the generous ICHEIC payment estimate is $281 million. When "humanitarian" payments nearing $200 million are counted, ICHEIC's tally is around $450 million.

Eagleburger then says bill sponsors Ileana Ros-Lehtinen and Robert Wexler do not provide substantiation for the figures cited. He is incorrect. In fact, the Preamble to HR 1746 cites experts' estimates of the value of unpaid insurance policies owned by Jews at the start of the Holocaust, as ranging from $17 billion to $200 billion.

The $200 billion estimate was published in 1998 in the *Insurance Forum*, the widely respected and quoted insurance consumer newsletter published by industry expert Professor Joseph Belth of the University of Indiana Business School.

The $17 billion estimate is based on an article by economist Sidney Zabludoff in the spring 2004 Jewish Political Studies Review. Mr. Zabludoff presented his analysis at the House Foreign Affairs Subcommittee hearing on October 3, 2007, and is testifying

again before the Financial Services Committee today. Mr. Zabludoff used a base total value of nearly $600 for the total value of Jewish policies in force in 1938. He then subtracted out the amount of policies repaid from the end of World War II to the start of ICHEIC in 1998 (some 70 percent for most west European countries and 10 percent for east European countries) and brought the remainder up to date by using the extremely conservative 30 year U.S. bond rate. The result is that value of unpaid value of Jewish policies is over $17 billion in 2006 prices.

Zabludoff's estimate is very conservative because insurers such as Generali, Allianz, Munich Re, Swiss Re, Swiss Life, etc undoubtedly earned higher returns on their money than the U.S. bond rate, as they invested in much higher-yielding assets such as real estate and stocks, as well as bonds.

Next, Mr. Eagleburger attempts to mock the sponsors' estimates by citing the 1999 ICHEIC Pomeroy-Ferras Report as containing the "actual data on this issue." This criticism is odd because nothing in the Pomeroy-Ferras Report contradicts the estimates of unpaid policies and current values reported in the Preamble of HR 1746. The reader can search through Mr. Eagleburger's verbiage, and the Pomeroy Ferras Report, and find nothing that contradicts Mr. Zabludoff's estimates.

The Pomeroy Ferras Report actually agrees in large part with Zabludoff's base calculations about the number and local currency value of Jewish policies at the start of the Holocaust. The Report did not, however, make any effort to estimate of the pre-Holocaust value using a common currency such as the dollar or the current value of the life insurance policies still owed to Jewish victims of the Holocaust or their heirs prior to

the Holocaust. That is what Mr. Zabludoff did in his 2004 article, using consensus numbers, which the Preamble to HR 1746 describes.

Therefore, with ICHEIC having paid $281 million to claimants and $169 million for Humanitarian purposes for a total of $450 million out of the $17 billion current value of the Jewish policies, it left 97% of the values unpaid.

In his Europe Subcommittee testimony, State Department representative Christian Kennedy's argues that the total current unpaid value is $3 billion, as opposed to the $17 billion estimated by HR 1746. Although Amb. Kennedy gives no explanation for his $3 billion number, the number would appear to be an estimate of the 2003 value of policies using the "ICHEIC valuations" as a base. The ICHEIC valuation system was, everyone concedes, a compromise that allowed the companies to take advantage of post-war currency devaluations and political events in Germany and Eastern Europe. This was the basis on which claims were actually paid via the ICHEIC process. It was not based on the economic value of Jewish policies in 1938, brought up to current value, but instead used the compromise ICHEIC values before any multiplier was applied.

However, even taking the $3 billion 2003 figure used by Kennedy, and updating it to $3.6 billion for 2007, the most generous estimate of insurance payments through ICHEIC, $450 million, is only 15 percent of the sum owed to European Jews .

HR 1746 opponents also misuse numbers to portray a false picture of ICHEIC's performance. They say ICHEIC paid $305 million to 48,000 Holocaust survivors or their heirs for previously unpaid insurance policies." This is not true. According to the June 18, 2007 "Legacy" document shown on the ICHEIC website, it paid $250 million for

unpaid policies. ICHEIC and made an additional 31,000 payments of $1,000 each (totaling $31 million) which were termed and treated as "humanitarian" in nature.

In fact, these payments were neither intended by ICHEIC nor interpreted by survivors as payments on policies. They were viewed as an attempt to give "something" to the tens of thousands of applicants whose family policies ICHEIC or the companies would not acknowledge. ICHEIC paid $1,000 but promised to "keep looking." Claimants have stated that they considered the $1,000 as tantamount to calling them liars. This was the position of survivors who testified on HR 1746, and this is the description applied by one ICHEIC appellate arbitrator, former New York Insurance Superintendent Albert Lewis, who went public with very damning documentation about the "phantom rule" by which ICHEIC's lawyers tried to influence appellate judges to deny appeals.

"Legal Peace." The insurance industry, the German Government, the State Department, and certain organizations that were part of ICHEIC (and their affiliates) oppose HR 1746, saying that "a deal is a deal," and the insurance companies were promised "legal peace" if they participated in ICHEIC. The short answer to this argument is that the U.S. Government did not agree to waive survivors' rights to sue insurance companies in any Executive Agreement or other action arising out of the Holocaust restitution cases and negotiations. Moreover, the U.S. Executive Branch does not have the authority to negotiate away any citizen's right of access to the courts of this country in the absence of a truly catastrophic foreign policy crisis and express Congressional authority. Today, opponents of HR 1746 want to give German insurers

more than they were able to negotiate for in 2000, and more than the U.S. government could constitutionally agree to.[3]

Unfortunately, the unprecedented court decisions making it impossible today for survivors to sue insurers over Holocaust era policies make HR 1746 necessary. Notably, even those decisions limiting survivors' access to courts today recognize that the absence of Congressional action in the field was influential in their decisions, an obvious acknowledgement of Congress's authority to provide access to courts through appropriate legislation. *American Insurance Association v. Garamendi*, 123 S.Ct. 2374 (2003), *In re Asscurazioni Generali, S.p.A., Insurance Litigation*, 240 F.Supp.2d 2374 (S.D.N.Y. 2004). HR 1746 would restore survivors' rights to their position noted above prior to *Garamendi.*

The background for the "legal peace" argument arose from the "$5 billion" German Foundation Agreement. In 1999 and 2000, federal courts dismissed class action lawsuits filed by Holocaust survivors against German industry seeking compensation for slave labor they were forced to perform during WWII. The courts held that international treaties settling the war had to be interpreted to preclude the judicial branch from allowing suits for personal injuries such as the injustices of slave labor. While the cases were on appeal, Germany and the U.S. government entered into a mediation to settle the slave labor claims.

At the eleventh hour, after months and months of negotiations over slave labor compensation, and after months of speculation on the total to be offered, the Germans

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[3] Stuart Eizenstat's book *Imperfect Justice*, at page 270, refers to a letter from Solicitor General Seth Waxman which addresses the issue, but that letter has never to the best of this writer's knowledge been made public. It is imperative that this Committee review this correspondence.

reportedly demanded that if the U.S. did not agree to include "insurance" in the agreement, there would be no slave labor settlement. Stuart Eizenstat's book about the negotiations describes the Germans' aggressive tactics to include insurance in the slave labor deal. In the process, German insurers' (and non-German insurers who sold in the German market) total potential "liability" through ICHEIC was limited, without ever having any independent audit or investigation or analysis of the actual amount of insurance theft the German companies committed, at the absurdly low amount of $200-250 million.

Several members of Congress have been concerned about ICHEIC from the outset, and the Executive Branch's "commitment" to include survivors' insurance rights within the German Foundation settlement. In September of 2000, forty-six members of the United States House of Representatives expressed their dissatisfaction with the German Agreement and with the failures of the ICHEIC specifically. They wrote ICHEIC Chairman Eagleburger "to express [their] concern about the alarming rate of rejection of claims processed through the International Commission for Holocaust Era Insurance Claims ("ICHEIC"), which has prevented many of [their] constituents from reclaiming their Holocaust-era policies." *See* Letter of September 29, 2000, from Henry Waxman, et. al. to ICHEIC Chairman Lawrence Eagleburger, Exhibit N. They expressed strong disagreement that the German-U.S. Agreement over slave labor was expanded to include any kind of limits on insurance regulations or liabilities:

> [W]e reject the notion that insurance claims estimated to be worth billions could be satisfied by the arbitrary DM 300 million ($150 million) set aside in the German Foundation Fund.

Letter of September 11, 2000, from Congressmen Waxman, Lantos, et al. to the Honorable Janet Reno.

Several of these Representatives also wrote to the Solicitor General of the United States to protest the Justice Department's efforts to undermine states' authority over Holocaust survivors' insurance claims.

> Since 1998, Holocaust insurance claims have been managed by the International Commission on Holocaust Era Insurance Claims (ICHEIC) under a seriously flawed process. As reported in a Los Angeles Times story by Henry Weinstein on May 9, 2000, ICHEIC has rejected three out of four of the claims that were fast-tracked and considered well documented. No appeals process exists and the courts have provided the only recourse available to Holocaust survivors. We were shocked, therefore, to learn that the recent slave labor settlement reached between the U.S. and German governments would also resolve claims settled by ICHEIC and undermine viable class action suits.

See September 11, 2000 Letter from Congressman Henry Waxman, et al, to U.S. Solicitor General Seth P. Waxman.

In response to concerns raised by U.S. Congressmen, the U.S. Government clarified the position that the German agreement did not purport to eliminate Holocaust survivors' legal claims against German insurers. According to Assistant Attorney General Raben, the Government would only state "that it would be *in the foreign policy interests* of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims," and "*that the United States does not suggest that its policy*

interests concerning the Foundation in themselves provide an independent legal basis for dismissal of private claims against German companies." *Id.* (Emphasis supplied).

It is also ironic in light of the position now being taken by the U.S. State Department and others that at the time of the agreement, the Justice Department acknowledged that if ICHEIC did not prove to be an effective forum for solving Survivors' claims, even the limited protection agreed to would be at risk: "Should the German Foundation fail to be funded and brought into full operation, or should the United States conclude that ICHEIC cannot fulfill the function for which it was created, the United States will certainly reconsider the balance reflected in its views on the constitutional issues." *See* September 29, 2000 Letter from Assistant Attorney General Robert Raben to Congressman Henry A. Waxman ("Raben Letter").

It should be added that even the Department of Justice added in the year 2000 – before ICHEIC's colossal failure was final, that the U.S. Government's agreed-upon limited support for ICHEIC was contingent on ICHEIC's successful functioning: "[S]hould the United States conclude that ICHEIC cannot fulfill the function for which it was created, the United States will certainly reconsider the balance reflected in its views on the constitutional issues [i.e. the California commissioner's subpoena power.]" September 29, 2000 Letter from Assistant Attorney General Robert Raben to Henry Waxman, et al.

In the *Garamendi* case, the United States Supreme Court held by a 5-4 vote that even without expressly preempting the California Insurance Commissioner's power to subpoena records fro German insurance companies doing business in that state, the court found and relied upon a separate "federal policy" favoring "nonadversarial resolution" of

Holocaust victims' claims against insurers who sold their families' insurance before WWII. So, if ICHEIC required less disclosure from Germany than the California Insurance Commissioner requested under its state law allowing it to examine insurers' market conduct, state law was preempted. Several members of the United States Congress filed an amicus brief in the *Garamendi* case confirming that states had primary jurisdiction over insurance regulation such as the subpoenas issued by the Commissioner, and opposing the expansion of executive authority represented by Germany's position in the litigation. Their position was not adopted by the Court.

Congress retains the authority to restore the *status quo ante* for Holocaust survivors and heirs, to enable them to bring court actions against the insurers who took their parents' and grandparents' money as a sacred investment to protect their loved ones, then turned their backs on the insureds, heirs, and beneficiaries after the horrors of the Holocaust. Now is the time for Congress to rectify this 60-plus year, and independently historic, injustice.

It is indisputable that Congress, not the Executive Branch, has the constitutional and statutory authority to regulate international commerce, and to define the jurisdiction of the federal courts. Therefore, HR 1746 relates to fundamentally Congressional prerogatives, which the Executive Branch's unilateral actions undermine in an intolerable and harmful fashion.

Survivors throughout the United States (and the world) have experienced ICHEIC's failures first hand, and call upon Congress to follow through and correct the shortcomings in the process, while the survivors still have life and hope.

Other Issues Precluding "Legal Peace." Congressman Wexler stated plainly at the Europe Subcommittee hearing, in response to Ambassador Kennedy's "legal peace" argument, that he wanted to know what the survivors received in exchange for the "deal" the Department now says should be "honored." He pointed out the 3% payment rate as clear evidence that whatever was contemplated surely was not fulfilled. Or, as survivors and their supporters have stated, "there can be no legal peace until survivors have moral peace" through an honorable, transparent, and accountable process.

ICHEIC's poor performance is the result of a series of poor policy decisions dictated by the insurers' dominance of the panel, and other failures of execution. There are many other shortcomings about ICHEIC that have been presented to the Committee or written about in the media or discussed in the courts, and this summary only touches on the surface of ICHEIC's failings.

Inadequate Disclosure of Policy Holder Names. ICHEIC was supposed to begin with a comprehensive dissemination of names of policy holders in order to inform survivors and family members about the possibility of an unpaid policy in their family, but only a fraction of policies were published. Only a fraction of the policy holder names from that period of time, including only 20% from Eastern Europe, were published. Most were published in mid-late 2003, after the filing deadline had been extended twice.

This failure undermined one of ICHEIC's basic tenets, i.e. that almost all Holocaust survivors and the heirs of Holocaust victims would have to depend on the insurance companies to publish policy holder information before they would have any idea that they might have a possible claim. On September 16, 2003, the Committee on

Government Reform of the U.S. House of Representatives held a hearing concerning the efficacy of the ICHEIC and the impact of the Supreme Court's *AIA* decision. Several members of the Committee, and the Survivors and Survivors advocates who testified, expressed their continued dismay with the ICHEIC. The concerns raised included the inadequacies in the dissemination of policy holder names that had occurred after nearly five (5) years, as well as the endless, frustrating, nontransparent, and unaccountable claims handling practices conducted under ICHEIC's auspices. *See* Treaster, "Holocaust Insurance Effort is Costing More Than It Wins," *The New York Times*, September 16, 2003, Exhibit 11. ("Lawrence Eagleburger . . . said today that his organization had spent 60 percent more for operations than it had persuaded insurers to pay in claims. . . . Independent Holocaust experts asserted at the hearing that the commission had been outmaneuvered by the insurers.").

For example, Ranking Committee Member Henry A. Waxman remarked:

> 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 at timely way, with adequate follow up.
>
> Even worse, many of the insurance companies remain recalcitrant and unaccountable. ICHEIC statistics show that claims are being rejected at a rate of 5:1. . . . The Generali Trust Fund, an Italian company, has frequently denied claims generated from the ICHEIC website, or matched by ICHEIC internally, without even providing an explanation that would help claimants determine whether it would be appropriate to appeal.

Statement of Henry A. Waxman, House Government Affairs Committee, September 16, 2003, Exhibit 12.

Mr. Waxman continued, with a critique of the failure of the ICHEIC to publicize names of policy holders from the areas of Europe in which Generali was most active:

> Look at a chart of Jewish population distribution throughout Europe before the Holocaust and look at 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 website: nearly 400,000 policies identified in a country that had 585,000 Jews. But 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 pre-war 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.

Statement of Congressman Henry Waxman, Committee on Government Reform, September 16, 2003.

It is true that in mid- 2003, five years after ICHEIC was created, three years after the German-U.S. Executive Agreement, and after two extensions of the published filing deadlines for ICHEIC claims, an additional 400,000 names were added to the ICHEIC website, including some 360,000 from the German insurers. However, these were published long after the vigorous publicity that had occurred fully three years earlier, and after most who had been interested had simply become frustrated and disgusted. In October 2004, the Washington State Insurance Commissioner wrote:

> The deadline for filing claims was December 31, 2003. Despite the terms of the MOU (Memorandum of Understanding), up until the very end of the claims filing period the companies continued to resist releasing and having the names of their policyholders

> published, in some cases citing European data protection laws. By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability. Had the companies released the number of policyholder names that could and should have been published over the entire ICHEIC claims filing period, it is likely the number of claims would have been significantly higher than the present 79,732.

The German companies and the GDV's claim for leniency from the proposed legislation based on their publication of 360,000 names requires close scrutiny. It is belied by their inexplicable three-year delay in arriving at an agreement with ICHEIC and producing the names it possessed. The U.S.-German Agreement was made in principle in December 1999 and formalized in July 2000. Yet the German companies haggled and fought over minute details for their participation in ICHEIC (under separate rules than other countries) and no agreement was reached with ICHEIC until October 2002. They did not publish the 360,000 names they claim represent the universe of possible Jewish policies until April 2003. By then, as the Washington Insurance Commissioner noted, virtually no one was paying attention and the deadline was looming.

Hundreds of thousands of relevant archive files were not reviewed. Another massive failure is the incomplete examination of European archival records to locate files of Jews' asset declarations from the Gestapo which in many cases showed the name of the victims' insurance company and the value of the policy. This research was helpful in some cases, but overall it was inconsistent and incomplete. Final Report on External Research commissioned by the International Commission on Holocaust Era Insurance Claims, April 2004, available at **www.icheicorg**.

For example, the researchers reported that they had access to the Slovakian Central Property Office, which contained "more than 700 boxes of records dealing with the 'aryanization' of Jewish firms in Slovakia. Those files contained information about "the assets of the firms and of their Jewish owners .. . . declared on a special form." However, the researchers searched only "a small sample" of those 700 boxes, which provided information about "18 policies."

Another entry, for an archive in Berlin entry says that the archive "comprises declarations on property belonging to the enemies of the Reich submitted by insurance companies and various custodians. Some 10,000 of about 1,000,000 existing files were researched and contributed 11,067 insurance policies." The obvious question from the report is why didn't ICHEIC look at the other 990,000 files? According to the finds, these unreviewed files might well have evidence of hundreds of thousands of insurance policies. Remember, the files were turned over to the Reich by the insurance companies themselves.

So, this information raises many important points, including not only the fact that the ICHEIC process failed to review a huge amount of relevant information for claimants, but contradicting the insurance companies' frequent refrain that there is no evidence that they turned over customer information to the Nazis.

It is also likely that the ICHEIC researchers only entered a fraction of the relevant archives. However, this is somewhat academic because the primary source of information, i.e. the company records and the records of the reinsurers, would indeed provide much of the information that would enable survivors and family members to locate policy information.

ICHEIC Operated in Secrecy and Ignored Congressionally Mandated Reporting Requirements. It is ironic that Mr. Eagleburger begins his "statement" to the House Foreign Affairs Committee by complaining that "no one representing ICHEIC was invited to testify at the October 3 hearing." In fact, for several years, Mr. Eagleburger and ICHEIC ignored congressionally mandated information requests from the State Department about ICHEIC's practices and performance under the Foreign Relations Authorization Act of 2003.

The ICHEIC "Audits" Were Limited and Secret Until ICHEIC Closed

ICHEIC supporters cite the audit process as a reason to defend the process. But the public and policy makers had no way of ascertaining what the audits actually signified, much less what they found. *No ICHEIC audits were published until after the body closed its doors in March 2007.*

One of the startling revelations that was put on the ICHEIC web site in March is that the audit for the Generali Trust Fund in Israel, the entity that handled all of the Generali ICHEIC claims between 2001 and 2004, had *failed its audit.* That audit was concluded in April 2005, but not disclosed until 2007. According to a letter from ICHEIC management to the New York Legal Assistance Group, ICHEIC made no systematic effort to go back and rectify mistakes that might have been made by the Generali Trust Fund during that time.

It is also important for the members to understand the extremely limited nature and validity of the of ICHEIC audits was in any event, i.e. what the audits did and did not purport to do. Under ICHEIC rules, the companies decided what the relevant scope of investigation and analysis would be in searching for names to publish, and in determining

whether claims were "valid." All the audits did was test whether the companies did what they said they were going to do. Therefore, even the audits that "passed" under this extremely limited ICHEIC mandate do not offer any comfort to claimants who were rejected, much less any basis for Congress in evaluating the process. For example, the Deloitte & Touche LLP Stage 2 audit "passing" Generali Trieste, which was not even *issued* until March of 2007, states:

> Our opinion . . . is not in any way a guarantee as to the conduct of Insurer in respect of any particular insurance policy or claim thereon at any time or in any particular circumstances.

Appeals Were Biased Against Claimants.

Another ICHEIC "safeguard" on which the process depended was the availability of an appeal mechanism for claimants who were dissatisfied with company decisions. However, after ICHEIC closed, one of the ICHEIC appellate judges, former New York State Insurance Superintendent Albert Lewis, disclosed that he was pressured by the ICHEIC legal office to deny appeals by survivors and heirs that he considered valid, based on a "phantom rule" that violated the published ICHEIC rules. He disclosed, after ICHEIC's official closure, that he was pressured by ICHEIC's legal office that even survivors with persuasive anecdotal evidence must overcome a "heavy burden" in order to be awarded money for a policy where the claimant could not produce documentary evidence.

Mr. Lewis disclosed not only that he witnessed a bias against claimants in ICHEIC appeals from the ICHEIC London office, but that it led to the *de facto* adoption of an unduly restrictive burden of proof on survivors by other Arbitrators as well. In that brief, he stated:

> In my experience as an arbitrator I witnessed bias against the claimants by ICHEIC's London office and especially as manifested by the administrator, Ms. Katrina Oakley. She demanded that ICHEIC arbitrator apply an erroneous and phantom burden of proof rule in deciding appeals, a rule that would force ICHEIC's arbitrators to deny an otherwise valid claim.

Mr. Lewis explained that in at least two of the appellate decisions he reviewed, he concluded that the claimant had given plausible evidence that his family had an insurance policy, based on the "relaxed standards of proof" published in the ICHEIC manual and in the rules provided to claimants who interacted with ICHEIC. Yet, when he provided a draft opinion to the ICHEIC legal office to have it reviewed for administrative form, he was pressured to deny the claim, based on what the ICHEIC legal office called a "heavy burden" imposed on claimants without documentation. Mr. Lewis's amicus brief in the Generali class action settlement appeal compellingly shows how this "phantom rule" violated applicable ICHEIC rules and standards:

> [The ICHEIC rules and standards] **contained no rule that resembled in any manner or form that where no record of a policy is produced by the claimant and the company that the claimant's burden of proof is a heavy one. This rule is contrary to the intent of the MOU.**

(Emphasis by Mr. Lewis).

ICHEIC Failed to Apply "Relaxed Standards of Proof"

Appellant Jack Rubin's claim is an example of Generali's strict standards that resulted in the denials of thousands of possibly meritorious claims. In light of Albert Lewis's disclosures, it is now apparent that Mr. Rubin's claim was denied due to the "phantom rule" surreptitiously instigated and imposed by the ICHEIC legal office.

Mr. Rubin filed a claim with ICHEIC stating that the building that housed his family home and his father's general store in Vari (Czechoslovakia, later Hungary) had a

sign affixed stating the building and premises were insured by "Generali Moldavia." [SUP-41]. Mr. Rubin's family was forcibly removed from their home in April of 1944 and taken to the Beregsastz Ghetto, and then deported to Auschwitz. His parents perished in the Holocaust but he survived. *Id.* Mr. Rubin filed two claims with the ICHEIC, which named his parents Rosa Rosenbaum-Rubin and Ferencz Rubin, with their years of birth. He noted that when he returned from the camps, his family home and business were destroyed and he could not locate any records. His even noted that "[t]he agent's name was Joseph Schwartz. He did not survive the Holocaust." *Id.*

Mr. Rubin's received a letter from the Generali Trust Fund in Israel which acknowledged that Generali Moldavia was a property insurance subsidiary of "the Generali Company" in Hungary, but denied any payment in the absence of a document proving the insurance. The letter stated that it could find no evidence of a life insurance policy in the main company's records for his parents or himself, but acknowledged that "the archives of the Generali company did not contain the water copies of the policies issued by subsidiaries."

The Arbitrator also upheld the denial of the life insurance claim based on Generali's representation that there was no evidence in its records pertaining to Mr. Rubin's family. He did not demand any actual evidence from Generali's records pertaining to Mr. Rubin's family, such as data on common customers between Generali Moldavia and any life insurance branch or subsidiary, or whether or not it had an agent named "Mr. Schwartz" in the region where Mr. Rubin's family lived, nor examine files on agents. In court, Mr. Rubin's lawyer would have this right.

The ICHEIC arbitrator stated the following in rejecting Mr. Rubin's claim:

> Where no written record of a policy can be traced by the Member Company, *the burden upon the Appellant to establish that a policy existed is a heavy one,* even when the burden is to establish that the assertion is "plausible" rather than "probable." Where the Appellant is not able to submit any documentary evidence in support of the claim, as in this case, the Appellant's assertions must have the necessary degree of particularity and authenticity to make it entirely credible in the circumstances of this case that a policy was issued by the Respondent.

(Emphasis supplied). Clearly, the Arbitrator's use of the "heavy burden" of proof imposed upon Holocaust survivors such as Mr. Rubin is contrary to the ICHEIC rules, and the adoption and application of this extraordinary "phantom rule" that was not only never formally adopted by ICHEIC, but in fact was contrary to the rules "relaxed standard of proof" that were supposed to be applied. Mr. Rubin's experience demonstrates the unfairness of the processes survivors were forced to accept.

The "relaxed standards of proof" which ICHEIC companies were supposed to apply were found to be ignored in a large number of claim denials, such as by Lord Archer on behalf of the ICHEIC Executive Management Committee in 2003. The Washington State Insurance Commissioner in October 2004 cited a multitude of other failures – including companies' denials of claims in violation of ICHEIC rules, or denials submitted without providing the information in company files necessary to allow the claimants or the ICHEIC "auditors" to determine whether relaxed standards of proof were applied, failure to supply claimants with any documents traced in their investigations," and routine denial of claims by simply saying, even when a claimant believes he or she is a relative a person named on the ICHEIC website, that "the person named in your claim was not the same person."

<u>ICHEIC Did Not Require Companies to Disgorge Information It Provided About</u>

Its Jewish Customers.

ICHEIC never required the companies to be accountable for their true conduct during and after the Holocaust, and this failure robs survivors of any sense of true justice, and robs history of the truth about this facet of the Holocaust. It is well-known that companies turned over records and funds relating to their Jewish customers to the Nazi and Axis authorities. ICHEIC failed to render a proper accounting of the companies' participation in the forced redemption of Jews' insurance policies and other practices whereby the companies assisted the authorities in looting their customers' property.

The companies defense of their conduct for the last decade has centered on the representation that it "could not identify who was Jewish" among its customers after WWII, hence it shouldn't be viewed as a monster for failing to pay policies of Jews who were Holocaust victims. However, contrary to such statements, records have surfaced that reveal one company's Italian portfolio had data entries including:

> "Jewish race of policyholder (starting from 1938)"
> "Jewish race of the insured person (starting from 1938)"
> "Jewish race of beneficiary in case of death (starting from 1938)"
> "Jewish race of beneficiary in case of survival (starting from 1938) at maturity"

This source of the information is an "examination of the collected data on unpaid policies shows that *some of the insured had to specify their 'Jewish race.'*" This revelation contradicts statements made over the last decade by the companies and their representatives. How much more information like that lies in their records? No one knows because ICHEIC did not probe that issue.

See, e.g. letter to the "Prefect of Milan," in which the company did indeed identify its Jewish customers to authorities.

> "The holder of the policy in the margin is Mr. Arrigo Lops Pegna of Ertore – the beneficiary is the wife. Mrs Gemma Servi in Lopes – Milan, O sc C Ciano 10, both of whom belong to the Jewish race. We renounce the aforementioned policy and signify to you that the same is in effect for an insured sum of L. 100,000."

How many of these kinds of transactions were "otherwise settled before maturity?" Don't survivors and doesn't history have a right to all these facts?

Survivors should not be deprived the right to choose for themselves whether to go to court to recover their families' insurance proceeds.

Under traditional common law, Holocaust survivors and heirs and beneficiaries of Holocaust victims would be guaranteed access to the courts of the states to sue insurance companies who fail to honor their family policies. The legislatures of Florida, New York, California, and several other states in 1997 and 1998 enacted specific statutes to ensure that Holocaust survivors and their beneficiaries and heirs could go to court to advance their claims for unpaid insurance policies. No legislatively enacted statute either at the state or federal level has provided that Holocaust survivors can be denied access to courts due to ICHEIC. The current legal landscape is entirely a creation of judicial decisions attempting to interpret executive branch actions in the absence of Congressional direction.

Florida's Legislature and Insurance Commissioner have consistently rejected the notion that the ICHEIC should be treated as a substitute for Florida's Holocaust Victims Insurance Act and traditional remedies under Florida law. In 1998, when Florida's Insurance Commissioner agreed to execute the Memorandum of Understanding which created the ICHEIC, he did so subject to several specific conditions, including the

express acknowledgment that Florida laws would not thereby be diminished. He wrote: "The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens." *See* April 29, 1998 letter from Florida State Treasurer and Insurance Commissioner Bill Nelson to The Honorable Glenn Pomeroy, NAIC President.

Commissioner Nelson again rejected the idea that ICHEIC participation created a "safe harbor" from Florida law in a subsequent letter to the members of the ICHEIC: "*Participation on the Commission should not be seen by any company as a means to shield itself from Florida's laws.* When I signed onto the Memorandum of Understanding establishing the International Commission, as every one knows, I stated: 'The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens. This has always been and continues to be my position."[4]

The principal Senate sponsor of the Florida Holocaust Victims Insurance Act and Senate Resolution 2730, State Senator Ron Silver, recently explained that claimants' rights to go to court in Florida are part of the bedrock of the State's common law and statutory scheme to protect the rights of Holocaust victims and heirs. In a letter to the Honorable Michael Mukasey, he wrote: "One of the key elements of our legislation was to establish a right for Survivors, heirs, or beneficiaries to go to court in Florida to enforce their rights in relation to insurance policies sold before the Holocaust." Senator Silver's letter explains:

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[4] Further, in resolutions adopted in 1999, both houses of the Florida Legislature emphatically rejected the idea that the ICHEIC could serve as an exclusive forum for Holocaust victims' insurance claims.

> In 1999, I sponsored Senate Resolution 2730, which reiterated the Legislature's strong policy in favor of assisting Holocaust victims and their families to recover unpaid insurance policies from companies. We were very aware of the work of the State Insurance Commissioner, who was participating as a member of the International Commission for Holocaust Era Insurance Claims (ICHEIC), as well as working to enforce the provisions of the Holocaust Victims Insurance Act. *The reason we adopted SR 2730 was to restate the Legislature's conviction that, notwithstanding the efforts of the ICHEIC and other global negotiations, individuals should retain the right to go to court to press their claims for unpaid insurance policies from the Holocaust era . . . .*

See Letter from Florida Senator Ron Silver to Hon. Michael Mukasey, October 31, 2001

Cost/Benefit Analysis of HR 1746. Perhaps the most cynical objection raised to HR 1746 is that it might not generate enough actual payments to Holocaust survivors to justify the political opposition mounted by the insurance companies and the governments seeking to protect them. The analysis above demonstrates that more than 60 years after the end of WWII, only three percent (3%) of the funds owed by these insurers to Holocaust victims' families has been repaid, after an excruciating nine (9) year hiatus in which ICHEIC was given sway to allow some companies to fly below the radar screen and still succeed in holding onto over 95% of their unjust enrichment.

The provisions of HR 1746 represent common sense and common decency in allowing Holocaust survivors and families access to the United States court system to control their own right to obtain information from the culpable insurers, seek the truth about their families financial history, and recover the funds they might be owed. Given the shortcomings in ICHEIC's names disclosure record and claims payment record, HR 1746 is necessary to allow all victims' families a fair chance to recover their financial due. The status quo creates one subclass of Americans who cannot go to court to sue

insurers that pocketed their hard-earned money – Holocaust survivors. This is an untenable position for America in the year 2008.

Companies that did not participate in ICHEIC won an even greater windfall, but they would be required to publish policy information under HR 1746 if they want to do business in the United States.

Further, as Congressman Robert Wexler pointed out at a public forum in South Florida on December 10, HR 1746 also sets a marker that the public policy of the United States will not tolerate or condone corporate or institutional profiteering from atrocity, whether against Jews or against any other people. It is appropriate and morally required to use all the tools at our society's disposal to discourage and even punish enterprises that do business with ruthless and genocidal regimes like those that do business with the Sudan, given the atrocities of Darfur.

The evidence that multinational insurers profited from the Holocaust to the tune of some $17 billion in today's dollars is overwhelming. Making them pay for their unjust enrichment – even 63 years after the end of the war – sends a message to other enterprises that might turn a blind eye to murder, and thereby save lives and prevent future atrocities.

Conclusion

As Holocaust survivor Jack Rubin stated before the Europe Subcommittee in October, it is indeed possible and even likely that tens of thousands of Jews' insurance policies went up in the smoke of Auschwitz. But why should the companies be able to retain the billions in unjust enrichment due to their greed and cynicism? Even if only a few additional policies are repaid to individuals, there is no plausible reason to allow the

financial culprits from the Holocaust rest easy in 2007 or ever, until they have disgorged their ill-gotten gains. Their unjust enrichment is tainted and must be returned, to the owners or to survivors in need if necessary.

Testimony of Stuart E. Eizenstat*
Before the House Financial Services Committee
February 7, 2008

Mr. Chairman, Mr. Bachus, I want to thank you, and the members of the Committee, for inviting me here today to testify regarding H.R. 1746, the Holocaust Insurance Accountability Act. I thank the Committee too for its continued focus on Holocaust compensation and restitution matters. For many years, you have provided a strong voice of moral leadership on a wide variety of Holocaust-related issues. I thank you for that leadership.

I have testified before this Committee numerous times, including in my capacity as the Special Representative of the President and the Secretary of State for Holocaust Issues during the Clinton Administration. In that capacity I negotiated agreements with the German, Swiss, Austrian, French, and other European governments that have resulted in the payment of more than $8 billion in compensation to more than 1.5 million Holocaust survivors, their heirs, and the heirs of those who did not survive. Those agreements, and the subsequent payments to Holocaust victims and their families pursuant thereto, were the result of the concentrated work of many people, including representatives of 11 agencies of the U.S. government, their counterparts in numerous foreign governments, leaders of many Jewish organizations, foreign companies, and a large number of skillful lawyers representing the interests of Holocaust survivors and heirs.

Through my testimony today I hope to enhance the Committee's understanding of how the International Commission on Holocaust Era Insurance Claims ("ICHEIC") fit into the United States Government's broader efforts to secure compensation and restitution for Holocaust victims. First, I will describe how the ICHEIC process emerged. Second, I will provide the Committee with background on the United States Government's broader compensation and restitution efforts during the period I served as the Administration's leader for these issues, particularly with respect to the Executive Agreement between the United States and Germany and the resulting German Foundation. Third, I will suggest that the Bill, as currently drafted, threatens the integrity of the U.S. Government's long-standing policy of resolving Holocaust-era claims through negotiation, not litigation. And finally I will highlight several characteristics of the ICHEIC process and contrast them with what is found in a court of law. This contrast indicates to my mind that the Bill may not add appreciably to the likelihood of additional recovery on Holocaust-era insurance policies, is actually more likely to hurt the beneficiaries of any unpaid insurance policies rather than help them, and undercuts the successful U.S. Government policy of finding non-litigation ways to compensate Holocaust victims and their families through loose, flexible rules of evidence without resort to costly, lengthy, and uncertain lawsuits.

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* Stuart E. Eizenstat was U.S. Ambassador to the European Union, Under Secretary of Commerce for International Trade, Under Secretary of State for Economic, Business, and Agricultural Affairs, and Deputy Secretary of the Treasury during the Clinton Administration from 1993-2001. He was the Administration's leader in seeking justice for Holocaust survivors as the Special Representative of the President and Secretary of State for Holocaust-era Issues.

Since the end of the Second World War, restitution for Nazi crimes has been an important policy objective of the United States Government. Unfortunately, the ability of the United States Government to seek restitution and compensation for many individuals was compromised during the Cold War. Efforts to seek funds directly from European companies were particularly hindered in this regard. Following the end of the Cold War, however, the United States Government's policy was to seek justice and to do so with urgency. We wanted to ensure that survivors and their families received justice, but it was equally important that they get some measure of justice quickly. The fifty-year duration of the Cold War meant that time was running short.

The twin goals of justice and urgency gave life to what became the fundamental policy of the United States with regard to Holocaust-era claims. We made the decision that the interests of survivors would be best advanced by seeking compensation and restitution through mechanisms based on negotiation and administrative processes, and not on litigation or any other adversarial process. The timing issue, of course, was not the only reason litigation was an impracticable option, although it was an important one. Defenses which defendant companies and governments could use in lawsuits including post-War settlements, transaction costs including attorneys' fees, statutes of limitation and rules of evidence, as well as the burden of proof that would apply to survivors' claims in U.S. courts, made it unlikely that litigation offers a useful path to obtain restitution and compensation.

Emergence of the ICHEIC Process

The ICHEIC process emerged initially not from our efforts inside the federal government, but rather from the impetus provided by the insurances regulators of a number of states. The initiators of the ICHEIC process were Neil Levin, at that time the New York Superintendent of Insurance, and Glen Pomeroy, the vice chairman of the National Association of Insurance Commissioners and North Dakota's Commissioner of Insurance. They and other insurance regulators had seen a growing number of claims relating to unpaid Holocaust-era insurance policies. In response, they met with Holocaust survivors, who told their stories of purchasing insurance policies to provide for their families' futures, of deaths of family members during the Holocaust, of their own survival, and of their unsuccessful attempts to receive payment under their insurance policies.

In the spring of 1998, the insurance commissioners and Holocaust survivor organizations invited the Clinton Administration to support an international commission to resolve unpaid Holocaust-era claims and asked us to use diplomatic efforts to bring the affected European governments and companies into the process. We agreed to support this effort, which became ICHEIC. We also agreed to become an ICHEIC Observer, although the United States was never a member. My able deputy, J.D. Bindenagel, served as the Observer and kept me abreast of ICHEIC's activities.

Our support for the ICHEIC process was premised on the Government's interest in obtaining as quickly as possible some measure of justice for Holocaust victims and their families, including many U.S. citizens. The ICHEIC process also offered a way for us to resolve outstanding claims in a way that enhanced our diplomatic and economic relations with our European allies as well as with the State of Israel.

At the time, I was at the State Department. I was approached by the representatives of European insurance companies that had faced criticism and lawsuits in the United States for non-payment of Holocaust-era claims. It was clear to me that while insurance in our system is an activity that is regulated by the states, the resolution of these 60-year-old claims had to be merged with our forthcoming broader negotiations with Germany on Holocaust-era claims, as well as with other future negotiations. The merger was essential because our negotiations and those of the state insurance regulators were both seeking funds from the same universe of companies in Germany, and eventually also Austria. Moreover, under the class action settlement with the Swiss Banks which I helped facilitate (and which U.S. District Judge Edward Korman completed), all Swiss companies received certain protections from further lawsuits relating to Holocaust-era claims. The companies, understandably, did not want to pay twice for the same wrongs.

We also felt that we had to ensure the inclusion of the broadest possible number of companies and countries because, as a practical matter, the state insurance regulators had influence over only those European companies with significant operations in the United States. Indeed, the insurance companies that signed the ICHEIC Memorandum of Understanding were essentially the only European companies in that category, and thus were subject to U.S. state regulation. They were also, for the most part, the only insurance companies that survivors and heirs could sue in U.S. courts. Yet we knew that European insurance companies with operations in the United States did not constitute the complete universe of companies that had issued policies to Holocaust victims. In fact, many European insurers that did not conduct business in the United States and, therefore, would have been beyond the reach of U.S. courts participated in the ICHEIC process.

So, as I met with the heads of insurance companies or other insurance company representatives, I put them in touch with Glen Pomeroy and Neil Levin, and at the same time searched for a mechanism to link them to our broader efforts on behalf of Holocaust survivors and heirs. In August 1998, the Memorandum of Understanding between the European insurers, state regulators, and survivor representatives, including the State of Israel, was signed with our support, and the ICHEIC process was launched.

The U.S. Government took a number of steps to support the ICHEIC process beyond assisting in diplomatic negotiations:

- The State Department organized a seminar in Prague to help spur efforts to create a fact-based history of the very complex issues relating to insurance policy assets seized by the Nazi regime and to help translate into action existing research into these issues so as to settle quickly the insurance claims of Holocaust survivors.

- The U.S. Government publicly supported ICHEIC at a 1998 meeting of the National Association of Insurance Commissioners in New York City.

- The State Department organized the so-called "Washington Conference" on Holocaust-era assets, which was held in November and December 1998 and at which I voiced the U.S. Government's support for the ICHEIC process and encouraged European insurers to participate in it. The proceedings of the Conference were published and remain available online.

The participants at the Washington Conference urged the resolution of still-pending insurance issues, but they also acknowledged past German Government efforts to compensate the victims of Nazi persecution with payments amounting to some 100 billion marks, or over 60 billion euros, or more than 100 billion in today's dollars. Much of this amount was distributed through the so-called BEG, the German Federal Compensation Laws. These compensation programs also included some payments for some confiscated insurance policies.

On behalf of the U.S. Government, I strongly encouraged all insurance companies that had issued policies during the Holocaust era to join ICHEIC and participate fully in the process. That policy was reflected in testimony I gave before this Committee on September 14, 1999, in which I stated that "[w]e continue to believe that [ICHEIC] is the best vehicle for resolving Holocaust-era insurance claims ...." It was reiterated numerous times including in my letter of November 28, 2000, to former Secretary of State Eagleburger, who served as Chairman of ICHEIC, in which I stated that the foreign policy of the United States Government was that ICHEIC "should be recognized as the exclusive remedy for resolving all insurance claims that relate to the Nazi era." That policy has never changed. I met with the Prime Minister of the Netherlands to encourage him to get the Dutch insurance companies to join ICHEIC. Indeed, the State Department worked with ICHEIC and representatives of the Dutch Government, insurance industry, and survivor organizations to incorporate the Dutch companies into ICHEIC. And through Executive Agreements that I negotiated with Austria and Germany, the United States Government ultimately brought the entire German and Austrian insurance industries into the process.

It is important for the Committee to understand that the ICHEIC process emerged voluntarily. It was not forced on the insurance companies. New York Insurance Superintendent Levin once described the theme of the effort to establish ICHEIC as "voluntary action based on a moral foundation." Neil Levin tragically died in the September 11th attack on the World Trade Center, yet all of the participants in ICHEIC -- including the state insurance regulators, the European insurers, and survivor's representatives -- have labored on to complete the work that he inspired.

German Foundation

The German insurance companies also participated in the ICHEIC process by virtue of the Executive Agreement executed by the United States and Germany. This came about

because in the fall of 1998 the German Government and German industry turned to me for help in facilitating the resolution of class action lawsuits brought against German companies. Germany proposed the creation of a foundation to make dignified payments to slave laborers and to resolve property and insurance issues. We agreed to work with them in that process. After 18 months of very difficult negotiations, on July 17, 2000, the United States and the reunified Germany signed an executive agreement which committed Germany to operate a foundation under the principles to which the parties in the negotiations had agreed, and at the same time, committed the United States to take certain steps to assist German companies in achieving "legal peace" in the United States.

Victims' interests were broadly and vigorously represented throughout the negotiations, and in the end, all parties accepted the Foundation "Remembrance, Responsibility and the Future" as a worthy result. The U.S. Government has filed Statements of Interest recommending dismissal on any valid legal ground in court cases brought against German companies for wrongs committed during the Nazi era and it remains committed to do so in future cases that are covered by the Foundation agreement. The United States, however, has not extinguished the claims of its nationals or of anyone else.

The most difficult issues in our German negotiations were the scope of the beneficiaries to be covered -- not just Jewish slave laborers but also non-Jewish forced laborers, for example; the total amount to be paid-in by Germany; the allocation of those funds; and the provision of "legal peace" for the German companies and government.

The Foundation which was created as a result of our negotiations was capitalized at 10 billion marks with the German Government providing 5 billion marks, and German industry providing another 5 billion marks, plus 100 million marks in interest. A board of trustees provided oversight of the Foundation's operations, and the Foundation was managed by a three-member board of directors. Of the 10 billion marks, 8.1 billion was allocated to cover slave and forced labor claims, while another billion marks was to cover property claims not fully captured by earlier German compensation and restitution programs. Of the one billion marks, 550 million were for insurance claims. The German Foundation also created a Future Fund of 700 million marks. (The remaining 200 million marks were for legal and administrative costs.)

The 26 members on the board of trustees included representatives of the German Government, the U.S. Government, the State of Israel, German companies, and also victims' organizations and plaintiffs' attorneys. The Foundation has been subject to legal oversight by the German Government and is audited by two of its agencies. If one considers the U.S.-Germany Executive Agreement of July 17, 2000, one will find that it provides a framework for the treatment of claims made against German insurance companies but leaves the details of implementation to the responsible parties.

The role of the German insurance companies in the negotiation of the Executive Agreement was an important one. In fact, without their participation, there could have been no broader Executive Agreement between Germany and the United States. There were two issues. First, was the money. It was impossible for Germany to provide the full

10 billion marks which we had agreed upon without the participation of the insurance companies. Second, was the issue of legal peace. German insurer Allianz, a key member of the German private sector negotiating team, and the German companies together, refused to settle unless German insurance companies also received "legal peace." This was particularly complicated because ICHEIC was also engaged with German insurance companies. My negotiations with Secretary Eagleburger, chairman of ICHEIC, were difficult.

Ultimately, we reached a solution whereby 550 million marks of the global 10 billion mark settlement amount would be "passed through" to ICHEIC. In return, the United States Government agreed to submit a Statement of Interest in any appropriate litigation involving any German company, including German insurance companies, stating that it is in the foreign policy interests of the United States for the court to dismiss on any valid legal ground as found by the court cases against them in return for the 10 billion mark payment. This was to afford the companies the legal peace they desired.

The Executive Agreement provided that insurance claims made against German insurance companies were to be processed by the companies and the German Insurance Association on the basis of claims-handling procedures that were to be adopted in an agreement between the Foundation, ICHEIC, and the German Insurance Association. The Government of the United States and the Federal Republic of Germany were not part of those tripartite negotiations, but we made every effort to facilitate and encourage all sides to come together and resolve their differences.

By the time I left government in January 2001, these negotiations had not yet been brought to a conclusion. It took until October 2002 to conclude the so-called "Trilateral Agreement" on claims-handling procedures. It took until July 2003 to conclude an agreement with three other non-German ICHEIC members (AXA, Winterthur, and Zurich), and it took until December 2003 to conclude an agreement with the Austrian General Settlement Fund.

It must be said that ICHEIC got off to a painfully slow and expensive start due to the complexity of the issues and the distrust of the parties and ICHEIC. Eliminating that distrust took years, but in the end, ICHEIC was able to achieve its mandate of providing some measure of justice for Holocaust survivors and their heirs as quickly as possible. ICHEIC ultimately was successful. It paid $306 million to 48,000 Holocaust victims and their heirs under relaxed standards -- far lower than would satisfy a court. It also paid $169 million for humanitarian programs and humanitarian claims. A surplus in the claims fund of $27 million for specific social welfare programs for Holocaust survivors went from ICHEIC to be administered by the Conference on Jewish Material Claims Against Germany.

HR 1746 Jeopardizes U.S. Government Policy on Holocaust Restitution and Compensation

The United States Government's policy on Holocaust restitution and compensation matters was and is that claims should be resolved through negotiation and cooperation, using administrative processes without payment of attorneys' fees, and not through a slow, costly, uncertain adversarial process like litigation. The policy was based on a belief that it was necessary to work with our European allies and other interested parties to secure restitution and compensation as quickly as possible. The policy also recognizes that litigation presents what would be, in the vast majority of cases, prohibitive barriers to recovery -- including statutes of limitation, rules of evidence, and burdens of proof -- and significant transaction costs in the form of high attorneys' fees. The policy came also from a consideration of the United States' broader foreign policy interests, in particular that we work closely with, and not against, our European allies and the State of Israel.

The Bill is squarely at odds with this United States Government policy. The Bill provides for an adversarial, litigation process. It imposes the probability of litigation on companies that have cooperated fully with the United States Government and in the ICHEIC process and that have paid tens of millions of dollars in an effort to satisfy their obligations. It further imposes the probability of litigation on certain companies that have been deemed by the United States Government to be entitled to "legal peace."

I am concerned with two groups of companies that could be subjected to litigation under the Bill. First, are the German insurance companies. These companies participated in the ICHEIC process pursuant to the Executive Agreement between the United States and Germany, an Executive Agreement which enjoyed strong support by key Members of Congress. In return for their participation, which was monitored by the German government and audited by two of its agencies, the United States Government agreed that all German companies including German insurers should enjoy legal peace. The bill, as currently drafted, would vitiate that commitment by the United States Government and would be an example of gross bad faith after payment of 10 billion marks in settlements.

The second group of companies are those that participated fully in the ICHIEC process without the benefit of an Executive Agreement calling for a Statement of Interest in the event of litigation. While there was no technical legal peace extended by the U.S. Government with respect to these companies, they nonetheless participated in good faith in a process that the United States Government had decided was the "exclusive remedy" for resolving all Holocaust-era insurance claims. I testified before Congress on this very policy and it was broadly supported on a bipartisan basis. There is no justification for now subjecting them to some other remedy. This is a conclusion shared by the United States Supreme Court, in its *Garamendi* decision dealing with a State of California statute that conflicted with our agreement, and now-Attorney General, then Judge, Michael Mukasey determination in his *In re Assicurazioni Generali* decision dealing precisely with this issue. Other cases have resulted in similar holdings.

The consequences of upsetting United States foreign policy interests will likely be wide-ranging. First, the Bill essentially and fundamentally threatens our existing Executive Agreements with Germany and Austria and would undermine confidence in our Executive Agreement with France. Second survivors' groups and the United States Government continually seek to increase payments under our existing arrangements. It is exceedingly unlikely that the Executive Branch will be able successfully to negotiate such enlargements in the future if Congress passes the Bill. Countries and companies will be unwilling to negotiate with the United States Government if it appears to them -- not unreasonably -- that the United States is incapable of maintaining its end of a bargain.

HR 1746 Will Not Increase the Likelihood of Recovery on Holocaust-Era Insurance Claims

The ICHEIC process included extremely favorable rules for claims processing. Rather than being required to prove his or her claim by a "preponderance of the evidence," a Claimant before ICHEIC was required only to prove that his or her claim was "plausible." Even in the absence of evidence establishing plausibility, thousands of Claimants received humanitarian payments which required an even lesser showing.

Participants in the ICHEIC process likewise were not bound by any rules of evidence. The insurance companies agreed that "anything goes" on the evidentiary front.

Finally, claims were resolved through the ICHEIC process at no cost to Claimants -- unlike costly discovery in lawsuits. This included considerable research ICHEIC performed to help Claimant's develop their claims.

The U.S. Courts would not be so friendly a venue. Litigants would be faced with statutes of limitation, rules of evidence, and burdens of proof. They would be faced with considerable costs, including attorneys' fees, which might only be recovered at the end of the process if he or she wins (and wins on appeal). But most importantly, litigation would take time. Time that survivors on the whole do not have.

Reporting Requirement for Future Claims

Since the ICHEIC claims process was completed in late 2006, each insurance company that participated has agreed to continue to process claims that could have been submitted during the ICHEIC process. They have agreed to do so using favorable ICHEIC-like standards of evidence and burden of proof and to do so without cost to Claimants.

I understand fully the desire to require publication of all Holocaust-era insurance policies as an aid to potential claimants. However, I am concerned that the Holocaust Insurance Registry proposed in the Bill would place the European insurers in the untenable position of being forced to violate European privacy laws in order to comply with U.S. law. To avoid this situation but to ensure future processing of claims under ICHEIC-like standards, I would support a requirement that these companies submit periodic reports on their post-ICHEIC claims processing to the Congress or to an appropriate office of the

Department of State like the Office of Holocaust Issues. Such a report -- which should include the number of new Holocaust-era claims submitted, the number granted, the reasons for any refusal, and the amount offered in compensation -- would vindicate the public's interest in ensuring that the insurance companies were living up to their commitment to continue to process claims under ICHEIC-like standards. Congress also should hold periodic oversight hearings to assure that claims submitted are being handled properly and in conformity with ICHEIC-like standards. This is all the more important because ICHEIC had done research at its expense when unnamed claims -- that is, claims without a specific insurer named -- were submitted to the German Insurance Association ("GDV"). ICHEIC is now disbanded and the GDV supporting research mechanism has been dissolved. Thus, the GDV has indicated that its members will consider "named claims" under relaxed ICHEIC standards. These requirements could be complied with without forcing insurance companies to violate any European privacy laws, which otherwise may prevent them from participating in a wholesale publication of the names attached to all Holocaust-era insurance policies.

Conclusion

In conclusion, I would simply like to say that I appreciate and share the emotions which motivate the Bill. However, as one who has spent many years working hard on Holocaust compensation and restitution issues, I urge the Committee to err on the side of discretion and to consider the potentially catastrophic consequences of the Bill to existing and future efforts. At the same time, I would support legislating a reporting requirement to assure that European insurers pay claims in the future under ICHEIC-like rules and do so with continuing Congressional supervision.

Thank you.

Ambassador J. Christian Kennedy
Special Envoy, Office of Holocaust Issues
United States Department of State
Statement before the
House Financial Services Committee
February 7, 2008

"The Holocaust Insurance Accountability Act of 2007 (H.R. 1746): Holocaust Era Insurance Restitution After ICHEIC, the International Commission on Holocaust Era Insurance Claims"

Chairman Frank, Ranking Member Bachus, thank you for holding this important hearing.

The principal focus of the Office of Holocaust Issues in the State Department is to serve our main constituency: Holocaust survivors. We can all agree that those who spent the Nazi era in concentration camps and ghettos, or in hiding, deserve not only our sympathy and moral support, but also a measure of justice in their lifetimes for the suffering they have endured and for the property that was stolen from them. Our Office therefore supports a continuing effort to obtain compensation for their suffering and restitution or compensation for their material losses.

The Office of Holocaust Issues also supports restitution to heirs of property that was stolen during the Nazi era. If restitution is not possible, then the heirs deserve compensation for their families' losses.

Over the past decade, numerous lawsuits and disputes have arisen concerning the Holocaust-era claims, and we have played an active role in resolving these disputes through dialogue, negotiation, and cooperation. We believe that such dialogue and negotiation lead to faster and better results for survivors than litigation. Indeed, litigation is often counterproductive because it so often results in acrimony and delay.

Since 1996, State Department negotiators have facilitated the resolution of class action lawsuits and helped parties reach agreements on payments of $8

billion in new money to the victims of Nazi Germany. The bulk of that money benefited Jewish victims, but a significant portion also went to non-Jewish victims, particularly former forced laborers who were exploited by Nazi Germany. These post-1996 lawsuit settlements and agreements made it possible for compensation to be paid for forced labor, personal injury, insurance and other property losses. The most comprehensive agreements were with Germany and Austria, but companies from France, Switzerland, and other countries contributed substantially as well.

Later in my testimony, I will say more about the creation of the International Commission on Holocaust Era Insurance Claims, or ICHEIC. I will simply note at this point that ICHEIC included not only the five largest European insurance companies, but it also brought into the ICHEIC process through additional agreements most of the insurance companies that issued life insurance policies to Nazi victims.

German Payment Programs Following the Second World War

Some may still ask this question: How can we as a government and nation be satisfied with merely $8 billion in payments to Holocaust victims and heirs that resulted from the post-1996 agreements? It is not a question of being "satisfied," of course. Rather, it is important to view these recent payments in the context of numerous other programs introduced by Germany since the Second World War. German governments have established several programs and paid out some 63 billion Euros (over $100 billion in today's dollars) in compensation and restitution to victims of Nazi crimes. Nonetheless, while recognizing what Germany has done, we must always acknowledge that no amount of money could ever compensate for the atrocities of the Holocaust.

Recent Expansion of German Pension Programs

Some German Government pension programs for survivors continue even today and have been expanded in the last few months through negotiations between the German Government and the Conference on Jewish Material Claims, or the Claims Conference. I am referring in this regard to new pensions for an estimated 6,000 survivors worldwide, including many in the United States. I want to stress that the German Government entered into discussions with the Claims Conference voluntarily and without the threat of any lawsuits.

In support of Claims Conference negotiations with the German Government, I met in Berlin with German officials on three occasions to press for an expansion of the pensions programs. We have achieved a substantial improvement. The total payout over the next ten years in new pensions is estimated to be $250 million. This is a major expansion, perhaps the largest single expansion ever, of the pension program for survivors. Negotiations and dialogue led to this expansion, not litigation. In addition, following discussions with the Claims Conference, Chancellor Merkel established a new program to make one-time payments of 2,000 Euros ($2,900) to an estimated 50,000 survivors worldwide who had worked in ghettos, another significant expansion of the program to provide payments to such workers. Supporting this effort, I met separately with the Ministry of Finance and the responsible officials in Chancellor Merkel's office.

The United States will continue to seek resolution of restitution and compensation issues through multiple channels. The United States is now consulting with a number of European Governments to organize a follow-up to the 1998 Washington Conference that laid a foundation for Holocaust-era compensation and restitution principles. We have a continuing dialogue with governments in the new democracies of Eastern Europe that, until the collapse of communism, were unable to address these issues. We urge these countries to adopt and implement legislation providing for compensation and restitution to Holocaust survivors.

H.R. 1746 Undermines Voluntary Cooperation on Holocaust Assets

As I stated earlier in my testimony, we have found that dialogue and negotiation with companies and governments lead to faster and better results for survivors than litigation. We oppose H.R. 1746 because it would undermine the current voluntary cooperation established by ICHEIC and our bilateral agreements. Indeed, the voluntary processing of claims, despite the recent closedown of ICHEIC, has continued. However, passage of this legislation would foment an adversarial relationship between claimants and insurance companies and could easily end such voluntary cooperation. In the end, the survivors and heirs would suffer because they would be left with only one recourse for resolving their claims – the filing of a lawsuit with all the risks and costs that would entail.

Other Problems with H.R. 1746

I will return to issue of voluntary cooperation later in my testimony. Let me first summarize our other objections to H.R. 1746:

- The bill would, in our view, raise false hopes among survivors and heirs that H.R. 1746 would open up new avenues for pursuing their claims. We do not believe any legislation could eliminate all obstacles to recovery through litigation.

- The bill is unnecessary because ICHEIC has been a survivor-friendly process that has already substantially accomplished the goals underlying H.R. 1746 without a resort to litigation, and at no cost to survivors.

- Passage of the bill would erode our ability to negotiate new compensation agreements which would further benefit survivors.

- H.R. 1746 would run counter to the policy of the United States for the past decade, which has been to promote the establishment of organizations, such as ICHEIC and the German Foundation, to be the exclusive forum and remedy for Holocaust-era claims. This approach has proven to be the best way of providing compensation to elderly survivors who cannot afford costly and time-consuming litigation.

Let me now go into further detail regarding these points.

Voluntary Cooperation Threatened. In dealing with Holocaust-era claims, given the advanced age of survivors, we have always believed that negotiations and cooperation rather than litigation lead to a more rapid resolution of claims. Experience supports this. The policy of negotiation has led to ICHEIC payments of $300 million on Holocaust-era insurance claims in this decade (with nearly an additional $200 million in humanitarian assistance going mainly to needy survivors). The companies participating in or cooperating with ICHEIC have agreed that they will continue to review Holocaust-era claims voluntarily, despite the closure of ICHEIC in March 2007. That is, even today, survivors and heirs can submit insurance claims directly to the companies. German insurers and many others involved in the ICHEIC process are committed to continuing to pay claims based on relaxed standards of proof. However, passage of this legislation would foment an

adversarial relationship between claimants and insurers and could easily end such voluntary cooperation.

H.R 1746 Cannot Eliminate the Costs and Risks of Litigation for Claimants. The bill would promote litigation for claimants seeking payment on Holocaust-era life insurance policies, but it cannot eliminate the costs and risks that litigation entails. The jurisdictional issues that the bill would seek to address are only part of the equation. Claimants would still have to prove their cases on the merits – for example, finding a company that remains in business today, showing that the company they are suing is the legitimate successor to the company that issued the policy, and proving the existence and non-payment of a policy. ICHEIC dealt with these issues by adopting relaxed standards of proof and doing the claimants' research for them, but no such relaxed standards will be available in court. Litigation is also, of course, time-consuming and costly, and this legislation would not ensure that any claims are resolved within the lifetimes of the survivors.

Undermining ICHEIC's Extended Reach. Passage of H.R. 1746 would create tensions that would threaten the existing voluntary cooperation with European insurers that lack U.S. operations. The state insurance regulators who created ICHEIC supported a voluntary approach, but one that contained the implied threat of greater regulatory scrutiny of the insurers' U.S. operations in the absence of cooperation. Nevertheless, many European insurance companies that had no operations in the United States – companies both beyond our regulatory reach and outside the jurisdiction of our courts – also cooperated voluntarily with ICHEIC. These include 70 German insurers and insurers in the Netherlands, Belgium, France and Austria. Insurance company associations or compensation commissions in these countries had detailed agreements with ICHEIC on claims processing. It is difficult to imagine that such voluntary cooperation would continue if H.R. 1746 becomes law.

ICHEIC has been a Survivor-Friendly Process. In the end, we believe ICHEIC was a success in paying claims for the following reasons:

- ICHEIC was established and run by state insurance regulators who were strong survivor advocates, and its board included leading survivor organizations and Israeli officials.

- ICHEIC paid claims that had little or no documentation, and it did so at no cost to the claimants.

- Through extensive research that included Yad Vashem's resources, as well as files from insurers in cooperating countries, ICHEIC built a credible database of Holocaust victims who were likely to have owned insurance policies. This database of over 500,000 names was made available to all via the Internet.

- Even if claimants could not find a relative's name on the data base, or could not name the issuing insurance company, ICHEIC's research was, under ICHEIC's relaxed evidentiary standards, able to substantiate thousands of undocumented claim applications.

- ICHEIC also undertook research into European insurance markets of the 1930s to determine their size and maturity, and the propensity of Jews and non-Jews to hold insurance policies. Such ICHEIC studies show that its claims and humanitarian programs did a credible job of adjudicating and paying claims on life insurance policies in effect during the Holocaust era.

- Using contributions from its members, ICHEIC paid claims even when the issuing insurance company went out of business or had been nationalized by communist regimes.

- ICHEIC undertook extensive outreach to encourage claim applications.

I would also note that ICHEIC is only the last part of the effort to pay insurance claims. Earlier and ongoing restitution efforts in other countries have dealt with the bulk of the insurance claims; Germany's efforts began in 1953. At no cost to survivors and heirs, ICHEIC undertook to pay claims for which survivors and heirs had almost no supporting documentation -- or indeed none at all.

The Bill's Name-Publishing Requirement Considered. ICHEIC's board examined – and decided against – the publication of additional names of policyholders who had no connection to the Holocaust. Publishing an estimated 8 million names of policyholders, both Jews and non-Jews, who

held policies at anytime from 1933 to 1945 would be a very costly undertaking that would likely raise false expectations among survivors and heirs. It would also run afoul of privacy laws. Far better was the approach that ICHEIC adopted: unspent funds originally devoted to claims were allocated to social welfare projects for needy survivors.

Undermining "Legal Peace." Passage of H.R. 1746 would erode our ability to negotiate new compensation programs. U.S. agreements with Germany and Austria commit the United States to a policy supporting "legal peace" for Holocaust-era claims against all companies from these countries. Swiss companies entered into a binding class action settlement in a U.S. court that protects them from litigation. Companies and governments in these countries were willing to put money on the table in the last decade only because they believed they would obtain "legal peace." These agreements have put nearly $8 billion in new money since the year 2000 into the hands of Holocaust survivors and their heirs and other Nazi victims. H.R. 1746 would open up the life insurance issue to a new round of federal litigation and collide directly with legal peace.

Jeopardizing Current and Future Negotiations. By ending any expectations of "legal peace," the legislation would also undermine U.S. policy and positions in our ongoing negotiations with Poland, Romania, Lithuania, Croatia and Slovenia on Holocaust-related property issues. The Claims Conference also negotiates every year to expand payments under existing agreements with Germany, and it is seeking new payments programs in Eastern Europe. The bill would jeopardize both of these efforts.

The Post-ICHEIC Voluntary Claims Process

Today, anyone who believes he or she is the beneficiary of a Holocaust-era life insurance policy, and can identify the issuing company, is still able to file a new claim with any of the companies that participated in or cooperated with ICHEIC, despite ICHEIC's closure. These include the largest insurance companies operating today in Western Europe that participated in or cooperated with ICHEIC. These companies will not consider claims that have already been decided under the ICHEIC process, but they have agreed to continue to process new claims against Holocaust-era policies underwritten by a specific company, and they will do so using relaxed standards of proof.

In this regard, we welcome in particular the statement and actions of the German Insurance Association, whose members have committed to continuing to process new claims under relaxed standards. Other participating and cooperating ICHEIC companies have made similar commitments.

My office is working with other interested parties on this matter. I am now considering the establishment of a mechanism to monitor the number of new claims filed and action taken by the companies on claims filed since the closedown of ICHEIC.

Conclusion

In closing, I would like to reiterate that the main objective of our office is to serve the interests of Holocaust survivors. My office remains available to assist your constituents in their efforts to file new claims.

We believe H.R. 1746 is well-intentioned, but it would make Holocaust survivors worse off, and therefore we oppose its passage.

Thank you for the opportunity to express the administration's views on this bill. I look forward to your comments and questions.

STATEMENT of ROMAN KENT

HOLOCAUST ERA INSURANCE ISSUE

Hearing before House Committee on Financial Services
(February 7, 2008)

I am a Holocaust survivor, the Chairman of the American Gathering of Jewish Holocaust Survivors and Their Descendants, and an officer of the Conference on Jewish Material Claims Against Germany, known as the Claims Conference. I served as a member of the Presidential Advisory Commission on Holocaust Assets in the United States and participated in the negotiations leading to the establishment, and was a Commissioner, of the International Commission on Holocaust Era Insurance Claims ("ICHEIC").

I also participated in the negotiations involving the German Foundation and am involved in the ongoing Claims Conference negotiations with the German government that have resulted in providing hundreds of millions of dollars annually for Holocaust survivors.

For years, I have been a determined advocate for survivors, struggling to find ways for survivors, both in the U.S. and worldwide, to obtain some measure of justice. For these reasons, I believe that I have a unique perspective from which to comment on the issues which are the subject of today's hearing.

Before proceeding, I would like to express my profound gratitude, as well as that of all Holocaust survivors, to Chairman Frank, to this Committee, and to the U.S. Congress for its critical role in addressing issues of Holocaust-era compensation and restitution. The U.S. Congress and many individual members of this Committee have played a historic role in this just and moral effort – an effort for which we have little time remaining.

At the outset, I want to highlight three key points:

- First, although the ICHEIC claims and appeals processes have concluded, the insurance companies which participated in the process have committed to continue to accept and process remaining Holocaust-era insurance claims – applying the ICHEIC standards in their decisions – at no cost to claimants. In addition, there are a number of organizations, such as the Holocaust Claims Processing Office ("HCPO") of New York State, which will assist survivors filing such claims with insurance companies. The important work of the HCPO greatly helps claimants, nationwide, pursue their claims and is provided at no charge.

- Second, the proposed insurance legislation may well raise the expectations of survivors only, in the end, to disappoint them. The costs, time and effort required to engage in litigation, as the legislation

provides, will be excessive, if not prohibitive. In addition, the mandatory publication by the insurance companies which participated in the process established by ICHEIC of all policy-holder names will, at this point, yield little new information regarding policy-holders who were victims of Nazi persecution. Even assuming that European data protection hurdles could be overcome, most of the policies which would be disclosed would not have been purchased by victims of Nazi persecution; many of the policies would have been paid out appropriately; and many of those not paid, would have been previously compensated. Thus, the huge expectations that the legislation will generate on the part of survivors will simply not be met – leading to upset, disappointment and frustration.

- Third, I am concerned that the proposed insurance legislation will, by effectively reopening previous agreements, significantly damage critical, ongoing Holocaust-related negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding which is required now for the neediest survivors in the United States and worldwide.

THE CONTEXT IN WHICH
ICHEIC WAS ESTABLISHED

Since the beginning of World War II and continuing for the next sixty years, few Holocaust survivors were able to recover the proceeds of their unpaid Holocaust-era insurance policies. During that period, survivors faced enormous obstacles in their efforts to obtain payment on such policies – thousands of which remained unpaid.

Insurance companies certainly were not eager to pay or even give a fair hearing to such claims. Indeed, there are chilling examples of companies insisting that claimants produce death certificates, from Auschwitz, of the policy-holders. The statute of limitations, the absence of relevant documentation, and the prohibitive costs and time involved proved insurmountable obstacles to successful recovery for the overwhelming majority of claimants. In addition, many insurance companies that had sold insurance in pre-war Europe no longer existed after the war. Finally, communist control of Central and Eastern Europe prevented the recovery of any property for survivors in those countries.

Clearly, there was a vacuum in post-war insurance restitution efforts. There was no effective way for the overwhelming majority of survivors to obtain payment for their pre-war insurance claims. After struggling to survive Nazi concentration camps, most survivors no longer had the documentary proof necessary to establish the existence of insurance policies or the evidence simply no longer existed as it was destroyed during the war. Therefore, few

survivors or members of their families were able to convert the policies they had purchased into the compensation they were owed.

That is precisely why the ICHEIC agreement was reached: to establish a process, imperfect as it may have been, to fill this void and attain a measure of justice for claimants which, up to that point, had not existed.

The agreement to establish ICHEIC, known as the Memorandum of Understanding, was signed in 1998 by the following parties: the World Jewish Restitution Organization and the Claims Conference – both of which include representatives from the American Gathering of Holocaust Survivors – organizations which, for years, have represented and worked on behalf of survivor rights; the National Association of Insurance Commissioners, which represented the state insurance commissioners of all 50 states; six (which later became five) large European insurance companies; and the State of Israel. In addition, as part of the negotiations with the German government and industry, which ultimately led to the establishment of a DM 10 billion fund, primarily for former slave and forced laborers, the German insurance companies also became part of the ICHEIC process.

ICHEIC's mission was to develop a process and methodology to identify and compensate previously unpaid, individual Holocaust-era insurance claims, at no cost to the claimants. ICHEIC, however, only received funds covering part of the huge European insurance market. Only the five European companies which signed the Memorandum of Understanding, along with the German companies which were part of the German Foundation agreement (collectively, "ICHEIC companies"), provided funding for ICHEIC.

For example, no funding was received from insurance companies which, prior to the war, had been located in the former Czechoslovakia, Hungary, Poland, Romania, and the former Yugoslavia, among other Central and Eastern European companies. These companies, or their assets, were nationalized, went bankrupt, or otherwise went out of business. Although such companies probably issued thousands of Jewish Holocaust-era insurance policies, they paid nothing, nor have the governments which took over such companies, or their successor governments, paid a penny to survivors for their insurance claims.

However, ICHEIC took on the obligation to make payments to claimants even for such policies, despite the fact that no funds were provided by these companies or governments. Information regarding such policies was difficult if not impossible to obtain. Nonetheless, ICHEIC, through its own research, located available information on such policies and evaluated these policies through a special process created for claimants of policies from Eastern European companies that had been liquidated, nationalized, or for which there was no known successor. These claims were evaluated by ICHEIC staff according to ICHEIC rules and guidelines, including ICHEIC valuation standards.

A continual stream of complications surfaced during negotiations with the insurance companies which participated in the ICHEIC process. One such issue related to the differing data protection or privacy laws of each country in which these companies are located – Germany, Italy, France and Switzerland. In an effort to have as many names of those individuals most likely to have had a life insurance policy during the relevant period and who were thought likely to have suffered any form of Nazi persecution during the Holocaust as possible identified and disclosed, each country's laws needed to be addressed individually. Publication of large numbers of names of individuals, where the overwhelming majority were not Jewish and not Holocaust victims, was of paramount concern to European governments. Yet, in spite of this and many other obstacles, ICHEIC was able to publish the names of over 500,000 Holocaust-era insurance policy holders which were most likely to have been victims of Nazi persecution.

Further, ICHEIC developed and implemented a liberal evidentiary approach which no court of law would follow. No court of law, for example, would or could rule in favor of an individual making a claim based on an insurance policy which was not presented in court. However, as we know, many Holocaust-era insurance policies were destroyed or otherwise cannot be produced. In contrast, ICHEIC agreed to – and did – pay claimants who did (and could) not produce an insurance policy. This is no small matter. If an insurance policy does not exist, how does one ascertain the name of the policy holder, the face value of the policy, the premiums paid and, most importantly, the name of the beneficiary? How can a court rule in favor of any claimant when the beneficiary of a policy is unknown? ICHEIC decided on principle – that the family would receive compensation for the policy – to address such circumstances.

Moreover, in Holocaust-era insurance policy cases it is rare to have definitive proof concerning whether a policy holder continued to pay premiums. If such payments were not made, the beneficiary would receive less than the full face value of the policy. ICHEIC decided in its guidelines – that all premiums were deemed to have been paid if they had been paid as of the start of the war in each country – to address this issue as well.

As a result, ICHIEC paid on claims where the company was not named, the insurance policy was not produced, and also paid on policies which could be produced, but which had been issued by Central and Eastern European companies which had been nationalized or whose assets had been nationalized.

Thus, to address the ineffectiveness of lawsuits and compensation programs in dealing with issues raised by Holocaust survivors related to their pre-war life insurance policies, ICHEIC became the first – and, indeed, the only – organization ever to offer Holocaust victims and their heirs a mechanism to pursue claims against insurance companies, at no cost, with no regard for

any statute of limitations, even if neither the claimant nor the insurance company could produce the policy in issue.

However, only ICHEIC companies disclosed the Holocaust-era insurance policies they had issued and became involved in the claims process established by ICHEIC. Clearly, this did not represent the entire Holocaust-era European insurance market.

THE VALUE OF JEWISH OWNED
HOLOCAUST-ERA INSURANCE

An assertion has been made, on a number of occasions, that less than 5% of the total value of Jewish Holocaust-era insurance policies has been paid through the ICHEIC process. It is a figure without any solid basis.

As previously noted, although ICHEIC did make payments to claimants for insurance policies issued by companies in Eastern Europe which had been nationalized, had their assets nationalized, went bankrupt, or otherwise went out of business, no funding was provided by these companies or the governments which benefited from their assets.

For the remainder of the market, a key factor in determining the percentage of the relevant insurance policies that was restituted through the ICHEIC process rests on the valuation of the policies in question.

The determination of the ultimate amount paid through ICHEIC varied widely depending on which out of a broad range of possible values were used for the relevant calculations. And there were profound differences between the Jewish side, on the one hand, and the insurance companies, on the other, regarding what values and percentages were appropriate to use.

The determination of the present value of unpaid, pre-war Jewish insurance policies requires a number of calculations involving many complex factors, including the following:

(i) the total face value of all life insurance policies at the beginning of the Holocaust period, in the local currency at the time;

(ii) the Jewish share of the total value of all life insurance policies, based on the percentage of the Jewish population in a given country;

(iii) the propensity for Jewish individuals to purchase insurance in greater numbers and at a higher value than the rest of the population;

(iv) an adjustment for policies which have been paid; and

(v) the system of valuation by which unpaid Holocaust-era Jewish policies (which includes heirless claims and others who did not or could not make a claim) should be converted into today's value.

However, there is no single, correct measure for any of these factors, while the range of possible values for each factor is vast. No consensus exists, for example, regarding how much higher than the average the Jewish propensity to purchase insurance was, or how much higher than the average the face values of such Jewish policies were.

Moreover, a number of the currencies used to buy pre-war policies became virtually worthless. Companies argued, both in ICHEIC and in court cases, that the policies were, therefore, also virtually worthless. We did not accept that argument.

These are only a few of the many, complex determinations to be made to reach a decision regarding the total value of unpaid Jewish Holocaust-era insurance policies. Nonetheless, the final conclusions one can reach – as to what percentage of the total relevant market was paid through the ICHEIC process – radically differed depending on which values out of the extensive range of possibilities were selected for the relevant component factors.

In other words, after lengthy arguments on these issues, the parties involved in ICHEIC recognized the virtually endless potential for disagreements over determinations related to the amount of unpaid Jewish insurance claims. As a result, a methodology was developed and accepted by the parties that permitted some discretion, leading in turn to negotiated settlements and compromises, which were essential to moving a slow and difficult process forward.

ICHEIC SOUGHT TO RESOLVE ALL CLAIMS SUBMITTED, REGARDLESS OF THE COMPANY IDENTIFIED IN THE CLAIM

One additional point must be made. Although the Memorandum of Understanding called for ICHEIC to resolve claims against Holocaust-era insurance policies issued by the companies which signed the agreement, ICHEIC's efforts went well beyond that.

First, only a small percentage of all the claim forms submitted to ICHEIC named a specific company, and far fewer claims contained any documents linking the policy in issue to the specific company named in the claim. Further, some claims that did identify the names of the policy-issuing companies turned out to be companies which were not signatories to the

Memorandum of Understanding, nor German insurance companies. To ensure that these claims would be treated properly, ICHEIC entered into agreements with other agencies and transferred these claims as appropriate.

Second, to ensure the broadest possible reach, when ICHEIC received anecdotal claims that did not identify a specific insurance company, it nonetheless circulated such claims to all member companies that did business in the policy-holder's country of residence.

Third, claims brought by survivors or heirs of survivors on policies written by Central and Eastern European companies that were nationalized, went bankrupt or otherwise went out of business after the war and have no present day successor, were not only reviewed by ICHEIC but, in many cases, were paid through an in-house process developed by ICHEIC.

Finally, although the ICHEIC process has closed, the participating insurance companies have made commitments to accept and process any Holocaust-era claims they continue to receive, with no cost to the claimant and in spite of any statute of limitations.

CONCLUSION

Was ICHEIC perfect? Clearly not. When dealing with matters relating to the Holocaust and the atrocities committed, the most that can be achieved is an imperfect justice. Nothing can remedy the wrongs that were perpetrated.

Was ICHEIC successful? As imperfect as it was, the answer is yes. What ICHEIC accomplished was without precedent:

- First, ICHEIC filled a void by providing a forum to process Holocaust-era insurance claims, even though claimants had almost no documentation. Prior to the ICHIEC process, there was, practically speaking, nowhere to go to recover the proceeds of unpaid Holocaust-era policies;

- Second, the ICHEIC process was at no cost to survivors, and without regard to any statute of limitations;

- Third, ICHEIC paid claims against insurance companies which no longer existed, whether due to nationalization, bankruptcy or other reasons;

- Fourth, the insurance companies which participated in the ICHEIC process will continue to accept and process claims, at no cost to the claimants and regardless of the statute of limitations. Claimants may obtain, at no charge, the assistance of the Holocaust Claims Processing Office in filing such claims;

- Fifth, an archive consisting of over 500,000 most likely Jewish insurance policy holders is now available to survivors, historians and other researchers; and

- Sixth, in total, ICHEIC distributed nearly a half-billion dollars in payments to Holocaust-era insurance policy-holders and heirs, as well as to programs benefiting Holocaust survivors. Those payments included providing critically needed home care funding for elderly and ailing Holocaust survivors.

These, by themselves, represent an impressive list of achievements. They are particularly remarkable considering that survivors had virtually nowhere to go with their insurance claims before ICHEIC was established.

My apprehension regarding H.R. 1746 is that it will fail to achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. This is especially the case regarding the five insurance companies which signed the Memorandum of Understanding and the German companies which were part of the German Foundation agreement, as they already have disclosed most, if not all, of their Jewish purchased insurance policies during the period in question. Litigation will be lengthy and the costs of such lawsuits will be excessive and unreasonable for survivors. Moreover, if we are to have the sort of litigation proposed in the bill, my fellow survivors and I will, most likely, not live to see its results.

I am also concerned that such legislation will unjustifiably raise the expectations of survivors only, in the end, to profoundly disappoint them. The proposed legislation mandates the disclosure of **all** policy-holders during the entire relevant period. However, almost all policies which would be disclosed will not be those purchased by individuals who suffered Nazi persecution; many of the policies may have been paid; and many of those not paid, will have been previously compensated. Unmet high expectations will have a tremendously negative impact on survivors.

Finally, I am extremely concerned that the Holocaust Insurance Accountability Act will greatly damage critical, on-going negotiations with governments for the continuation and expansion of funding to meet the vast needs of Holocaust survivors, both in the United States and worldwide. For example, German insurance companies were included in the ICHEIC process as part of the negotiations which ultimately resulted in the formation of the German Foundation, a DM 10 billion fund primarily for former slave and forced laborers. Those negotiations and the working of the German Foundation occurred with the involvement, and under the auspices and approval, of the German and U.S. governments, among others. The proposed legislation threatens to undermine ongoing negotiations with the

German government regarding Holocaust-related compensation which is critical to and affects large numbers of survivors worldwide and is needed now. Moreover, I also worry that the support the U.S. government provides Holocaust survivors will be undermined as the German government loses faith in the ability of the U.S. government to keep its promises.

Accordingly, to the extent that H.R. 1746 includes within its reach the companies with which ICHEIC worked, I believe that it would be detrimental to the well-being of survivors. On the other hand, if H.R. 1746 were to apply only to insurance companies which issued Holocaust-era insurance policies and did not participate in the ICHEIC process, and if the legislation were crafted in a way that is practical, I might have no objection in principle. However, I believe that even such legislation would raise widespread expectations that could not be met. In my opinion, the legislation still would not achieve substantial positive results during our lifetime.

Reimbursement is still being sought from Eastern European governments for claims paid by ICHEIC to claimants who held policies issued by Eastern European insurance companies that were nationalized or had their assets nationalized. We would request the assistance of the U.S. Congress in the effort to recover these funds.

I believe that the U.S. Congress has in the past and will continue to have a major role to play in the current efforts to secure Holocaust-era compensation and restitution. We thank you for your on-going support and assistance in the past and hope that you will continue to provide that help in the future.

Thank you.

February 5, 2008

Statement of

Diane Koken

before the

U.S. House of Representatives

Committee on Financial Services

Hearing on

"The Holocaust Insurance Accountability Act of 2007 (H.R. 1746):
Holocaust Era Insurance Restitution After ICHEIC,
the International Commission on Holocaust Era Insurance Claims."

February 7, 2008

Chairman Frank, Ranking Member Bacchus, and Members of the Committee:

I thank you for the opportunity to appear before you today.

I appreciate the work this Committee has done in seeking to examine to the fullest extent possible the issues underlying Holocaust-era insurance claims in the context of considering legislation on this subject.

Under the leadership of former Secretary of State Lawrence Eagleburger, the International Commission on Holocaust Era Insurance Claims (ICHEIC) resolved more than 90,000 claims for Holocaust survivors and their heirs. My testimony will provide you with an understanding of why and how the Commission approached its mission -- to identify and compensate previously unpaid Holocaust-era insurance policies -- and how the organization was structured around that mission.

As Pennsylvania Insurance Commissioner from 1997 - 2007 and a member of the National Association of Insurance Commissioners (NAIC) International Holocaust Commission Task Force I participated in this process from its earliest days. I believe ICHEIC was largely successful in accomplishing its mission. I was joined in this effort by many state insurance regulators from all parts of the country who deserve even greater credit for much of the work of ICHEIC. I also commend the NAIC's work to create a process to identify and ultimately settle valid and previously uncompensated Holocaust-era insurance claims at no cost to claimants.

WHY SUCCESS – WHAT ACHIEVED

The Commission concluded its work with over $306 million paid to more than 48,000 Holocaust victims or their heirs for previously unpaid insurance policies. Of this amount, more than half went to individuals with so little information about their potential claim that they were unable to identify even the company that may have issued the policy. The resolution of these undocumented claims sixty years after the devastation of the Holocaust and the Second World War clearly illustrates the success of ICHEIC's research efforts. Moreover, the successful settlement of these claims through the ICHEIC process, along with restitution efforts during the immediate postwar period and the present ongoing work of ICHEIC-related entities[1] to resolve remaining unpaid life insurance policies within their respective jurisdictions, addresses a preponderance of the pre-war insurance market.

[1] Examples include the Claims Resolution Tribunal (CRT), which was created as a result of the Swiss banks class action settlement and the General Settlement Fund (GSF), a result of agreement between the United States and Austrian governments.

In addition to the over $306 million payments made by ICHEIC companies or related entities, ICHEIC distributed nearly $200 million more for humanitarian purposes. At ICHEIC's concluding meeting, every company that was a member of the Commission as well as the 70-odd companies of the German Insurance Association through its partnership agreement with ICHEIC reaffirmed their commitment to continue to review and process claims sent directly to them. In preparation for this hearing, four of the five the ICHEIC companies -- AXA (which also now controls Winterthur), Generali, and Zurich – have written to me directly to reaffirm the commitments they made at the ICHEIC meetings. I also understand the German Insurance Association and the Dutch Insurance Association respectively sent letters to Chairman Frank commenting on the legislation, in which they referenced their ongoing commitments to process claims.

I am here in my capacity as former Vice-Chair of the Commission, and as a former insurance regulator and as a past President of the NAIC (2004-2005) who dedicated a considerable amount of professional and personal time to this endeavor. My primary concern throughout has been assisting Holocaust survivors, and the families of those who perished, seeking to recover the proceeds of unpaid pre-war insurance policies.

I appreciate the care we must take with the expectations of survivors and their heirs; I know that the path to closure is a difficult one. In the late 1990s, the question of Holocaust-era asset restitution re-emerged and numerous class action lawsuits were filed, At that time, U.S. insurance regulators sought the most effective means to address issues raised by survivors and families seeking the proceeds of unpaid pre-war life insurance policies of those who had been persecuted during the war. We recognized that given the understandable challenge of documentation, the length of time that had passed, and the effort and costs involved, the path of litigation presented significant difficulties for this highly sensitive and emotionally charged issue.

For these reasons we explored routes other than litigation to resolve these unpaid claims. By conducting interviews, researching the historical background, and organizing informational hearings across the country, the NAIC sought to better understand the issues raised by individuals like Roman Kent and Israel Arbeiter. Working through state insurance regulators, the NAIC then identified the companies most likely affected and worked with these companies to arrive at a means of resolving the issues presented.

We worked to gain an understanding of the defining characteristics of pre-war life insurance markets in Europe, and the geographic limitations and procedural shortfalls of prior compensation programs. With this work in mind, ICHEIC was created in August 1998. Chairman Lawrence Eagleburger led ICHEIC to establish processes to identify claimants, locate unpaid insurance policies, and assist Holocaust survivors and their families, and the families of those who did not survive, in resolving claims. Survivors and their heirs, most of whom could provide no documentation beyond anecdotal information, were able to submit claims to insurers and related entities, at no cost.

As part of the ICHEIC process, we examined insurance company files, built a database constructed from research in archives across Europe, worked to make sure potential claimants world-wide knew how to file claims, developed a website to provide easy access to information about our efforts, established a system to process the more than 90,000 claims submitted, and established an independent appeals system presided over by jurists who, over the life of the process, reviewed hundreds of appeals that provided every claim that named a company the opportunity for review. The relatively small percentage of reversals on original decisions underscored the strength of the initial system of checks and balances we had constructed, which included internal ICHEIC staff verification of every company decision, and outside independent audits of companies' records and decision-making practices to make sure they complied with ICHEIC rules and guidelines.

As I offer more detail on each of these steps, I will describe how the Commission was structured and why, and the nature and scope of the companies and entities with which the Commission had agreements. It is important to have an understanding of this groundwork to appreciate (1) how much of the Holocaust-era insurance market ICHEIC claims and/or ICHEIC-related agreements covered – and thus why the over $306 million plus in claims payments plus the nearly $200 million in humanitarian fund commitments, essentially on behalf of would-be heirless claimants, was a substantial proportion of the estimated market share; and (2) the degree to which the combined experience, authority, and responsibilities of US insurance regulators; Jewish representatives of Holocaust victims and their heirs; and European insurance companies and entities together were necessary to forge workable agreements, as well as internal operating rules and guidelines.

STRUCTURE and APPROACH

In the mid-1990s a growing body of public evidence suggested that several major insurance companies had sold policies to European Jews in the 1920s and 1930s, and that for many of these policies, claims were still outstanding. In the summer of 1997, NAIC members reached out to the World Jewish Congress and by September of that year, the NAIC held its first public hearing and established a Working Group on these issues. By May 1998, the Working Group became a more formal task force, and consulted with Roman Kent, President of the American Gathering of Jewish Holocaust Survivors, and others. We agreed then that dialogue, rather than confrontation, should be a cornerstone of the commission because we were seeking a voluntary process. For the Holocaust survivors still living there was little time for further litigation or debate.

Major European insurance companies who shared an interest in the US market participated in the discussions, ultimately signing a Memorandum of Understanding to create the Commission, and indicating their willingness to become members. These companies were Allianz, AXA, Basler, Generali, Winterthur, and Zurich. All but Basler remained ICHEIC Commission members throughout the process; Basler participated in processing ICHEIC claims but through its membership in the German Insurance Association. The Dutch Association of Insurers joined the Commission in May 2000.

The Commission included US insurance regulators, Moshe Sanbar and Roman Kent representing survivor organizations, and the State of Israel. In addition, regulators, Jewish organizations, and companies also had alternates and observers who actively participated in the process.

Property Issue
Information revealed through the hearings and discussions leading up to the formation of the Commission indicated that the issue of unpaid claims went beyond life insurance policies and also included unpaid property claims. Life insurance policies are generally held for longer periods and retain value even after premiums are no longer paid. Property insurance policies differ in that they are usually written on an annual basis and have no residual value if they are cancelled for non-payment of premiums.

In general, property insurance covers property damage, not expropriation and most policies include an exclusion for acts of war. When assessing post-war compensability of such policies, among other issues, it is necessary to determine whether the policy was in effect at the time the insured event occurred and whether the insured event was the direct result of persecution or was caused by an act of war, such as an air raid. Although ICHEIC accepted property claims, given the issues, claimants needed to provide specific answers to worksheet questions in response to property-related claims.

DETERMINING SCOPE/SIZE OF MARKET; NEGOTIATING AGREEMENTS AND FORMING VALUATION GUIDELINES

In the fall of 1999, having identified the building blocks of the claims process and initiated a global outreach campaign that would eventually result in receipt of 120,000 claims forms from 30 different countries, the Commission sought macro-level guidance on the overall volume and estimated value of potential claims. For this effort, Secretary Eagleburger appointed Glenn Pomeroy, then North Dakota Insurance Commissioner and former President of the NAIC and Phillippe Ferras (then Executive Vice President of AXA France) as joint chairmen of a task force to report on the estimated number and value of insurance policies held by Holocaust victims.

The task force was staffed by outside experts as well as ICHEIC members, and included economists Frank Lichtenberg from Columbia University Graduate Business School and Helen Junz, a member of the Presidential Advisory Commission on Holocaust Assets in the United States who assisted the Volcker Committee with a project on estimating the size and structure of the wealth of the Jewish population in Nazi-affected countries before World War II, as well as actuaries with the Office of the California State Insurance regulator and AXA-Paris. The Pomeroy-Ferras report, available at www.icheic.org, provided data that allowed the Commission to assess the scope and size of the European pre-Holocaust insurance market relevant to Holocaust victims and their heirs.

The Pomeroy-Ferras report determined how the relative maturity of the various European insurance markets might have affected local populations' access to insurance. It provided an overall view of what total damages might be by trying to determine the

Jewish population's respective rates of participation in the life insurance market and by estimating the average value of life insurance policies, based on the scope of the insurance market and the size of the Jewish population in each country. While the propensity of the Jewish population to insure was found to be two to three times that of the regular population in a given country, the propensity to insure differed significantly from country to country, which dramatically affects the overall estimates of market size.

By way of example, Poland had a very significant Jewish population (3.3 million at that time and by far the highest in Europe) but also had a highly agrarian economy and was one of the poorer countries in the region. In contrast, Czechoslovakia's Jewish population (396,000), while constituting a smaller percentage of the overall population, would have been likely to be far more highly insured given the maturity of the insurance market. As noted in the Pomeroy-Ferras report, in 1937 the average policies per capita was 0.074 in Czechoslovakia and 0.0077 in Poland.[2] The Pomeroy-Ferras task force discussed as well what proportion of policies in each market might be deemed to have remained unpaid.

The Pomeroy-Ferras report also details some of the challenges that participants faced in accurately assessing the value of unpaid policies. While the task force reached consensus on the overall size of the each country's insurance market and estimated the propensity of Jews to purchase life insurance, it was far more difficult to determine the number, average value, and percentage of unpaid Jewish-owned policies.

Given these considerations, the Pomeroy-Ferras report generally provided a range of figures in different categories for different markets. These ranges served to guide the Commission as it entered its deliberations on how to assess appropriate settlement amounts company by company (and in some cases, with national insurance associations) across markets in Europe. In the case of the German market, for example, the settlement amount provided in the 2002 agreement between ICHEIC, the German Foundation, and the German Insurance Association exceeded the companies' estimates of unpaid policies in Germany.

The various national commissions working to assess their own situations have confirmed the reliability of the Pomeroy-Ferras work. For example, the Dutch commission's data showed the insured sum of all policies surrendered to the Nazi authorities to be within five percent of the task force's mid-range value for Jewish policyholders. The Belgian commission found results very close as well. The French commission, when defining the policies that could have belonged to victims of the Holocaust, generated a number that fell within the mid-range of the task force's number for France. The total overall settlement reached by the Commission with all its entities, approximately $550 million, was premised on the Pomeroy-Ferras work, and has thus proven the test of time, both with respect to the over $306 million paid out in claims, and the remaining amount going to humanitarian activities to honor the memory of those who were not able to make claims directly.

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[2] The primary sources of data used by the Pomeroy-Ferras task force were the *Assekuranz Jahrbuch* published annually and *Neumann's Jarhbuch* for Germany.

OUTREACH

From inception, the Commission strived to identify as many people with possible unpaid Holocaust-era policies and encourage them to file claims, even if they lacked detailed information about their family's coverage. To do this effectively, we sought to define a target audience. We knew that we had potential claimants throughout the world. So we worked closely with the same experts who had conducted outreach for the Swiss Bank settlement's Claims Resolution Tribunal (CRT), using free and paid media extensively.

Our outreach initiatives included both a 24 hour ICHEIC call center and grassroots efforts through global Jewish communal and survivor organizations and representatives of other victims groups. We distributed packets to survivor communities and Jewish organizations that included press releases, posters, and guidance on how to request and complete a claim form. In addition, the Commission worked with US insurance regulators, particularly in California[3], Florida[4], New York[5] and Washington, who already designated staff to reach out to and assist constituents.

To supplement the work with survivor and Jewish groups and the regulatory community, the Commission launched a global press and media campaign to publicize the process. We ran ads in major and parochial media markets and capitalized on as much free media as outside institutions were willing to provide. We did this not only at launch, but also when announcing the last deadline extension, alerting potential claimants via all means available, including a live webcast with Secretary Eagleburger.

While conducting its outreach, ICHEIC initially publicized a claims filing deadline of January 31, 2002. Subsequently, as the Commission's archival research efforts generated more information that ICHEIC published on its website, this claims deadline was extended six times, with the final date set as December 31, 2003.[6] Claim forms requested by December 31, 2003 and returned to ICHEIC by March 31, 2004 were deemed to have been timely filed.

As a result of this outreach, during the five years that the Commission accepted claims, it received 120,000 claim forms in more than 20 languages from more than 30 countries.[7]

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[3] http://www.insurance.ca.gov/0100-consumers/0300-public-programs/0100-holocaust-insur/index.cfm

[4] http://www.fldfs.com/Holocaust/index.htm

[5] As part of this effort, New York State's Holocaust Claims Processing Office expanded to include potential insurance claims (http://www.claims.state.ny.us).

[6] Deadlines were set at the following dates: January 31, 2002; February 15, 2002; September 30, 2002; March 30, 2003 (new names published on March 8, 2003); September 30, 2003 (new names published April 30, 2003); December 31, 2003 (with claim forms to be received by March 31, 2004).

[7] Approximately, 30,000 of the claim forms received by the Commission either did not fall under ICHEIC's mandate and were therefore forwarded to the appropriate agency, for example, the Sjoa Foundation, Buysse Commission, CRT, or did not pertain to life insurance policies, i.e., slave labor, forced labor, Swiss bank accounts.

ICHEIC's extensive and targeted outreach prior to the filing deadline was important given our understanding that many of those who filed would do so with little documentation or information about policies. In order to generate as many successful matches as possible from the information gathered through ICHEIC's research and company records it was necessary to impose deadlines on both claimants and companies. Results of this matching exercise were conveyed to the companies for review and adjudication, allowing companies to complete the decision-making process by June 30, 2006. The end result was that member companies were ultimately able to match 16,243 unnamed claims against these records.

ICHEIC AGREEMENTS
PARTNERS ORGANIZATIONS AND RELATED ENTITIES

The Commission used the Pomeroy-Ferras report to help guide discussions on contribution levels for ICHEIC member companies. In addition, the Commission negotiated agreements with various entities and outside associations, the most significant of which was the tri-lateral agreement between ICHEIC, the German insurance association, and the German Foundation. The so called Tri-Partite Agreement incorporated the settlement with Allianz and adopted almost identical rules and processes to those applied to non-German ICHEIC companies, but with procedures such as those to provide for archival research on German post-war compensation.

The Commission reached separate operating agreements with the Holocaust Foundation for Individual Insurance Claims in the Netherlands (also know as the Sjoa Foundation, which was a member of ICHEIC, although its claims were processed separately), the Jewish Community Indemnification Commission in Belgium (Buysse Commission), and the Austrian General Settlement Fund (GSF) to make sure that claims received were processed. Additionally, claims that were the province of Swiss companies covered by the Global Settlement Agreement were redirected to the Claims Resolution Tribunal (CRT) in Zurich, Switzerland. The combined efforts of ICHEIC and these parallel entities covered a vast section of the pre-war European insurance market.

As the Commission began receiving claims, it became increasingly apparent that the bulk of the claim forms contained very little detailed information, that policy documentation was the exception rather than the rule, and that many claims did not name a specific company, or named a company that ceased to exist before 1945. So we worked to establish relaxed standards of proof and create valuation standards that could be calculated without the usual policy documentation, as well as an extensive research database and matching system. Furthermore, we instituted a separate but related humanitarian claims payment process for un-named un-matched claims, and for Eastern European claims on companies that had been liquidated, nationalized, or for which there were no known successors. All these elements became part of the critical architecture of the Commission. Our lists publication decisions grew from it; our need for filing deadlines were dictated by it; the audits to which all companies were subjected, conducted by outside independent auditors, proved its effectiveness; and our ability to carry out our mission depended on it.

RELAXED STANDARDS OF PROOF

During its existence, the Commission directly or through its member companies/partner entities offered payment totaling over $306 million to more than 48,000 of the 91,558 who made inquiries. Only a small percent of all the claim forms the Commission received named a specific company and far fewer contained policy documents. Survivors who had attempted to recover the proceeds of insurance policies during the immediate postwar period had been frustrated by companies' demands for death certificates and proof of entitlement that they could not provide. Understanding that expecting such documentation was both insensitive and in most cases impossible, the relaxed standards of proof adopted by the Commission did not require claimants to submit such evidence to make a claim.

Even before the end of the war, the records maintained by the International Tracing Service at Bad Arolsen assisted families in documenting the fates of victims of Nazi persecution. These records offer basic information regarding persecution, such as the date of deportation or when the policyholder perished. While the increased public accessibility of the Bad Arolsen archives is important because researchers and historians can now access information that was available only to survivors and their relatives in the past, it does not mean individuals would have opportunities to further enhance their claims against European insurers.

The increased accessibility of the Bad Arolsen archives would not generate information that could lead to more eligible Holocaust-era insurance claims than identified through the claims and appeals processes of ICHEIC, for two reasons: (1) ICHEIC always assumed that a person was persecuted unless information was presented that pointed to the contrary; (2) ICHEIC offered full valuation in instances where it was unclear exactly when a policyholder had died. Moreover, because survivors and their relatives, families of those who perished, and their representatives already had access to the Bad Arolsen archives, in effect the Commission also had full access to this information.

Under ICHEIC's relaxed standards of proof, the claimant produced whatever evidence the claimant had available. Individuals filling out claim forms were asked to provide all information available to them, including copies of existing documents in their possession that might be relevant. In some instances, claimants had actual copies of policies, but there was no expectation that such would be the case. The relaxed standards of proof allowed claimants to provide non-documentary and unofficial documentary evidence for assessment.

Companies were similarly required to produce the evidence they had, with the objective of helping claimants to establish sufficient evidence of a contractual relationship. Once the existence of a policy was substantiated, the burden shifted to the company to show the status of the contract or to prove the value of the contract had been adjusted or the contract had been paid. All parties agreed, however, that the relaxed standards of proof were to be interpreted liberally in favor of the claimant.

The relaxed standards of proof adopted by the Commission aimed to ensure that every claim, no matter what evidence the claimant could produce, would be reviewed to identify whether evidence could be located sufficient to substantiate the existence of a contract.

VALUATION

In order to define the guidelines for assessing present-day value of Holocaust-era insurance products, the Commission created a Valuation Committee, which examined historical records, the realities of interwar economic history and specific cases to establish valuation guidelines. Fairly early on the Committee reached agreement on the components required for any calculation: the insured sum, the duration of the policy, and the date of the insured event.

In addition, it became clear that the final valuation guidelines would need to take into account a number of factors. For example, we needed to determine whether the insured person had perished or had survived the Holocaust, in what currency the underlying policy had been written, whether any adjustments had been made in the insured sum prior to the Holocaust (such as loans or voluntary reductions to the sum insured) and how any relevant laws of general application in the country of issue affected the terms of the policy.

Since the majority of claims submitted to ICHEIC contained little or no information, the Valuation Committee established rules and guidelines that would permit appropriate assumptions in lieu of documented policy terms or details regarding the fate of the policyholder. Drawing on the findings of the Pomeroy-Ferras report, the Committee agreed on country-specific average values, and so-called "deemed dates" that provided assumptions regarding confiscation of assets and dates of death of policyholders. As a result, ICHEIC's Valuation Guidelines contain dates for each country that identify the start of persecution and the start of confiscation in that country.

The Commission sought to make as much information as possible about our efforts to resolve these unpaid claims publicly available. Therefore, the final valuation guidelines as well as committee structures, claims processing statistics, audit reports, quarterly reports, a guide to how the process worked, and annual meeting presentations, were published on the ICHEIC website at www.icheic.org. Arrangements have been made for this website to be maintained by the U.S. Holocaust Museum.

ARCHIVAL RESEARCH/BUILDING RESEARCH DATABASE (and LISTS)

Working closely with European insurance companies, ICHEIC established protocols to make sure that information provided by claimants was matched to all available and relevant surviving records in the companies' possession. However, since many claimants had little or no information about specific insurance policies, ICHEIC conducted archival research to locate documents that were relevant to Holocaust-era life insurance claims.

Working with archives in 15 countries, ICHEIC researchers located almost 78,000 policy specific records which were subsequently compiled in an internal research database. This research was used by ICHEIC member companies to augment the often limited information provided with claims. It is worth noting the significance of more than half of the $306 million that was awarded went to individuals who were unable to identify a policy or name a company that was the source of their claim.

LISTS

The role of the published lists within the overall scope of the Commission's work and the relative utility of publishing more names going forward have received a great deal of attention, but continues to be widely misunderstood. Development of the lists that were published was a by-product of the Commission's efforts to match claim form information with relevant policy information discovered through archival research or in companies' records. Finding one's name on a list published by the Commission was never intended either as necessary to file a claim or as any proof that a previously unpaid claim existed.

Since ICHEIC's mission was to find potential claimants, identify unpaid Holocaust-era insurance policies, and settle valid insurance claims at no cost to claimants, the Commission sought to maximize opportunities to identify policies and "match" policies with claims, even when submitted claims might have contained little accompanying documentation. The Commission did so by supplementing the information that claimants provided with relevant archival information through agreed-upon procedures. This research and matching work identified thousands of policies related to claims where the claimant was not able to name a company.

Consistent with the Commission's mission of reaching out to the broadest possible universe of interested parties, ICHEIC published on its website its research and the 519,009 potential Holocaust-era policyholder names who were thought likely to have suffered any form of racial, religious, or political persecution during the Holocaust. In so doing, however, the website also carried a clear warning that finding a name on the website was not evidence of the existence of a compensable policy. There were many similar names with spelling variations, policies that might have been surrendered or paid out prior to the Holocaust, and some policies that had already been the subject of previous government compensation programs, rendering them ineligible for any further payments under the ICHEIC process. The list remains accessible to the public through the Yad Vashem website (www1.yadvashem.org/pheip).

The broad obligation to publish potential policyholder names as described in the legislation being considered by this Committee, HR 1746, which mandates publication of all policyholders during the entire relevant period, would be of limited value and create confusion and raise false expectations. The number of policies issued during the period (1920-1945) would be considerable and in many cases, records, when available, would not be in a database but on microfiche, film, and paper. The pre-war proportion of the persecuted population (as determined by ICHEIC's research) was only a fractional part of the pre-war insurance market.

ICHEIC's published lists – as components of ICHEIC's research database – result from working closely with archival experts in Germany, Israel, the United States, and elsewhere, and drawing on information from company policyholder records. During the ICHEIC process, companies had to identify which policyholders might potentially fit the definition of Holocaust victim.[8] For companies with many surviving records, this presents a considerable challenge, because in most instances, insurance companies did not identify policyholders based on racial, religious, political, or ideological factors. Nor was it possible to filter solely on the basis of "Jewish"-sounding last names: the name Rosenberg, for example, often believed to be a typical Jewish name, was also the name of one of the Nazi party's highest-ranking ideologues. Similarly, Anne Frank shares her last name with the notorious governor-general of occupied Poland, Hans Frank, who was hanged at Nuremberg.

The Commission considered all these factors, and culled out from an overall list of policyholder names that are those most likely to have been persecuted during the Holocaust. The Commission's list also contained many more names of policyholders likely to have been previously compensated on their policies because the majority of policies issued in Germany had already been subject to prior postwar compensation programs.

HR 1746 legislation would cast a far broader net, resulting in the publication of millions of policyholder names, to the extent companies were legally and practically capable of doing so, and still complying with the data protection and privacy regulations in force in their jurisdiction. Yet a very small percentage of the published names would be relevant to ascertain those who were persecuted during the Holocaust.

CLAIMS PROCESS – AND HUMANITARIAN CLAIMS PAYMENTS

A fundamental component of the claims process was the development of a company-country matrix. This matrix illustrated historical portfolio transfers including mergers, acquisitions, and other company changes across pre-war and Holocaust-era Europe. With one axis representing the company responsible for life insurance policies during the relevant period and the other representing the country of issue, the point of interception identified the current day successor responsible for specific pre-war and Holocaust-era portfolios. The final version of the company-country matrix included 340 companies from over 30 countries. The Company-Country matrix enabled the Commission to

[8] ICHEIC took as its definition of Holocaust victim or persecutee the German federal indemnification legislation definition, as follows, anyone who: "was deprived of their life, suffered damage to their mental or physical health; was deprived of their economic livelihood; suffered loss or deprivation of financial or other assets; suffered any other loss or damage to their property; as a result of racial, religious, political or ideological persecution by organs of the Third Reich or by other Governmental authorities in the territories occupied by the Third Reich or its Allies during the period from 1933 to 1945."

identify the policies for which each member company was responsible and facilitated the timely submission of those claims to the relevant company.

Claims on policies written by Eastern European companies that were nationalized or liquidated after the war and had no present day successor were reviewed and settled via ICHEIC's in-house process. To ensure the broadest possible reach, anecdotal claims that did not identify a specific insurance company were circulated to all companies that did business in the policyholders' country of residence. Having located unpaid policies, ICHEIC's settlement process determined present values based on negotiated guidelines that provided historical currency conversions. By the conclusion of the Commission's process, 2,874 claims from Eastern Europe were evaluated and offers of approximately $31 million were made using the Commission's humanitarian funds.

Anecdotal claims which, despite ICHEIC's relaxed standards of proof and its research efforts, could not be linked to a specific policy, were referred to ICHEIC's humanitarian claims process for review. Qualifying claims were paid on a per claimant (rather than a per policy) basis. This process, named after section 8A1 of our Memorandum of Understanding, was designed specifically for those claims that, despite all efforts, had to be reviewed and evaluated based solely on the information provided in the claim form. Thus the 8A1 humanitarian claims payment process made 31,384 offers of $1000 per claimant, totaling approximately $31.3 million.

AUDITS; VERIFICATION; EXECUTIVE MONITORING GRP

The Commission adopted a series of oversight structures to make sure that decisions on claims were processed correctly and in accordance with ICHEIC rules and guidelines. Independent third-party audits for the claims review processes of each participating company and partner entity were carried out to assess the status of existing records, and make sure that records were appropriately searched and matched. The rules for these audits were dictated by written agreements between ICHEIC and its participating companies and partner entities, and were reviewed and ultimately approved by ICHEIC's Audit Mandate Support Group, which was staffed by representatives from state regulators' offices, and Jewish organizations.[9]

In response to concerns about the potential for flaws in the companies' claims processing, ICHEIC created an Executive Monitoring Group, which was staffed by representatives from the US regulators, Jewish groups and the claims process manager in ICHEIC's London office. This group reviewed in "real time" segments of participating companies' as well as ICHEIC's own claims processing operations. Through this review, the team recommended new measures to establish and maintain consistency in claims handling

[9] For example, under the Commission's rules, if a company's records were found to be comprehensive for a time period in question, as determined by the agreed upon audit process, the company could assert that lack of registration of a given policy in its records as evidence that such policy did not exist with that particular company.

across companies and make sure that decision making was in accord with ICHEIC's rules and guidelines, provide for reconciliation of databases, and review company internal matching systems.

ICHEIC created an in-house verification team to cross-check every company decision. The verification team also conducted a series of large scale exercises to review decisions made by member companies. Discrepancies were reported back to the companies for reassessment and, where appropriate, remedial action. This process included verification that names added to files after they were originally submitted were properly researched. At the conclusion of ICHEIC's work, the verification team also carried out major reconciliation exercises, to make sure that all research information in ICHEIC's database conformed to and had been matched against companies' policyholder information, and that all claims filed had been checked against all companies' decisions.

In conclusion, the claims process was comprehensive in terms of participants, those whom it served, and how it addressed historical, legal, and operational complexities. Although the work of the Commission was unprecedented and filled with unique challenges, we were able through amicable and inclusive dialogue to voluntarily adopt a new approach towards the resolution of unpaid Holocaust-era insurance claims for the benefit of Holocaust survivors and their families and those who did not survive.

In the end, for me, it was about people and about justice. I recognize that no Commission can resolve the wrongs done by the Holocaust. I firmly believe, however, that our efforts brought some measure of justice to the lives of thousands of survivors, their families, and the families of those who perished.

Michael J. Kurtz

Assistant Archivist for Records Services

National Archives and Records Administration

before the

Committee on Financial Services

U.S. House of Representatives

February 7, 2008

Chairman Frank, Mr. Bachus, and members of the committee, I wish to thank you for inviting me to testify today.

Mr. Chairman, I am Dr. Michael J. Kurtz, Assistant Archivist for Records Services and I am pleased to represent the National Archives and Records Administration (NARA) at this hearing on H.R. 1746, The Holocaust Insurance Accountability Act of 2007.

For the record, Mr. Chairman, I have been on the NARA staff since 1974, and in my current position since January 1997. I was also the chair of the Nazi War Crimes Interagency Working Group for its first two years of operation. By the time the Nazi Wart Crimes and Japanese Imperial

Government Records Interagency Working Group completed its work in 2007 over 8. 5 million pages relating to Nazi and Japanese war crimes in Federal government records had been identified and opened to the public; these included certain records never before released, such as certain CIA files. Now literally millions of pages of records are now publicly available at the National Archives which are directly relevant to Holocaust-era crimes. The Archives understands that the Administration opposes this legislation, for reasons that have been explained by the Department of State. We wish to raise the following concerns we would have if NARA was in a position to implement this legislation:

1. First is the uncertainty about the size and scope of the Registry. There is no firm number for of the size of the registry. We do know that the International Commission on Holocaust Era Insurance Claims (ICHEIC) resolved over 90,000 claims involving more than 48,000 Holocaust survivors and that ICHEIC posted 519,000 names of potential Holocaust era policy holders on its web site. We also know this legislation anticipates that there are vastly more policies and claimants to be discovered under the provisions of this proposed legislation. We have heard estimates in the range of millions of names

and would see the placement of this size data base as a potentially extremely costly undertaking. Also, the number of expected inquiries may overwhelm the NARA homepage.

2. These uncertainties make it difficult to estimate the costs of creating and then maintaining the database for the registry, but the anticipated large scope of the database has led our IT experts to roughly estimate the potential costs to be at least $28 million. This would make the database a large part of NARA's program and may distract from NARA's core mission of preserving Federal Government records. Also, NARA's information technology capabilities are currently being deployed to oversee the development of the Electronic Records Archives, which will intake Federal electronic records. Right now, NARA and the development contractor are working to build the capability to intake the electronic records of the current Administration. Developing, building and maintaining another IT project could greatly strain NARA's capabilities.

3. What ever the final cost of creating and servicing the registry, the funding for the project is problematic. It is unclear as drafted if the penalty fees charged against non-compliant insurance companies would serve as the main or sole funding mechanism for the development and maintenance of the Registry. If that is the case, the logic in this structure would seem to be reversed. In other words, if insurance companies comply with the law, NARA would have the responsibility of web access to a potentially huge names registry, but would not receive any direct monies to establish and maintain the registry. If, on the other hand, insurance companies do not comply, NARA's costs would be very low, but we would receive monies by way of these fines. If the former situation takes place we would need to rely on increased appropriations to meet the legislative requirement. If the latter situation takes place, proper use of the fines would be somewhat in question.

4. A stable OE funding source beyond the uncertain revenues from the fines would be needed to avoid diverting funds from other current Archives programs. We fear the cost of the registry might compel further cuts in traditional core services. Also, I want to

reiterate that, at the very least, building this database may be a distraction to NARA's core mission of preserving Federal records.

Right now, NARA continues to perform its work seeking the highest level of customer service and satisfaction. Ninety-three percent of written requests received in 2007 were answered within 10 working days, exceeding a goal of 90 percent. And 88 percent of Freedom of Information Act requests for Federal records were completed within 20 working days, again exceeding a target. Our web site, Archives.gov, continues to expand access to our holdings—with more than 34 million visits this year. At Archives.gov we offer digital versions of many of our most-requested records and online versions of popular exhibits as well as the rich resources of various data bases.

Our concern is that the addition of this new program will diminish our ability to keep maintaining the areas of good performance.

5. The legislation has a 10 year statute of limitations for individuals filing claims under the Act. It does not have a sunset date for the maintenance of the registry on-line in a web-accessible format.

We believe that provision should be made for NARA to maintain the information in a web searchable format until the date that the statue of limitations applies; after such time we would still retain the electronic information and undertake individual searches when requested.

Mr. Chairman, this concludes my testimony and I will be glad to answer any questions.

Testimony of Sidney Zabludoff
Thursday February 7, 2008
House of Representatives Committee on Financial Services,

Thank you for allowing me to present the facts relating to restitution of Holocaust era assets. My basic conclusion after examining the issue for more than 10 years is that extraordinary events require extraordinary resolutions. Clearly, the murder of two-thirds of continental European Jewry and the confiscation of nearly all Jewish assets by the Nazis and their collaborators was such an event. Despite such extraordinary circumstances only about 20 percent of the stolen property and other assets has been returned through 2007.[1]

Two bold actions could be taken to help rectify this sizable and unconscionable shortfall. They are the passage of HR 1746 and ensuring that the remaining unpaid stolen assets are used to assist needy Holocaust survivors.

In the first case, HR 1746 would help restore to Holocaust victims or their heirs the value of policies never paid by insurance companies or countries. Conservatively estimated this amounts to $17 billion in today's prices. It is conservative because it uses the 30 year US government bond yield to move from the pre-Holocaust to the 2007 value, whereas insurance company portfolios earn a much higher yield because they contain stocks, corporate bonds and real estate. It also should be noted that my estimates of pre-Holocaust policy values and the post-war amounts repaid are consistent with the Pomeroy-Ferras Report published by ICHEIC. That Report makes no attempt to determine the current value of unpaid life insurance.

HR 1746's important first step is to ensure that the names of policyholders are published. ICHEIC started this process and some 500,000 names of policyholders were placed on its website (now available on the Yad Vashem website). Germany provided about 80 percent of these policyholder names. Some 360,000 resulted from an ICHEIC agreement with the German Foundation and 42,000 were developed via ICHEIC archival research. In the ICHEIC context the published German Foundation list was of little use, since it was made public only a few months before ICHEIC's filing deadline. Even so Germany has largely met its obligation to provide policyholder names under HR 1746.

For the other countries, the number of Jewish policyholders published is minimal. The most notable shortcomings are in Hungary, Poland and Rumania, all of which had large pre-Holocaust Jewish populations. Even in most west European countries the number of published names is extraordinarily small. To deal with this shortcoming, non-German archives need to be further examined and, most importantly, companies doing business outside of Germany should publish the names of their Holocaust era policyholders. HR 1746 has provisions to do both.

The proposed legislation also provides victims and their heirs a means to receive a fair value for policies taken out in the pre-Holocaust period. This recognizes that there is still a long way to go for life insurance companies to meet their Holocaust era obligations. Indeed, at most only about 11 percent of the fair value of outstanding policies was paid during the post-war and ICHEIC years. HR 1746 provides an opportunity to increase that percentage.

Again there are differences between Germany and other countries. Germany is the only entity that has pledged to continue to accept claims and pay them under ICHEIC guidelines. There are, however, very serious negative aspects of this seemingly benevolent action. The German insurance association (GDV) will not accept new claims that do not name companies. This is an enormous drawback. Nearly all the 400,000 German names of policyholders listed on the website do not indicate a company name, and ICHEIC experience demonstrates that two-thirds of the claimants did not know the company name. Thus, this German action is of little benefit to the claimant. Also, on the downside is the method Germany insisted upon to determine a policy's current value. It produces an amount that is only about 15 percent of similar valued policies paid under ICHEIC guidelines for all other west European countries.

The extraordinarily low German payments are caused mainly by the inclusion of the 1948 German monetary reform in their asset restitution systems. At that time, the Allied powers insisted on a monetary change in which 10 Reichsmarks were made equivalent to one Deutschmark. This was done in order to save the post-war German economy from the vast deluge of Reichsmarks the Nazi regime had dumped on the market to pay for the war effort. Indeed, without this Allied action, the German economic miracle that followed would not have taken place or would have been much delayed. The problem is that the Jews, who were not responsible for the Nazi war effort, along with many non-Jewish Germans, had to suffer in terms of reduced values of assets for the war-time economic policies of the Nazi regime. The non-Jewish Germans, however, benefited from the economic miracle while few Jews were left. If the German companies were paying at the rate every other west European country was paying, it would have paid ICHEIC claimants about $500 million rather than the $74 million it actually paid.

It should also be pointed out that the Foreign Claims Commission of the United States provides strong precedent to use the foreign-US exchange rate at the time of confiscation. It therefore excludes currency changes between the time of confiscation and claim payment, such as the 1948 German monetary reform. An example is Commission claim #CZ-2,832, which was decided during the year ending June 1961. It involved a Jewish family who owned property and financial assets (including life insurance policies) in Czech Sudetenland which was occupied by the Nazis in 1938. The assets were soon taken over by the Nazis. The decision calls for paying the claims at a "sum converted into United States

Dollars at the 1939 exchange rate of 2.5 Reichsmarks for 1 United States Dollar..." [2]

Among the other issues are:

--The east European valuation rate set by ICHEIC amounted to only about one-third of the conservative realistic current value. The companies argued that they were nationalized. They did, however, receive partial repayment from east European governments. More importantly, many insurance contracts indicated that payments to policyholders were backed by company funds outside the country in which the policy was written.

--Austria, which had by far the poorest post-war insurance restitution record in western Europe, allocated $25 million in 2001 for repaying outstanding policies. The result is that it can reimburse claimants only about 15 percent of the ICHEIC valuation. ICHEIC discussed paying the difference but nothing was resolved.

--Holland never paid for small-valued burial policies, a form of life insurance. There were some 8.5 million such policies in a country with a pre-war population of 10 million. In current prices, the Jewish portion of these burial policies would be valued at some $300 million.

--Switzerland has paid only 17 claims other than those from Germany and Austria for some $90,000, according to ICHEIC statistics. Swiss company sales of life insurance elsewhere to Jews in Nazi occupied Europe amounted to some $440 million in 2007 prices. In addition, Swiss companies played a major role in the European reinsurance market and thus had a portfolio of Jewish policies likely amounting to some $2 billion in 2007 prices.

--Belgium paid one policy worth $15,000 according to ICHEIC statistics even though it had some $120 million (2007 prices) still unpaid in the case of Jewish life insurance.

--AXA France—an ICHEIC company--paid 131 policies worth some $5 million according to ICHEIC statistics. Non-ICHEIC companies operating in France were supposed to pay claims via the Drai Commission. It is not known how much of the $420 million (2007 prices) still owed by French companies to Jewish life insurance policyholders were paid by the Commission.

--Generali stated in court it had a total of 89,000 life insurance policies held by both Jews and non-Jews in 1936. But based on hard historical evidence, it had several hundred thousand and more likely several million. This enormous undercounting raises serious doubt about Generali's denying claims because it had a full list of policyholders (for more details see annex).

--The ICHEIC system rejected claims or paid too little because it failed to deal with the many unforeseen issues that naturally arise in any complex restitution process. For example, the only known original value of numerous policies was at the cash surrender value which is roughly 25 percent of the face or pay off value. ICHEIC refused to develop a reasonable methodology to get from the cash surrender value to the face value. Thus, the lower cash surrender value was used. In addition, ICHEIC never dealt with the vast number of non-life insurance policies although it had pledged to do so in its charter.

The chief reasons for such ICHEIC problems were inept governance and poor management. Governance became akin to secret diplomacy, in which those who ran ICHEIC relied heavily on dealing only with those who favored their views while making promises to others that were never fulfilled or too long delayed. ICHEIC management mainly ignored the numerous studies pinpointing the serious problem with the claims process. Judge Michael Mukasey succinctly summed up the problem when he described ICHEIC as "in a sense, the company store." [3]

But no matter what steps are taken to find claimants, many policies will remain unpaid. Those working on ICHEIC and other restitution efforts recognized this outcome from the start. This is because whole families were wiped out by the horrific events of the Holocaust, leaving only distant relatives with little knowledge of the policyholders, especially when dealing with events that occurred more than a half century ago. It was also understood that many records no longer exist. An example is the extensive search for life insurance records in Germany. Only about eight million or a quarter of the 31 million policies outstanding in the late 1930s was found.

Recognizing this fact, ICHEIC attempted at one time to calculate the overall value of policies—called the "top down approach." The companies would then pay the difference between this overall estimate and the amounts actually paid to claimants to a fund that would support needy survivors and other causes. This approach, however, was forgotten as ICHEIC proceeded, and only relatively small amounts were provided for such a humanitarian fund, mostly under the accord with Germany. Insurance companies failed completely to deal with this issue.

This brings me to my second point. Besides pressing individual claims, I would suggest an International Remembrance Fund to support needy Holocaust survivors who are in their autumn years. Currently there are approximately 600,000 Holocaust survivors worldwide and actuarial data indicate their number will diminish sharply during the next ten years. A review of the available studies indicates that there are numerous survivors who lack adequate income to meet their daily living expenses and health requirements. For example, one study of the United States indicates that the income of more than half the survivors falls within the poverty or near poverty bracket. My first rough approximation is that

between $20 and $40 billion will be required during the next ten years to sustain needy survivors.

Clearly, what is urgently required is an in-depth study to determine more precisely the likely financial requirements of needy survivors. This would take into consideration funds they are already receiving through various governments as well as private assistance. Simultaneously, we must reach a global accord to establish an International Remembrance Fund. This will require an innovative financial structure. But again extraordinary measures are essential in dealing with an extraordinary event such as the Holocaust.

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[1] For more details please see my articles from the Jewish Political Studies Review; *ICHEIC: Excellent Concept but Inept Implementation* (Spring 2005); *Restitution of Holocaust-Era Assets: Promises and Reality* (Spring 2007). Both articles can be found at the website JCPA.org. On the home page under JCPA projects click on "Jewish Political Studies" and look for the date and title of the article.

[2] Foreign Claims Settlement Commission of the United States: Report to Congress for the period ending June 30, 1961; page 168.

[3] *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litigation,* 228 F. Supp. 2d 348, 356-57 (S.D.N.Y. 2002)

American Jewish Committee
A Century of Leadership

Department of International Jewish Affairs
1156 Fifteenth Street, NW, Washington, DC 20005
Main: 202.785.4200 Direct: 202.785.5495 Fax: 202.785.4115 Email: bakera@ajc.org

Rabbi Andrew Baker, Director

February 4, 2008

Hon. Barney Frank
Chairman,
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Hon. Spencer Bachus
Ranking Minority Member,
House Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Frank and Congressman Bachus,

As an official observer of the International Commission for Holocaust Era Insurance Claims, the American Jewish Committee is quite familiar with its efforts to identify policies and match them with claimants. The ICHEIC process was complicated and prolonged. It sought the records of participating insurance companies as well as other archival information and relied on victims' lists prepared by Yad Vashem in order to identify a large but likely list of policy holders that could then be shared via the internet. In the end thousands of claims were found and paid by participating insurers. Many other claims against now defunct companies were also paid by ICHEIC. Its additional humanitarian funds have been used to make small payments to those with only anecdotal evidence of insurance policies and to support welfare projects designed to assist needy Holocaust survivors.

No doubt some people believe that ICHEIC did not do everything it could to identify Holocaust-era policies, and a few even think that some insurance

companies willfully sought to hide documentation. But such views cannot be supported by our own observation of ICHEIC's operations.

H.R. 1746 would require insurance companies to provide extensive lists of prewar policies without any prior vetting to determine if they were held by Holocaust victims. It would also open the door to a new set of legal battles in American courts. As the American Gathering and the Claims Conference have noted, both these steps would actually be detrimental to the concerns of Holocaust survivors and their heirs. Such unvetted lists would only create false expectations among claimants. The new burdens imposed on the companies would effectively renege on the promise of "legal peace" that was instrumental in securing their participation in the first place. Such promises have also been a key to settling other Holocaust-era claims, and H.R. 1746 could adversely affect similar negotiations in the future.

Despite the fact that ICHEIC has closed its doors, participating insurance companies have agreed to continue to receive new claims. State insurance regulators should be vigilant to make sure that they live up to these promises. We understand that the State Department Office for Holocaust Issues is also prepared to intervene on behalf of individual claimants should that become necessary. Although not perfect, we believe these measures should be sufficient to address the concerns of individual survivors who may still have insurance claims to pursue.

Respectfully,

Andrew Baker

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JESS N. HORDES
GENERAL COUNSEL
BETTY B. ROBBINS

February 4, 2008

The Honorable Barney Frank
Chairman, Committee on Financial Services
US House of Representatives
2252 Rayburn House Office Building
Washington, DC 20515-2104

Dear Chairman Frank:

We are writing to express the view that House Resolution 1746, the Holocaust Insurance Claims Accountability Act, is not necessary and undermines the credibility of efforts by the U.S. government, and many non-government organizations to resolve these problems.

Over recent years, culminating in the agreement Concerning Holocaust Era Insurance claims on October 16, 2002, there have been a series of hands-on steps to make sure that all Holocaust survivors who have insurance claims receive a measure of justice.

In addition to all the claims that have already been recognized and for which monies have been dispersed, the ICHEIC also has made clear that its "member companies intend to continue to address inquires that are sent to a specific company and will honor legitimate claims." Such cases, which we understand to date are few in number, are and will be handled in a serious fashion.

It is therefore our belief that the agreements which were comprehensive in nature and which were supported by many of the most outspoken institutions on behalf of Holocaust survivors, including State Insurance Commissioners, members of the Administration, and major Jewish organizations, should be respected and continue to be the foundation for resolving any future claims.

HR 1746, as we noted, is unnecessary and does not serve the needs of Holocaust survivors nor the interest of the credibility of agreements on these matters of great sensitivity.

Sincerely,

Abraham H. Foxman
National Director

ANTI-DEFAMATION LEAGUE, 605 THIRD AVENUE, NEW YORK, NY 10158-3560 212-885-7700 FAX: 212-867-0779 WWW.ADL.ORG

B'NAI B'RITH INTERNATIONAL

February 6, 2008

The Honorable Barney Frank, Chairman
The Honorable Spencer Bachus, Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Representatives Frank and Bachus:

On behalf of B'nai B'rith International's more than 200,000 members and supporters, I write to express concern about H.R. 1746, the Holocaust Insurance Accountability Act of 2007.

B'nai B'rith, which has long been actively engaged in efforts to obtain restitution for Holocaust survivors and reemerging European Jewish communities, has always regarded the interests of survivors as a leading priority of our organization, and we are determined to fight for justice for those who have suffered so greatly. We generally welcome any legislation or other policy initiatives that advance their cause. In this context, we have noted the opposition of some prominent critics of this particular legislation, such as former Deputy Secretary of the Treasury Stuart Eizenstat, Chairman Roman Kent of the American Gathering of Holocaust Survivors, and the Conference on Jewish Material Claims Against Germany. Upon careful consideration, we cannot help but defer to their reservations about the bill.

This legislation comes in the wake of a lengthy process resulting in the payment of thousands of claims, amounting to over $300 million, by insurance companies that cooperated with the International Commission for Holocaust Era Insurance Claims (ICHEIC). While this process may have been imperfect, it did involve the meticulous research of insurance policies and the identities of Holocaust victims who held those policies. ICHEIC not only facilitated the payment of claims against existing companies; it also paid out claims against now-defunct companies and funded survivor assistance programs. Furthermore, participating insurers have pledged to continue fielding new claims, so an important avenue remains open to survivors.

B'nai B'rith's fear is that this legislation, if passed, could invite new litigation that would disrupt the hard-fought legal peace promised to European governments and companies in exchange for their cooperation with ICHEIC. We are therefore concerned that future restitution negotiations might be compromised if this bill becomes law. We also worry that the legislation would unfairly raise the hopes of survivors without being able to satisfy their expectations.

B'nai B'rith urges that your Committee weigh these considerations in evaluating the efficacy of H.R. 1746. Thank you for your attention and cooperation.

Respectfully,

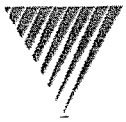
Eric A. Fusfield

Eric Fusfield
Director of Legislative Affairs

2020 K Street, N.W., 7th Floor, Washington, D.C. 20006
202-857-6500 FAX: 202-857-2700 internet@bnaibrith.org www.bnaibrith.org

VERBOND VAN VERZEKERAARS

> mr. R. Weurding
Director General



The Honorable Barney Frank
Chairman
House Financial Services Committee
2252 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
2246 Rayburn House Office Building
Washington, DC 20515

Our Ref.
2008/br/5010/SCATE

The Hague
February 1st 2008

Dear Mr. Frank and Mr. Bachus,

The Association of Insurers in the Netherlands ("the Association") is pleased to provide you with the following information regarding the commitment to process future Holocaust-era insurance claims in the Netherlands.

As you know, during the German occupation of the Netherlands in 1940-1945, the Dutch Jewish population was heavily persecuted. Almost 75% of the Dutch Jews did not survive the war. Part of the persecution was the looting of all possessions, including life insurance assets. After our country was liberated, a comprehensive and complicated program of restoration of Jewish rights started almost immediately, and lasted until late in the 1950s. As a result of that program, approximately 98% of the value of all German-looted policies originally held by Holocaust victims was restored or the insured value paid out by 1960. With respect to the remaining 2%, in 1999 the Association and the Dutch Central Jewish Board formed the Sjoa Foundation to retain and distribute funds representing the value of unclaimed policies. The Sjoa Foundation holds € 9 million and has paid out nearly € 5 million to 6,275 rightful claimants. Recognizing that there would inevitably be additional unclaimed insured value on policies for which no beneficiaries can be identified, the agreement between the Association and the Central Jewish Board also resulted in a payment of € 13.6 million to Jewish war victims, survivors, and their families, both in and outside the Netherlands, and for other humanitarian purposes. This included funds distributed by the Maror organization, which was established at the initiative of the Dutch-Jewish community in conjunction with the Dutch government to facilitate payments of a minimum of € 5000 to any Jewish individual who could prove that he or she was in the Netherlands during the Holocaust era.

In 2000, the Association also agreed to join the International Commission on Holocaust-Era Insurance Claims ("ICHEIC"). We did so under an agreement that called for close cooperation among the Association, the Sjoa Foundation and ICHEIC while at the same time respecting the robust claims process already established by the Sjoa Foundation. Today, claims presented to Association members continue to be handled by the Sjoa Foundation and are processed using relaxed standards of proof and valuation as set forth in the operating agreement between ICHEIC and the Sjoa Foundation, a copy of which is attached.

Informatie: Mw. S. ten Cate
Doorkiesnummer 070 - 333 86 55 Fax rechtstreeks 070 - 333 86 50 E-mail s.ten.cate@verzekeraars.nl
Bordewijklaan 2, 2591 XR, Postbus 93450, 2509 AL Den Haag, Internet www.verzekeraars.nl

The Sjoa Foundation is presently slated to continue until 2010. Nevertheless, the Association has agreed to continue to honor the commitments made in establishing the Sjoa Foundation and in joining ICHEIC and, in particular, to ensure a continuing process for the payment of any new claims even though the ICHEIC claims and appeals processes have closed and once and if the Sjoa Foundation has disbanded. That claims process will include the same relaxed standards of proof and valuation currently employed by the Sjoa Foundation.

The Association and its members strongly believe that the public should have confidence in the processing of Holocaust-era insurance claims. Therefore, as in the past, the Association is committed to ensuring that future claims processing will continue to be transparent and subject to appropriate independent audit and review.

Sincerely,

Richard Weurding
Director General
Dutch Association of Insurers

02/04/2008 13:20 FAX 1212 755 5883 W.J.C. NY 002/003

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January 31, 2008

Hon. Barney Frank
U.S. House of Representatives
2252 Rayburn H.O.B.
Washington DC 20515

Re;: H.R. 1746
Holocaust Insurance Accountability Act

Dear Congressman Frank,

The World Jewish Congress ("WJC") has been deeply involved in the struggle to obtain justice for Jewish victims of Nazi persecution. The WJC has been involved, among other matters, in the Swiss Banks Settlement of $1.2 billion, the DM 10 billion German Foundation fund providing compensation for former slave and forced laborers, and the disclosure of the Nazi past of Kurt Waldheim, former President of Austria.

Our serious concerns about the consequences of enacting H.R. 1746 compel us to write. While we believe that few will benefit from the legislation, it will, at the same time, significantly impair ongoing and future funding for holocaust survivors around the world.

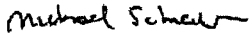
First, not many survivors will be able to successfully sue the insurance companies. The overwhelming majority of policy holder names the companies will be required to publish will not be Jewish, while many of the policies which will be published already will have been disclosed and paid, or otherwise compensated, through the proess established by the International Commission on Holocaust Era Insurance Claims ("ICHEIC"). Thus, the great Anticipation engendered by the bill's mandatory disclosure requirement will turn into major disappointment in the survivor community when compensation for unpaid policies is ultimately paid, at most, only to a handful of survivors.

Second, the proposed legislation will breach existing agreements which already have resulted in Holocaust survivors and their heirs being paid hundreds of millions of dollars in compensation. These agreements guaranteed participating insurance companies they would not be sued subsequent for holocaust-era policies. Yet, without the agreements, ICHEIC would not have been able to pay a single insurance claim, while the German Foundation would have reduced its payments for survivors by tens of millions of dollars.

Finally, passage of H.R. 1746 will severely damage negotiations with Germany and other governments regarding critical funding for the benefit of Holocaust survivors worldwide.

Such negotiations, affecting far more survivors and involving much more in compensation than will ever be realized by survivors through H.R. 1746, will be irreparably harmed by the utter loss caused by violation of existing agreements, which will be the result of the bill's enactment into law.

Sincerely,



Michael Schneider,
Secretary General

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DAVID S. ABRAMOWITZ
CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

CONGRESS OF THE UNITED STATES

COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021
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ILEANA ROS-LEHTINEN, FLORIDA
RANKING REPUBLICAN MEMBER

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REPUBLICAN STAFF DIRECTOR

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REPUBLICAN SENIOR POLICY ADVISOR

DOUGLAS C. ANDERSON
REPUBLICAN CHIEF COUNSEL

FEBRUARY 5, 2008

SUPPORT HR 1746 HOLOCAUST INSURANCE ACCOUNTABILITY ACT

Dear Colleagues,

The Holocaust stands as one of the most horrific events in human history and the physical and emotional damage it has caused still lingers. One of the remaining issues that prevent closure to many of the survivors and family members of the victims is the unresolved matter of Holocaust-era insurance policies.

For years insurance companies have refused to honor tens of thousands of policies issued to European Jews before WWII, requiring documentation, such as a death certificate for the claim to be honored. However, concentration camps in which many of the Holocaust victims were murdered didn't issue death certificates and all asset documents, including insurance policies, were confiscated from the Jews by the Nazis.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in 1998 to address the issue of unpaid Holocaust-era insurance policies. However, experts estimate that only 3% of the insurance policies sold to European Jews before WWII have actually been paid by the insurance companies following the ICHEIC process, which officially ended last year.

To address this problem we introduced the Holocaust Insurance Accountability Act of 2007 (H.R.1746). If enacted, the bill would require insurance companies that conduct business in the United States to disclose the names of Holocaust-era insurance policy holders, something that the insurance companies have refused to do for over 60 years. Additionally, the bill will allow Holocaust survivors or family members of victims to sue the insurance companies in U.S. courts and recover under their policies.

We are including a few of the letters we have received from Holocaust survivors, sharing their stories and seeking Congressional action on the issue of Holocaust-era insurance policies. We are also including a memorandum that was put together by the Holocaust Survivors Foundation-USA, arguing in support of H.R.1746.

We ask for your support on this important legislation.

Sincerely,

ILEANA ROS-LEHTINEN
Ranking Member
Foreign Affairs Committee

ROBERT WEXLER
Chairman
Europe Subcommittee

Thursday, January 03, 2008

Congresswoman Ileana Ros-Lehtinen
US Congresswoman, District 18
2160 Rayburn House Office Bldg
Washington , DC 20515

Dear Congresswoman Ros-Lehtinen,

My name is Elizabeth Ungar Lefkovits and I am a US citizen and a Florida resident. I was sent to the Auschwitz concentration camp in 1944 when I was 20 years old. During the Holocaust I lost both of my parents, my grandparents, my two sisters, and my two year old nephew.

After the war, I found a document that was hidden by my father, **Ignatz Ungar** (also spelled **Ignac** Ungar). This document contained his life insurance policy for 25,000 gold dollars. In 1945, when I presented the insurance claim to the insurance company, they requested his death certificate as the prerequisite to pay the claim. Without the death certificate, they said the policy was invalid.

A few years ago, the International Commission on Holocaust Era Insurance Claims revived our hope for justice with the insurance companies and I filed my claim (Claim # 77452, reference Ignac Ungar life insurance). Unfortunately, this effort produced no results.

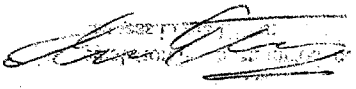
I am very glad that **The Holocaust Claims Insurance Accountability Act of 2007 (H.R. 1746)** legislation has been introduced in Congress and if passed, the insurance companies doing business in the US, that profited from the Holocaust, will be held accountable for their actions.

I urge you to please support the 37 co-sponsors in the House and the thousands of constituents and Holocaust survivors that demand justice, by passing bill HR 1746.

I am happy to provide you with any additional information that may be helpful and would be at your service to testify in congress should you deem it helpful.

I wish you and your family a happy and healthy New Year.

Sincerely,



Elizabeth Lefkovits
4748 S. Ocean Blvd, LPH B
Highland Beach, FL 33487
(561) 391-3876

Congresswoman Ileana Ros-Lehtinen
2160 Rayburn House Office Building
Washington, D.C. 20510

February 2, 2008

Dear Congresswoman Ros-Lehtinen,

My name is Jack Rubin. I am a survivor of the Holocaust. I lost my Parents, Grandparents, Aunts, Uncles and Cousins in the Holocaust. Just my sister and I survived. I was only fifteen years old when I was taken to the Concentration Camp.

I remember that my parents and grandparents had insurance with Generali Moldavia which was the subsidiary of Generali Insurance.

When I was liberated and returned to my home town, I found our house and business was destroyed and therefore cannot show any proof of a policy. The policies were burned along with my parents in Auschwitz.

Please, Madam Congresswoman, please help us, the Holocaust survivors, to get the HR 1746 Bill to pass. We need your help now. We do not have much time left as we are already eighty years and older.

HR 1746 would require Generali to publish all of the names of its customers from the Holocaust time, and would require the company to produce all the information ICHEI C allowed it to keep secret. It would also allow survivors like myself, to sue the company in U.S. courts. I believe I, and all Holocaust survivors are entitled to have a real judge and jury decide whether or not the company treated my family correctly. This is a basic American right but we need Congress to restore that right.

I will be attending the Financial Services hearing reference HR 1746 Thursday Feb. 7th At 9:30am. I would be very happy to meet with you personally once again.

Thank you for reading this letter. I truly hope that you will not let us down.

Warmest Regards,

Jack Rubin

7660 San Carlos St,.
Boynton Beach, Fla. 33437

Lea Weems
14 E Greenway Plz
Houston, TX 77046-1400
713-621-1899

February 4, 2008

By Fax: 202-225-5620

Dear Congresswoman Ros-Lehtinen,

I am Lea Weems from Houston. I am a survivor of the Holocaust. I will not take up your time to tell you the horrors my family endured during that horrible time or what happened to me. I know you're busy. My father owned a business and a home in prewar Germany and I've been told everyone had insurance coverage. We all are very grateful for you all your hard work and bless you greatly.

I am president of the Houston Council of Jewish Holocaust Survivors, elected to represent many survivors and their families here in the Houston Metro area, and all our stories about what we have had to go through to get any justice whatever in trying to get compensation from the insnrance companies.

I know our family had insurance. I tried to present information and got no responses. Now we learn that through an International Commission on Holocaust Insurance only three percent (3%) of the total of the policy they stole from us was paid out at the time last year when this commission closed. Three percent of over $17 billion owed to all of our families at a minimum and they said they did a good job? Those who say they represent our interests say they did a good job. We think not!

They wonldn't even open their archives which listed our families names and then had the nerve to demand birth and death certificates from all of us who either died in the camps or barely survived and came out with nothing but our bodies. All was taken from us and now this tragedy.

I am presently battling a terrible disease. So many survivors I represent are in worse condition here in Texas living in poverty literally and the insurance companies are unjustly enriched and nothing is done about it in the United States of America.

I, we all, need your help. The Financial Services Committee in the Congress is holding a hearing on a bill introduced by Congressman Wexler and Congresswoman Ileana Ros-Letinen, HR 1746. Urge your colleagues on the Committee to vote for this bill as the Foreign Affairs Committee already did and urge our senators to introduce and pass out this legislation soon. We have very little time left and it is one minute to midnight for us survivors. WE NEED YOUR HELP NOW! You in Congress are our only chance to have justice! Don't let us done, please!

The insurance companies were to get legal peace only after we the survivors got legal and moral peace and that has not happened for us and our families. Help us survive a little while longer, please. Thank you for reading my letter. Do not let us down.

Sincerely,

Lea Weems

Lea Weems

Houston Council of Jewish Holocaust Survivors

Representing over 250 Snrvivors of the Holocaust and their families

This letter was sent to all the members of the Financial Services Committee and Congressman Wexler and Barney Frank. We thank you for all of your efforts!

Congressman Robert Wexler
2129 Rayburn House Office Building
Washington,D.C.20510

Dear Congressman Wexler,
My name is Susan Schlesinger and I am a Survivor of the Holocaust.I was born in Hungary where I lost my parents ,grandparents, aunts ,uncles,cousins and the rest of my family.I am the lone survivor.I was 19 years old when I was put into a Concentration camp of Auschwitz,Ravensbruck,and on a Death march until liberation at the end of the war in 1945.Upon liberation I was forced to spend several month in a hospital in Chechoslovakia.I remember my parents telling me that they took out a insurance policy with the Generali Company.Of course all of my posessions including the Insurance policies were lost and burned together with my family in Auschwitz.I am a senior citizen
and in dire need of help.You Mr.Chairman are my last hope that can get the HR1746 Bill to pass.I desperatly need your help now.I am 83 years old and who knows how long I will be on this earth.I am appealing to you for help because I am desperatly in need of assistance and feel that you have the power to obtain what is legally mine from the Generalli Company,

Sincerely,
Susan Schlesinger
Susan Schlesinger
7649 Las Cruces Ct.
Boynton

Beach,Fl.33437.

FROM :NORMAN FAX NO. :15617401700 Feb. 04 2008 05:38PM P1

February 4, 2008

To Whom It May Concern,

I am the child of Holocaust survivors. I heard from my parents about insurance policies their parents purchased before WWII to provide security for their family and businesses. It wasn't easy for them to provide for their families much less pay premiums for insurance. When ICHEIC started, we were given hope, but none of my relatives names appeared on the ICHEIC website and we never applied. I understand after reading about HR 1746 that not all of the companies who sold insurance to our families were part of ICHEIC, but they are active in the United States insurance market. Shouldn't these companies be required to publish all the names of policy holders so families like ours can learn the facts and make a claim? Sixty years have passed, and we have been denied this information. We urge you to press ahead on HR 1746 so my parents can finally have some kind of closure and that the hard work of my grandparents will not have been in vain.

Sincerely,

Helene Davis

Helene Davis

February 5, 2008

Dear Congresswoman Ros-Lehtinen,

My name is Andrew Klein, I was born in the Czech Republic which is now known as the Ukraine. I am a Holocaust survivor from the age of thirteen. My entire family including my Grandfather, Father, Mother, older brother and younger sister were lost at the hands of the Nazis. Myself and one older brother, Michael, survived. I am 78 years old and my brother is 84.

I can remember my Father owning a business and discussing business matters with my Mother. I also remember coversations about life insurance and the name General Moldavia.

I am a Korean Veteran and have served my country proudly. I have been a United States citizen since 1953 and have faith in this country and those who represent us. I hope, Madame Congresswoman, that you will help pass Bill 1746.

Sincerely,

Andrew Klein

Andrew Klein
221 Bulkley Drive
Fairfield, CT 06825
203 929-3300

Monique Bental
4031 Hythe B
Boca Raton, Florida 33434

February 5, 2008

Congresswoman Ileana Ros-Lehtinen
2129 Rayburn House Office Building
Washington, D.C. 20510

Dear Congresswoman Ileana Ros-Lehtinen,

My name is Monique Bental. I am a survivor of the Holocaust. I was only thirteen and my little sister three, when my parents were deported from France to Auschwitz where they perished.

I remember that my parents had insurance with General Moldavia which was the subsidiary of Generali Insurance.

At the liberation, after having been in hiding the whole length of the war, my grandmother, my sister and I returned to our hometown but no papers were found to show any proof of policy.

Please Congresswoman Ros-Lehtinen, please help us, the Holocaust survivors, to get the HR 1746 Bill to pass. We need your help now. We do not have much time left as I am already seventy-eight years old and many are older.

Thank you for reading this letter. I truly hope that you will not let us down.

Sincerely yours,

Monique Bental

February 5, 2008

Congresswoman Ileana Ros-Lehtinen
2160 Raybum House Office Building
Washington, D.C. 20510
Fax Number: (202) 226-7269

and

Congressman Robert Wexler
2241 Raybum House Office Building
Washington, D.C. 20510

As a Holocaust survivor who has been pursuing fairness and decency from Generali for nearly 6 decades, I want to express my gratitude for your sponsorship of HR 1746. I hope you are able to convey to other members of the House of Representatives, and the Senate just how important this legislation would be in its real impact.

My family lived in Lithuania before World War II. When I was born, my father purchased an insurance policy from the Italian company Assicurazioni Generali, S.p.A. The policy, with a face amount of $2,000 US Dollars, was to make sure there would be money for my education when I grew up. Well I grew up all right, but not the way anyone expected. After four years in several concentration camps, I was liberated in Dachau on April 29, 1945 by the Third American Army. My father and mother miraculously survived, but my younger brother perished.

After the war, my father advised me to go to Rome because that was where the money was to pay for my education. He went back to Lithuania and by another miracle, my father retrieved the insurance policy he had bought for me from the hiding place where he had buried it. I went to the Generali headquarters Piazza Venetia in Rome with the policy number – 332 – and asked for payment. They said they would look for the number and contact me but they never did. I did finish my medical education in Italy but it was very hard living on only $10 as I was required to do.

I graduated and moved to California. My parents were allowed to leave Lithuania in 1960 and my father brought the original policy which I then brought back to Rome to demand payment. Remember, the $2,000 U.S. Dollars was a big policy by 1960. The Generali people again promised to look into it and contact me in California. They never did.

Decades later after ICHEIC was created, I again made a claim. Generali denied it because it said the policy in "Liths" or "Lats" currency was not worth anything. But as I said it was a dollar policy so Generali didn't read it and ICHEIC was beyond useless as all it did was buffer Generali from the harsh reality of its conduct toward me since 1945. When Generali finally made an offer of a few thousand dollars, I refused.

Under California law, I would be entitled to be compensated for the full value of the policy, access to company records to see the policies it likely sold my other relatives, and even damages for the bad faith the company displayed to me in those years after WWII. Yet I have faced endless hurdles in obtaining the full truth from Generali because I have been denied access to our court system. Why are the courts siding with the insurance thieves? Why has Congress sided with

them up until now? It is a mystery to me and other survivors how we can be treated this way in the 21st century, in America no less.

Under HR 1746, my rights under California law would be restored, and I could have a real judge and a real jury decide what is right. ICHEIC might have been well intended by some, but it has caused thousands of Holocaust survivors great heartache. To promise a fair and easy and open system as it did, only to become a shill and shield for insurance companies, is a fiasco that survivors should not have to endure.

Please make HR 1746 law and allow justice to be done between me and Generali.

Thank you very much,

Sincerely,

Jack Brauns, M.D.

cc: Chairman Barney Frank (202) 225-6952
Rep. Henry Waxman (202) 225-4099
Rep. Brad Sherman (202) 225-5879

Alberto Goetzl
17203 Lightfoot Lane
Poolesville, Maryland 20837
H: (301) 972-8018
O: (202) 463-2713
E-Mail: agoetzl@sentrek.com

February 5, 2008

By FAX: 202-226-7269

The Honorable Ileana Ros-Lehtinen
2160 Rayburn House Office Building
Washington, D.C. 20510

Re: H.R. 1746 Legislation to Address Holocaust Insurance Claims

Dear Congresswoman Ros-Lehtinen:

Thank you for sponsoring H.R. 1746, a bill requiring disclosure of Holocaust-era insurance policies. As you are well aware, many of the European insurance companies have not been forthcoming in providing information about thousands (perhaps hundreds of thousands) of life and property insurance policies that were issued to victims of the Nazi atrocities.

The case of our family is illustrative of the problem. My grandparents were deported from Trieste, Italy and murdered in Auschwitz in 1943. My grandfather apparently had a life insurance policy with Assicurazioni Generali, a fact I learned in 1998 after responding to that company's original public notice seeking potential participants for a settlement. However, in my communications with Generali, the company indicated that my grandfather's policy had been surrendered before 1936. The company refused to provide any documentation concerning the circumstances surrounding the issuance and surrender of the policy. Equally perplexing is the fact that my grandfather's name never appeared on the ICHEIC website even though ICHEIC or Generali supposedly matched Generali records against records of Holocaust victims at Yad Vashem (where my grandparents have long been listed).

HR 1746 would require the insurance companies to open their archives, force them to disclose all information and allow claims to proceed in American courts. It's time for the insurance companies to come clean!

Whether or not my family is entitled to file a claim is uncertain since we don't have the full extent of the information about my grandfather's policy, but absent this kind of legislation, we have no opportunity to press the insurance company for more information. More importantly, there are thousands of other families and survivors who should be entitled, but are unable, to seek resolution of Holocaust-related insurance policies. Many are elderly and possibly unaware that the insurance companies continue to withhold information about unsettled policies.

Again, thank you for sponsoring this legislation.

Respectfully yours,

Alberto Goetzl

SOUTHERN CALIFORNIA COUNCIL FOR SOVIET JEWS

AFFILIATE MEMBER OF UNION OF COUNCILS FOR SOVIET JEWS

P.O.Box 1542 - Studio City, CA 91614 - (818) 769-8862 - Fax (818) 766-4321 - E-mail: esfrumkin@roadrunner.com - Web: www.sifrumkin.com

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Holocaust Survivors Ass. - former USSR
Media Analysis Foundation

2/4/2008

Congresswoman Ileana Ros-Lehtinen
Washington, DC

Dear congresswoman Ros-Lehtinen:

I am a Holocaust survivor of the ghetto Kovno in Lithuania and the Dachau concentration camp from which I was liberated by the U.S. Army at the age of 14.

I have been active in the movement for Soviet Jews – an effort that is familiar to you - and in many other endeavors deal with the Holocaust, human rights, democracy and politics. I am proud to consider your colleagues Waxman, Berman and Sherman my personal friends, as well as the L.A. County Supervisor Zev Yaroslavsky who once, in the remote past, was my executive director at the So. Cal. Council for S.J. and still is a personal friend.

I appeal to you to exercise all possible pressure for the passage of H.R. 1746 to get justice and fairness for the destitute survivors who are being swindled by the European insurance companies. Their decade-long policy has been the refusal to open their files and reveal the names of Holocaust era policy holders and pay appropriate settlements to their heirs.

I sincerely hope that you and your colleagues will support H.R. 1746 and that it will serve to bring some relief to those who managed to cheat death 65 years ago.

Sincerely,
Si Frumkin, chairman SCCSJ

Sandy Hoffman
10415 N. Sunflower Ct.
Mequon, WI 53092
February 5, 2008

Congresswoman Ileana Ros-Lehtinen
Washington, DC 20515

Dear Congresswoman Ros-Lehtinen:

As the daughter of two Holocaust survivors and an active member of the survivor and second generation community I am writing to urge you to pass the Holocaust Claims Insurance Accountability Act of 2007 (**HR 1746**.) This legislation will require insurance companies doing business in the United States to publicly disclose all Holocaust-era insurance policies.

HR 1746 recognizes that less than 3% of the number and value of insurance policies owned by Jews at the beginning of World War II have been satisfied through the International Commission on Holocaust Era Insurance Claims (ICHEIC) process, which ended last spring. The bill will require these insurance companies to open their books and fully disclose the names of all World War II-era policyholders so that Holocaust survivors and their relatives can pursue legitimate claims. **HR 1746**, if enacted into law, will give survivors the only reasonable chance they will have to obtain insurance policy information withheld for decades and obtain judicial relief.

Holocaust survivors whose ICHEIC claims were denied or who may never have filed claims because they were unable to obtain policy documentation have been prevented from seeking redress in the courts. **HR 1746** requires the insurers to disclose the necessary information; **HR 1746** allows survivors to go to court to get an impartial judge and jury to examine all of the records surrounding the insurers' conduct and assign financial responsibility. Without the passage of **HR 1746** those survivors' rights are finished and they, together with their heirs and beneficiaries, will have no chance to realize a full accounting or "fair compensation" for policies sold to their families.

HR 1746 will force insurers who profited from the Holocaust to be accountable for their actions. The bill will inject transparency into the claims process and give survivors at long last a legal means in which to recover payouts from those policies.

Thank you for your time and consideration of this urgent and most important legislation.

Sincerely,

Sandy Hoffman

Sandy Hoffman, President
Generation After – Milwaukee

Suzanne Marshak
9229 Washington
Morton Grove, Illinois 60053
(847) 679-1718 (Phone)

February 5, 2008

Congresswoman Ileana Ros-Lehtinen
2160 Rayburn House Office Building
Washington, D.C. 20510
Fax Number: (202) 226-7269

and

Congressman Robert Wexler
2241 Rayburn House Office Building
Washington, D.C. 20510
Fax Number: 202-226-2722

Re: ICHEIC and Insurance Bill 1746

Dear Representatives Ros-Lehtinen:

Dear Represntative Wexler:

I am writing to tell you about my unfortunate experience with the International Commission (ICHEIC) and the urgency for passage of legislation to allow survivors like myself to have the ability to get information from the insurance companies and take them to court if necessary.

I am a 78 year old Holocaust survivor from Paris, France. I somehow managed to survive against all odds, and I'm sure I don't have to tell you everything my family and I went through.

When ICHEIC was started, I filled out forms naming many of my relatives who I knew were prominent and relatively well-to do residents of Budapest, Hungary, including my uncle Albert Bleich who was a very prominent and wealthy physician. Generali responded with a letter stating that it had sold my uncle one policy in 1921 worth 50,000 Hungarian crowns, but it was not payable because it lapsed before the Holocaust. However, the company did not provide me with any information to justify that conclusion.

Considering my uncle's circumstances, I find it very unlikely that he would have only had one policy for a relatively small amount. In addition, Generali claimed that it did not sell any policies to other family members. However, given the suspicious response on my uncle's one policy they acknowledge, why would I believe these denials?

HR 1746 would enable survivors like me – with the assistance of lawyers of our own choosing -- to finally see for ourselves what information is in the companies' records. Given the companies' disgraceful behavior during and after WWII, why should we be the only Americans who don't have such rights against insurance companies who treated our families in bad faith?

I thought I was getting on in years when ICHEIC started, and now it is 10 years later. Will I ever see justice in my lifetime? What about the other survivors who aren't as healthy as I am who might feel too frustrated to speak up? Please give us our rights back and allow us to control our own affairs. Really, all we need is the same protections other Americans have against these avaricious insurance giants.

Thank you very much.

Sincerely,

Suzanne Marshak

cc: Representative Barney Frank – (202) 225-6952 (Fax)
Representative Mark Steven Kirk – (202) 225-0837
Representative Janice Schakowski – (202) 226-6890

MiamiHerald.com

Posted on Sun, May. 06, 2007

Holocaust still reverberates

I want to express my gratitude to U.S. Rep. Ileana Ros-Lehtinen, R-Miami, for her tireless efforts on behalf of Holocaust survivors. Most recently she introduced legislation to require insurance companies that profited from the Holocaust to finally open their records and allow survivors to go to court if the companies will not settle.

I was a child in 1939 when my family peered hopefully from the Atlantic Ocean at the shores of Miami Beach praying for permission to land. That permission never came, and hundreds of my shipmates were returned to Europe where they were murdered by the Nazis.

My father and several other members of my family were among the doomed. I was lucky to survive with my brother.

Our father had told us about an Allianz life-insurance policy that he bought to provide for us if something happened. He even gave us the number. For years Allianz denied there was a policy.

When the International Insurance Commission was created in 1998, I believed that at long last there might be some recognition of our father's Allianz policy. Sure enough, the company finally admitted in 2004 that it sold insurance to our father.

But it stated that the proceeds were paid in 1938 to "an unknown recipient." This is ridiculous. How could an insurer stay in business with such sloppy record keeping?

Ros-Lehtinen's legislation would finally force the company to tell us the truth and allow us to receive what our father was trying to provide 60 years ago. I speak for hundreds of survivors in South Florida when I say thanks to Ros-Lehtinen for her humanity and courage.

HERBERT KARLINER, Miami

Herbert Karliner

Mr. George Curtis
3500 Mystic Point Drive
Apartment 2204
Aventura, Florida 33180

February 5, 2008

Congresswoman Ileana Ros-Lehtinen
2160 Rayburn House Office Building
Washington, D.C. 20510
Fax Number: (202) 226-7269

and

Congressman Robert Wexler
2241 Rayburn House Office Building
Washington, D.C. 20510
Fax Number: 202-226-2722

Dear Congressman Wexler and Congresswoman Ros-Lehtinen:

My name is George Curtis (Kertesz). Ms. Ros-Lehtinen, do you remember when we met at the Greater Miami Jewish Federation last March? I showed you my father's Generali policy that they still refuse to pay. I want to thank you again for all you are doing to help survivors. At the age of 94, I do not have much more time for decency and justice so I hope you are successful in getting HR 1746 passed right away.

ICHEIC allowed Generali to deny my family's insurance claim even though I have a copy of the policy my father bought in 1927, and even though Generali has no proof that it was paid or cancelled before the Holocaust. Generali gave me no records and ICHEIC did not require the company to do so. ICHEIC allowed the company to keep my father's money in spite of everything my family endured.

I was born in Kalocsa, Hungary, in 1914. My parents were Sandor Kertesz (born 1885) and Ilona Hahn Kertesz. My father operated a successful wholesale business supplying all the general stores in the city. The business was called "Kertesz Sandor A.G." It was a family owned corporation.

I am attaching a copy of the insurance policy my father bought from "Triesti Altalanos Biztosito Tarsulat (Assicurazioni Generali)," Policy No. 52603, in 1926, for the face amount of "Dollars 2,000 – ch. New York." The policy was to mature in 15 years. Premiums were payable at the rate of "33.58 Dollar New York." The insured was listed as "Sandor Kertesz" whose birthdate is listed as "1885," the year my father was born.

My parents were Holocaust victims, having been deported to a concentration camp in Austria in 1944; they were fortunate to survive and return to Hungary. I personally was captured in 1943 by the Russians and was a POW in Siberia before returning to Hungary in 1948. My father died in Hungary in 1953 and my mother came to the United States in the mid-1970s and died here.

Even with this paper, when I filed a claim to Generali, the claim was denied by the Generali Trust Fund in June 2002. The letter stated: "Policy Nr. 52603 was cancelled or surrendered before the year 1936 i.e. does not refer to the Holocaust Era, and therefore no payment can be offered in respect of it."

Generali's explanation cannot be correct because my father's business continued successfully long after 1936, until his deportation in 1944. It is well known that the Jews of Hungary were not fully devastated by the Holocaust until 1944, and that many businesses were able to function prior to 1944. Further, Generali provided no documentary proof of how it ascertained that the policy was surrendered before the year 1936. I believe I am entitled to such proof under ICHEIC rules, otherwise Generali has failed to overcome the claim established by the policy.

Under ICHEIC rules, the fact that I had a policy was supposed to mean that the burden would then be on the company to prove it paid the policy or that it was no longer valid. Generali never did this, but ICHEIC went along. ICHEIC allowed Generali to violate the ICHEIC rules. Why allow the companies that cheated us decades ago get away with such behavior?

The actual value of the $2,000 policy today would be between $75,000 and $500,000, depending on the rate of return. And, why should Generali get away with only paying the economic loss? What about its conduct in denying payment after the war? Why should I bear the burden of this company's piracy?

HR 1746 will allow me to get this serious matter out of the secret world of ICHEIC and politicians, and into the U.S. courts where it belongs. Isn't this a right that I as an American citizen should be able to take for granted? Something is seriously wrong here and I implore your colleagues in Congress to fix it.

Sincerely,

George Curtis

George Curtis

cc: Congressman Barney Frank (202) 225-6952

○

January 31, 2008

Ms. Diane Koken
Former Vice Chairman
International Commission on Holocaust-Era Insurance Claims
1102 Oakmont Drive
Lancaster PA 17601

Re : Holocaust Related Insurance Claims : AXA and Winterthur Groups

Dear Ms. Koken,

You had inquired as to AXA's treatment of Holocaust related insurance claims received since the closing of the International Commission on Holocaust Insurance Claims ("ICHEIC") at the end of March 2007.

As you know, AXA Group actively participated in the ICHEIC process from the beginning, as did Winterthur Group which was acquired by AXA in December 2006. During the ICHIEC process, both AXA and Winterthur made clear on more than one occasion that, following the closure of ICHEIC, we would continue to handle any Holocaust related insurance claims received directly by our companies in accordance with ICHEIC standards (including the ICHEIC's relaxed standards of proof and valuation standards). In other words, we had (and have) no intention to stop reviewing and paying valid Holocaust related insurance claims just because the ICHEIC process has now come to a close. I reiterate that commitment today on behalf of both AXA Group and Winterthur Group,

Since the closing of ICHEIC at the end of March 2007, AXA and Winterthur companies have received a total of ten new claims[1] concerning Holocaust related insurance policies. After reviewing these in accordance with ICHEIC's relaxed standards of proof, we identified a match in our database on one policy which resulted in a compensation payment in accordance with ICHEIC's valuation standards. We believe that the small number of claims received since the closing of ICHEIC confirms the effectiveness of the ICHEIC's outreach program to publicize its claims process and demonstrates the comprehensive nature of the ICHEIC process.

Please let me know if you would like any additional information or if I can be of any further help.

Very truly yours,

George Stansfield
AXA Group General Counsel

[1] Of these new claims : (1) seven were sent to us for review by the Commission Drai which continues to operate in France to treat Holocaust related insurance claims, and (2) the other three were received directly by Winterthur in Switzerland. After reviewing these claims, we found a match in our database with one of the policies submitted to us through the Commission Drai and we paid out an amount of €10 476 on that policy in accordance with ICHEIC valuation standards. No matches were found on the other claims. In addition to these new claims, we have received one inquiry at Winterthur Belgium.

25, Avenue Matignon 75008 Paris, France
Téléphone : +33 1 40 75 57 00 Fax : +33 1 40 75 47 93 www.axa.com

February 4, 2008

Diane Koken
Former Vice Chairman
ICHEIC
1102 Oakmont Drive
Lancaster PA 17601

Dear Ms. Koken:

In view of the upcoming hearing regarding H.R. 1746, we provide our company intentions regarding future claims which may be submitted on Holocaust era insurance policies.

As you are likely aware, Generali, a founding member of ICHEIC, has been committed for more than a decade to finding and paying claims in respect of its former policyholders and their heirs who suffered during the Holocaust. This commitment has resulted in thousands of individual claims being paid. Generali has never wavered from this commitment. In that vein, after the conclusion of the ICHEIC process, Generali entered into a US Federal District Court settlement that gives claimants an additional opportunity to file court-supervised claims (in some cases through mid-2008, four years beyond the ICHEIC claims deadline).

Generali has facilitated claims by supporting two unprecedented worldwide outreach programs targeted to reach all potential claimants, first through ICHEIC and subsequently as approved by the US court. If new claims are submitted after the Court approved settlement deadline, Generali will continue to process these claims, pursuant to the valuation guidelines and relaxed standards of proof of ICHEIC. Generali will, of course, maintain the procedures and mechanisms necessary to manage any such claims professionally and efficiently.

We hope the foregoing clarifies any concern regarding this issue.

Sincerely,

Assicurazioni Generali S.p.A.

1 Liberty Plaza, New York, N.Y. 10006-1477 • Telephone: (212) 602-7600 • Fax: (212) 587-9537/8

ZURICH

Ms
Diane Koken
Former Vice Chair
International Commission on Holocaust Insurance Claims
1102 Oakmont Drive
Lancaster PA 17601
USA

Your reference
Our reference
Date December 4, 2007

Holocaust Related Insurance Claims

Zurich Insurance Company

Mythenquai 2
P.O. Box
8022 Zurich
Switzerland

Phone +41 44 625 25 25
http://www.zurich.com

Dir. phone +41 44 625 21 30
Dir. fax +41 44 625 01 30
matthias.landolt
@zurich.com

Dear Commissioner Koken

You have requested information on Zurich's activities as respects Holocaust related insurance claims in the aftermath of the closing of the International Commission on Holocaust Insurance Claims (ICHEIC).

Zurich, as you are aware, was a founding member of ICHEIC. In anticipation of the ICHEIC claims process Zurich set up an elaborate claims investigation support process and developed an extensive electronic data base linking incoming claims information with all relevant policy and archival information available to us in-house or through outside sources researched by us and through the ICHEIC-based investigations. This process is supported by detailed guidelines, methodologies and checklists, enabling us to closely record incoming queries and to continually monitor the status of such claims. As a result of such procedures and processes Zurich believes it has developed an expeditious and broadly based system to handle any incoming claims – a fact which has been amply supported and audited by ICHEIC-approved independent audit firms.

Indeed, over the last several months these processes have been further refined and streamlined and, we believe, made more accessible with a view towards maintaining the process well into the future if and when further inquiries should be submitted to Zurich.

We have repeatedly indicated in- and outside ICHEIC that Zurich is be prepared to handle Holocaust related inquiries following the close-down of ICHEIC by applying the criteria developed by ICHEIC, including such rules as relaxed standards of proof, valuation rules and interest rate assumptions. At this point, we unqualifiedly reconfirm our ongoing commitment to equitably handle any such inquiries in the future on the same basis.

We would like to mention that since March, 2007 when ICHEIC terminated its operations, no claims or inquiries have been received by Zurich (and, accordingly, no award has been made) which we take as a welcome sign that ICHEIC has done a very credible job in reaching out to possible claimants and in identifying, matching and making accessible all relevant information available through company and outside archives alike. In the event any claims or inquiries are received in the future, Zurich stands ready and prepared to deal with any future query effectively and in line with best practice standards already in place.

Yours sincerely

Zurich Insurance Company

Matthias Landolt