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# HOLOCAUST ERA INSURANCE RESTITUTION AFTER ICHEIC

## HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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# HOLOCAUST ERA INSURANCE RESTITUTION AFTER ICHEIC

**TUESDAY, MAY 6, 2008**

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN RELATIONS,
*Washington, DC.*

The committee met, pursuant to notice, at 2:27 p.m., in room SD–419, Dirksen Senate Office Building, Hon. Bill Nelson, presiding.

Present: Senators Bill Nelson, Menendez, Cardin, and Coleman.

## OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator Bill NELSON. Good afternoon and welcome. The Senate Foreign Relations Committee is meeting to consider a difficult but extremely important issue, compensating Holocaust survivors and their heirs for the value of Holocaust-era United States insurance policies that they held before the war, but were lost or had stolen from them by various entities, including the Nazi regime.

This afternoon I have just been informed that we will have two recorded votes called by the Senate at 2:30. It is my intention to go ahead and start the meeting and get as far as we can until I have to recess the committee to get over there to vote. I will vote on both of those and come back immediately and resume the hearing.

This is the first time a Senate committee has met specifically to consider Holocaust-era compensation issues. I've been involved with this issue for more than a decade. In my former life as Florida's elected insurance commissioner in the nineties, I was part of an international effort by regulators in the 50 States, as well as Jewish groups, that ultimately forced many European insurers to come to the table and for the first time begin paying restitution to survivors.

Florida is a State with a large population of Holocaust survivors, one of the largest concentration of Holocaust survivors in the world. The three States that have the highest degree of concentration of survivors are New York, Florida, and California.

Most are in their eighties or nineties. The youngest are in their seventies. They are extremely valuable citizens that we honor and, while no amount of financial compensation or property restitution can ever make up for the indescribable wrong of the Holocaust, we all are committed to doing what we can to assist the survivors to

obtain meaningful compensation due to them for the assets that they lost during the war and around the period prior to the war, and to have that compensation come to them without delay.

This hearing is timely for a number of reasons. It comes only a few days after the national commemoration of Holocaust Remembrance Day, on which people all around the world acknowledge the historical atrocity of the Holocaust and say a prayer for the 6 million Jews who were murdered by the Nazis and their collaborators.

Second, this hearing gives the Senate the opportunity to examine what has been done to compensate victims of the Holocaust for the unpaid value of the insurance policies that they held before the war. Last spring the International Commission on Holocaust Era Insurance Claims, ICHEIC, closed its doors after paying out $306 million to more than 48,000 Holocaust victims and their heirs, principally for life insurance policies. Other insurance claim processes in Austria and The Netherlands are winding down, and there is a pending class settlement involving one of the insurance companies that had written a significant portion of life insurance policies for Jewish customers before the war, and that's the company Generali.

This disputed settlement involves some 45,000 pending claims that await evaluation for payment. Now that ICHEIC has closed its doors, the question remains: What is left to be done? Are there companies that have participated in ICHEIC that haven't done enough to compensate Holocaust survivors who held insurance policies? There is disagreement on this point that we'll hear more about today.

Supporters of a bill introduced in the House by Representatives Ros-Lehtinen and Wexler include certain organizations representing Holocaust survivors. They are represented here today by Mr. Rubin, Professor Rosenbaum, and Mr. Dubbin, and are calling for legislation that directs all companies doing business in the United States that issued insurance policies during the Holocaust era to disclose all the names of policyholders to the National Archives for publication. They also seek a new Federal cause of action that will enable them to sue in Federal court for damages and attorney's fees for the compensation for their Holocaust-era insurance policies.

Others here today include Ambassador Eagleburger, Secretary Eagleburger and Eizenstat, who led the effort to negotiate, establish and run ICHEIC, and Mr. Kent, a Holocaust survivor who was an ICHEIC commissioner. They, along with several major national Jewish organizations, the governments, including Germany, Austria, and the European Union, that participated in the negotiated resolution for compensation, and some plaintiffs' attorneys who have represented Holocaust survivors in class action litigation to obtain compensation for insurance, all of those groups oppose the legislation proposed in the House and support efforts to ensure that insurance companies that participated in ICHEIC continue to honor their commitment to accept and evaluate under relaxed ICHEIC standards insurance claims for survivors and their heirs.

They will also argue that the legislation will undo commitments made by the United States to give countries and companies that participated in ICHEIC legal peace for agreeing to pay claims

under a negotiated resolution and imperil ongoing efforts to obtain additional compensation in a host of areas, such as pensions or property restitution.

Now, one entity involved in assisting Holocaust survivors and their heirs to process claims, the New York Holocaust Claims Processing Office, is represented here today by Mrs. Rubin, no relation to Mr. Rubin. The office possesses expertise in the area of Holocaust compensation in many areas and continues to assist survivors from anywhere in the world. They have been examining ways to provide ongoing monitoring and assistance to ensure that insurance companies make good on their promise to accept claims now and forever under relaxed standards. So we will hear from Mrs. Rubin as well.

Now, are there countries or companies that did not participate in the ICHEIC that should be called upon to compensate Holocaust survivors for the unpaid value of their insurance policies? There's no dispute on that question. Millions of Jews lived in Eastern Europe before the war and, while many of them lived in rural areas or were too poor to afford insurance, there were certainly Jews who purchased insurance policies from subsidiaries of Western European companies whose assets were taken by the Communist governments that came into power or by Eastern European companies that were nationalized.

In both cases, the Eastern European countries did not participate in ICHEIC or contribute to any of the insurance compensation efforts that have taken place. ICHEIC even paid claims on those Eastern European policies from out of the humanitarian funds that were contributed by the ICHEIC companies and paid $31 million on more than 2,800 claims.

Unfortunately, some countries have not taken nearly enough action to provide restitution for insurance or other property taken from Jews and other victims of Nazi persecution. Poland, for example, is the sole member of the Organization for Security and Cooperation in Europe not to have enacted restitution legislation, and this is unacceptable.

That's why I'm pleased to announce today that, working with my colleagues Senator Gordon Smith and Ben Cardin, we've drafted and plan to introduce a bipartisan resolution urging all countries, especially those in the former Eastern Europe, to enact fair and comprehensive private and communal property restitution legislation and do so as quickly as possible. Our resolution will call for the Secretary of State to engage in dialogue to achieve the aims of the resolution as well as the convening of an international, intergovernmental conference to focus on the remaining steps necessary to secure restitution and compensation. We hope the resolution will spur our own and other European governments into action and call attention to the important unfinished business.

In addition, I am committed to helping survivors to obtain compensation for insurance and other property that they lost during the war or had stolen from them by the Nazis.

Now, before I turn to my colleague, the ranking member, I want to ask unanimous consent to make the following documents a part of the record: The written statements of all the witnesses; the written statement supporting H.R. 1746 from Sidney Zabludoff; a letter

supporting H.R. 1746 from the Organization of Forced Laborers Under the Nazi Occupation; a petition supporting H.R. 1746 from the Generations of Shoah International; a letter opposing H.R. 1746 jointly signed by the Anti-Defamation League, B'Nai B'rith International, the Conference on Jewish Material Claims Against Germany, the Religious Action Center for Reformed Judaism, and the World Jewish Congress; a letter opposing H.R. 1746 from the American Jewish Congress; a letter opposing H.R. 1746 from Agudoth Israel of America; a letter opposing H.R. 1746 from plaintiffs' attorney Robert Swift; and a letter opposing H.R. 1746 from plaintiffs' attorney Stanley Chesley.

[The material referred to is located in the Appendixes to this hearing print.]

Senator Bill NELSON. I really appreciate our witnesses and I turn to my colleague Senator Coleman——

Senator COLEMAN. Mr. Chairman, I know that we have a vote——

Senator Bill NELSON [continuing]. Without objection.

Senator COLEMAN. Thank you, Mr. Chairman.

I know we had a vote posted about 10 minutes ago, a 15-minute vote.

Senator Bill NELSON. Yes.

Senator COLEMAN. So I would suggest that I go vote, and I'm not sure if we want to put the hearing in recess, your call, but then after the votes—there may be two votes—that we then come back and I would give my—deliver my statement, and then turn to the witnesses.

Senator Bill NELSON. Certainly. We have how many minutes left?

Mr. BOWMAN. 7½.

Senator Bill NELSON. 7½. So I had announced before you got here, and that's why I started 1 minute early, trying to get it in, that maybe they would delay the vote past 2:30. But they didn't. They started right on time. So we will recess the hearing and we will come back.

Now, let me remind all of the witnesses, because of this interruption, that's going to take a few minutes for us to vote and then vote on the second recorded vote in the Senate, and because of the length of the agenda, we're going to ask each of the witnesses to keep your statement to 5 minutes. There is a light box up there that will indicate when 5 minutes is over by turning red. But I'm going to ask the Clerk of the committee, who will stand at the end of the 5 minutes; he'll come right over here, so everybody can make sure that they understand. That's the only way we're going to be able to keep on time.

All of your written statements are entered into the record without objection, and we will now recess and resume upon call of the chair.

[Recess.]

Senator Bill NELSON. If everybody could take their seats. In my opening remarks I inadvertently said that there would be a letter entered in the record from the American Jewish Congress. It's from

the American Jewish Committee, as well as a letter from the U.S. Department of State.

Senator Coleman.

**STATEMENT OF HON. NORM COLEMAN, U.S. SENATOR FROM MINNESOTA**

Senator COLEMAN. Thank you. Thank you, Mr. Chairman. I'd like to begin by thanking you for holding this critically important hearing and for your longstanding leadership in seeking Holocaust-era insurance restitution to victims and their heirs. I'd also like to thank Senator Vitter for graciously allowing me to serve as ranking member of this hearing.

Mr. Chairman, just last Thursday I attended the Days of Remembrance for Holocaust Victims event at the Capitol Rotunda, where I had the high honor of joining Polish-born Holocaust survivors Freida Weinberg in lighting a candle in remembrance of those who perished in the Holocaust, including those of her family.

Every time I think of the Holocaust and how it represents the deaths of a population equivalent to everyone living in my State of Minnesota and then some, I am stunned at the evil human beings are capable of. So, Mr. Chairman, I come to this hearing with a heavy heart and an abiding commitment to seeing that victims have received the justice they deserve.

To me the fundamental question of this hearing is whether victims of the Holocaust have been treated right, has justice been served? As I've looked at this issue, there can be no denying that for many of these victims and their families the effort at rendering justice was too long in the making. It was only in 1998, and thanks in great part to the efforts of you, Mr. Chairman, that action was finally taken to address unpaid Holocaust insurance claims with the establishment of the International Commission on Holocaust Era Insurance Claims, ICHEIC.

But now, a little over a year since ICHEIC has closed its doors, we have been confronted with important and troubling questions as to whether victims who have gone through the ICHEIC process have received the justice they deserve, questions relating, for instance, to the fairness of ICHEIC's claims valuations and claims processing. These are not some technical bureaucratic issues, but rather issues at the very heart of the matter: Did ICHEIC do right by the victims?

Beyond ICHEIC, it is important for us to note the full extent of those victims out there who are waiting for justice to be served, that there are others, in particular for those victims from Eastern and Central Europe. What is currently being done to help these victims with unpaid insurance claims?

In the name of justice, these questions deserve to be answered. With many survivors in the twilight of their lives, we have a solemn but urgent obligation to ensure the appropriate rendering of justice. Ultimately, if injustice indeed remains then we must act to ensure that survivors and their families receive the compensation they deserve. They are owed nothing less.

Mr. Chairman, when we talk to Holocaust survivors and the relatives of victims the refrain is "Never again." The Holocaust happened in part because it was unthinkable. As we think about it, we

reduce its power to reoccur. What this hearing is about is our efforts at ensuring justice for those who suffered and to keep the Holocaust in front of our minds to be sure we are always working toward "Never again."

I would note, Mr. Chairman, that as you outlined in your opening statement there are clear differences in what should be the right approach or what has been the approach, to whether justice has been done for victims of the Holocaust regarding insurance restitution. You read a number of letters both in support and opposition. I think this hearing is what congressional hearings should be. It's an opportunity to provide a forum for us to listen and then respond.

Just on a personal note, my forebears, they came to this country before the Holocaust, before the rise of Hitler. They came in the early 1900s, some in the late 1880s. So for those of us of the Jewish faith, the experience is either personal, your own relatives, or personal if not your relatives, of friends and neighbors. It's a very real connection. So on every level I appreciate the opportunity that you've provided for this forum and this hearing. I think it's important. I think we've got to listen and then we have to figure out what's the next step.

Thank you, Mr. Chairman.

Senator Bill NELSON. Thank you, Senator Coleman.

Senator Cardin, did you want to make a quick opening statement?

**STATEMENT OF HON. BENJAMIN CARDIN, U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Let me just be very brief because I do want to hear from our witnesses and the other panel. Thank you for holding this hearing, Mr. Chairman. I appreciate it very much. Senator Coleman, thank you for your leadership in this area.

I do think it's important for us to have the right record on the issues concerning the insurance restitution issues. It's part of a broader problem of property restitution and community property and personal property confiscated during the Nazi era and continued during the Communist regimes in many countries.

I want to just acknowledge with thanks the tremendous work that was done in an effort to bring to a proper conclusion the insurance issues. It was a very complicated and difficult issue. I think what we were looking for was an agreement that would be fair, acknowledge the injustices that were done, and provide relief to those who were entitled to relief in an effective manner so that moneys could actually get out. And I thank those who worked on this issue and I appreciate this opportunity to get a better understanding of that.

I just want to make one quick comment. Property confiscation issues are very emotional. I had a case of a family that had their property taken in Romania. When they tried to get the property back and got a court judgment, the government wouldn't respect the court judgment. It went on and on and on. It wasn't until we put a spotlight on that, through our Ambassador and through Members of Congress, that we were able to get the property returned to its rightful owner.

I just would like to point out that it's complicated when a country has gone through a Nazi regime where properties were confiscated and Communists who didn't want to do anything about it. Just in the last dozen years there's been the opportunity to correct the injustice. Some countries have responded well, have enacted good laws. Others have not.

Although we're looking at insurance issues today, I hope that we will look at this with a broader view, Mr. Chairman, to make sure that countries that are involved where properties were confiscated have effective laws to right the injustices that were done.

Senator Bill NELSON. Now, as the ground rules are, because of the delay and the length of the agenda, 5 minutes. You can use the 5 minutes however you want. Everybody's written testimony and supporting documents are entered into the record. At the end of 5 minutes, the clerk will stand up and come right up here so you can be sure to see your time.

We're going to go just in the order as the agenda is printed. Mr. Roman Kent.

**STATEMENT OF ROMAN KENT, HOLOCAUST SURVIVOR AND CHAIRMAN, AMERICAN GATHERING OF HOLOCAUST SURVIVORS AND THEIR DESCENDANTS, NEW YORK, NY**

Mr. KENT. Good afternoon, Senator Nelson, members of the Foreign Relations Committee.

At the outset I want to express my gratitude and that of all Holocaust survivors to you for addressing issues of Holocaust-era compensation and restitution, an effort for which we have little time remaining.

I am a survivor of Lodz Ghetto, Gross-Rosen, Darnau, Flosenburg, and Auschwitz concentration camps. I am chairman of the American Gathering of Jewish Holocaust Survivors and an officer of the Claims Conference. I participated in the negotiations leading to the establishment of ICHEIC and subsequently played an active role as a commissioner. For over 20 years, I have actively participated in Holocaust-related compensation negotiations with the German Government which have resulted in providing hundreds of millions of dollars annually for the benefit of needy Holocaust survivors worldwide.

I am greatly concerned that this proposed legislation will help only a few survivors, but most certainly will be detrimental to survivors who are in need of immediate medical and financial assistance.

To address the ineffectiveness of lawsuits, ICHEIC became the first and indeed the only organization to offer Holocaust victims and their heirs a way to pursue Holocaust-era insurance claims at no cost, without regard for any statute of limitations, even if the policies could not be produced. However, only the five European companies which signed the agreement to work with ICHEIC and German insurance companies provided funding for ICHEIC.

Proponents of the bill have presented estimates ranging from $3 to $17 billion and even higher up to the stratosphere which they claim represent the value today of unpaid Jewish insurance policies purchased in prewar Europe. However, the Holocaust Claim Processing Office has just produced an analysis of the insurance data

in prewar Europe. Review of this data readily leads to the conclusion that the approximately $600 million secured by ICHEIC from the companies which participated in its process clearly represents the recovery of a significant part of the portion of the unpaid Jewish Holocaust-era policies.

In the end, was ICHEIC perfect? No. Even though nothing can remedy the wrongs perpetrated during the Holocaust, each new compensation or restitution program brings the inflated hope for survivors that now, finally, we will get back some of the material losses that were taken from us. ICHEIC suffered from such exaggerated expectations. Yet, in spite of its shortcomings, what ICHEIC accomplished was without precedent. ICHEIC provided a forum for identifying and processing Holocaust-era claims, even without documentation, even without naming the policy-issuing company, where for 60 years, practically speaking there had been nowhere to go.

Second, ICHEIC did not charge survivors, nor was it bound by any statute of limitations.

Third, ICHEIC paid on policies issued by insurance companies which no longer exist.

Fourth, ICHEIC published a list of over 500,000 most likely Jewish insurance policyholders.

Fifth, ICHEIC recovered approximately $600 million from participating insurance companies, which was used to pay claims and for humanitarian purposes, including the critically needed home care, particularly in Florida.

Finally, insurance companies which worked with ICHEIC will continue to accept and process claims.

I believe that H.R. 1746 will fail to provide an effective mechanism to compensate Holocaust victims and that my fellow survivors and I will, most likely, not live to see any of its results. I worry that the legislation will unjustifiably raise survivors' expectations, only—in the end—to profoundly disappoint them. The overwhelming majority of policies which would be disclosed would not be Jewish-purchased.

I also want to emphasize that I am very concerned that the legislation will greatly damage critical ongoing negotiations, especially with Germany, involving hundreds of millions of dollars in Holocaust-related compensation which, as you know, is desperately needed now, not tomorrow, not next year, but now.

Thus, instead of the proposed legislation, I respectfully suggest that congressional action addressing the following issues would provide critical assistance to survivors and their heirs:

First, in order to ensure that insurance companies which participated in ICHEIC continue to process claims submitted after the close of ICHEIC, which they have promised——

Senator Bill NELSON. Mr. Kent——

Mr. KENT [continuing]. It would be valuable for Congress to help develop a mechanism to monitor the processing of such new claims.

Senator Bill NELSON. Mr. Kent, would you just wrap up now?

Mr. KENT. Yes; I will wrap it up.

Second, since most of the remaining unpaid Jewish Holocaust-era policies were issued by companies which did not participate in ICHEIC, it would be helpful for Congress to focus its efforts on de-

veloping measures to have such companies address the issue of Holocaust-era insurance.

Finally, reimbursement is also sought from Eastern European governments for claims paid by ICHEIC on policies issued by insurance companies that were nationalized or had their assets nationalized. We would request congressional assistance in the effort to recover such funds, as well as in the broader problem of having Eastern European countries, for example Poland, address and resolve in a meaningful way the restitution of property confiscated during World War Two.

We want to deeply appreciate your assistance and in the best, and we hope that you will continue to provide such support in the future.

Thank you. Thank you very much.

[The prepared statement of Mr. Kent follows:]

PREPARED STATEMENT OF ROMAN KENT, HOLOCAUST SURVIVOR AND CHAIRMAN, AMERICAN GATHERING OF HOLOCAUST SURVIVORS AND THEIR DESCENDANTS, NEW YORK, NY

I am a survivor of Auschwitz, 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 have been a vigorous advocate for what, in my experience and judgment, is best for survivors and I have struggled to find ways for survivors, both in the U.S. and abroad, to obtain some measure of justice for us. To that end, I have been deeply involved in activities which preserve the memory of the Holocaust and help, as much as possible, the tens of thousands of survivors desperately in need of home care, medical assistance, and other services in the twilight of their lives.

For over 20 years, I have actively participated in Holocaust-related compensation negotiations with the German Government which have resulted in providing hundreds of millions of dollars annually for the benefit of Holocaust survivors worldwide. In too many instances, this has been the survivors' only available source of assistance of any sort.

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. However, before proceeding, I would like to express my gratitude to Chairman Nelson, as well as to the other members of this subcommittee, for addressing issues of Holocaust-era compensation and restitution. The U.S. Congress has 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 several key points:

- First, the insurance companies which participated in ICHEIC have committed to continue to accept and process Holocaust-era insurance claims received after the close of ICHEIC—applying the ICHEIC standards in their decisions—at no cost to claimants. In addition, the Holocaust Claims Processing Office ("HCPO") of New York State, will assist survivors nationwide filing such claims with insurance companies, at no charge.
- Second, the proposed insurance legislation will raise the expectations of survivors only, in the end, to disappoint them. The costs, time, and effort required to engage in the litigation the proposed legislation authorizes, will be excessive, if not prohibitive. In addition, the mandatory publication by the insurance companies which participated in the ICHEIC process of all policyholder names will, at this point, yield little new information regarding policyholders who were victims of Nazi persecution. Even assuming that stringent European data privacy hurdles could be overcome, the overwhelming majority of the policies disclosed will not be Jewish-purchased, while most of those that are will have been previously published and/or 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 legislation will, by undermining previous commitments and reopening previous agreements, significantly damage critical, ongoing negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding immediately required for survivors in need in the United States and worldwide. Without question, these negotiations offer the real prospect of substantial benefits for many survivors now, as compared to the doubtful likelihood of insurance recoveries for more than a few survivors and their heirs offered by the enactment of H.R. 1746.

THE CONTEXT IN WHICH ICHEIC WAS ESTABLISHED

Since the beginning of World War II and continuing for almost the next 60 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, and few attorneys stepped forward who were willing to help with their plight.

Insurance companies certainly were averse to pay or even give a fair hearing to such claims. Indeed, there are chilling examples of companies insisting that claimants produce death certificates, including from Auschwitz, of deceased policyholders. The absence of relevant documentation, statutes of limitations, and the prohibitive costs and time involved proved insurmountable obstacles to successful recovery for virtually all potential claimants. In addition, many insurance companies that had sold insurance in prewar Europe no longer existed after the war and Communist control of Central and Eastern Europe prevented insurance recoveries for survivors in those countries.

Clearly, there was a vacuum in post-war insurance restitution efforts. There was no effective way for survivors to obtain payment for their prewar insurance claims. After struggling to survive Nazi concentration camps, hardly any survivors had the documentary proof necessary to establish the existence of insurance policies, or the evidence simply no longer existed as it was destroyed or lost during and after 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 to fill this void and enable claimants to attain a measure of justice 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 included representatives from the American Gathering of Holocaust Survivors and the Centre of Organizations of Holocaust Survivors in Israel—which are organizations that, 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 provided a forum—at not cost to survivors and without regard to statutes of limitations—to identify, process, and compensate previously unpaid claims based on Jewish Holocaust-era insurance policies. ICHEIC, however, did not receive funds covering the entire European market. Rather, 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"), which provided funding for ICHEIC, represented only a portion of the vast European insurance market. Insurance companies representing the larger part of the market did not participate in the ICHEIC process.

No funding or any other sort of participation, for example, was forthcoming 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 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.

Nonetheless, 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. Yet, ICHEIC, through its own research, located available information on the policies and evaluated them 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 had to be resolved during negotiations with the insurance companies which participated in the ICHEIC process. One such issue related to the differing data protection and privacy laws of each country—Germany, Italy, France, and Switzerland—in which these companies are located. In an effort to have as many names as possible identified and disclosed of those 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, each country's laws needed to be addressed individually. Publication of large numbers of names, where the overwhelming majority of the individuals were neither Jewish nor 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 policyholders 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 not presented in court. However, as we know, many Holocaust-era insurance policies were destroyed, lost, 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. Without an insurance policy, how is the identity of the policyholder, the face value of the policy, the premiums paid and, most importantly, the beneficiary ascertained, so many years later? How can a court rule in favor of any claimant when the beneficiary of a policy is unknown? ICHEIC decided, as a matter of principle, that the family would receive compensation for the policy to address such circumstances.

Moreover, it is rare, in Holocaust-era insurance policy cases, to have definitive proof concerning whether a policyholder continued to pay premiums. Yet this is important information because if premium payments were not made, the beneficiary would receive less than the full face value of the policy. ICHEIC addressed this issue as well, deciding that all premiums were deemed to have been paid if they had been paid as of the start of the war in each country.

As a result, ICHEIC paid on claims in circumstances where the company was not named and the insurance policy was not produced. It also paid on policies which were produced, but which had been issued by Central and Eastern European companies which had been nationalized or whose assets had been nationalized.

In sum, the ICHEIC process was a response to the ineffectiveness of lawsuits and compensation programs in dealing with issues raised by Holocaust survivors related to their prewar life insurance policies. It 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, the companies which participated in the ICHEIC process did not represent the entire, nor even the majority of, the Holocaust-era European insurance market.

THE VALUE OF JEWISH-OWNED HOLOCAUST-ERA INSURANCE

The various assertions made these past months, regarding the percentage of unpaid Jewish Holocaust-era policies paid through ICHEIC, makes at least one thing clear: There is no universal agreement on the relevant figures. There have been wide-ranging, sometimes completely unrealistic, estimates offered regarding the total value of Jewish Holocaust-era insurance policies which remain unpaid, and unsubstantiated allegations regarding what portion of that amount was paid by companies which participated in ICHEIC (without any determination having been made of how much of the relevant market can be attributed to policies actually sold by ICHEIC companies).

Not surprisingly, almost seven decades after the outbreak of World War II, such calculations will necessarily vary broadly depending on available documentation and on which values and methods—out of a broad range of possibilities—are used for the calculations.

To be able to function and begin processing claims, ICHEIC had to resolve a number of such issues regarding what values and methods were appropriate to use, in

the face of profound differences between the Jewish side, on the one hand, and the insurance companies, on the other. After lengthy arguments, the parties involved in ICHEIC recognized the virtually endless potential for disagreements over such determinations and ultimately were able to develop a methodology accepted by the parties which, in turn led to the negotiated settlements and compromises essential to moving a slow and difficult process forward.

The determination of the present value of unpaid, prewar Jewish insurance policies requires, under the ICHEIC valuation system or any valuation system, 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) A 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) are 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 which had been used to purchase policies before World War II became virtually worthless. Companies argued, both in ICHEIC and in court cases, that the policies were, therefore, also virtually worthless. ICHEIC, in the end, did not accept that argument.

These represent a few of the many complex determinations that had 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 the amount of the entire relevant market and what percentage of that total was paid through the ICHEIC process—radically differ depending on which values and methods, out of the extensive range of possibilities, are selected for the relevant component factors.

## ICHEIC SOUGHT TO RESOLVE ALL CLAIMS SUBMITTED, REGARDLESS OF THE COMPANY IDENTIFIED IN THE CLAIM

Although the Memorandum of Understanding called for the resolution of claims against Holocaust-era insurance policies issued by the companies participating in the ICHEIC process, 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 few claims included any documents linking the policy in issue to the specific company named in the claim. Further, some claims that did identify 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 policyholder's country of residence.

Third, claims brought by survivors or heirs of survivors on policies written by Central and Eastern European companies that were defunct after the war and have no present-day successor, were not only reviewed by ICHEIC but, in many cases, paid through an in-house process it developed.

Finally, although the ICHEIC process has closed, the participating insurance companies have made commitments, orally and in writing, 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.

And yet, ICHEIC was successful. What it accomplished was without precedent:

- First, ICHEIC filled a void by establishing a mechanism to identify and process Holocaust-era insurance claims, even when claimants typically had 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 statutes 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 have continued to accept and process claims—again, at no cost to the claimants and regardless of statutes 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 policyholders is now available to survivors, historians, and other researchers; and
- Sixth, in total, over $½ billion in payments to Holocaust-era insurance policyholders and heirs, as well as to programs benefiting Holocaust survivors has been distributed as a result of ICHEIC. The payments included providing critically needed home care funding for elderly and ailing Holocaust survivors.

These, by themselves, are an impressive list of achievements, particularly 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 not achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. Thus, whatever ICHEIC's shortcomings, they will not, in any meaningful way, be remedied by the enactment of the bill.

The bill mandates that insurance companies, notwithstanding the strict, European data privacy laws, disclose the names of all policyholders during the entire relevant period, but this extraordinarily costly effort will yield little new information regarding Jewish policyholders. 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—they already have disclosed most, if not all, of their Jewish-purchased, Holocaust-era insurance policies. Thus, 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

In addition, litigation of such claims will be lengthy, and the associated costs, time, and effort required will prove excessive and unreasonable, certainly for elderly survivors. My fellow survivors and I will, most likely, not be alive to see the results of any of the lawsuits the proposed legislation authorizes.

While a handful of survivors and their heirs, at most, may benefit from H.R. 1746, I am also concerned that the bill's enactment will unjustifiably generate huge expectations that, in the end, will not be met, which will have a profoundly negative impact on survivors.

Finally, I am extremely concerned that the Holocaust Insurance Accountability Act will severely damage the common goal of those looking to help survivors. It will jeopardize critical, on-going negotiations with governments for the continuation and expansion of funding to meet the vast, immediate 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 such negotiations. 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 commitments.

RECOMMENDATIONS

Thus, instead of the proposed legislation, I respectfully suggest that congressional action addressing the following issues would provide critical assistance to survivors and their heirs.

First, the insurance companies which participated in ICHEIC have committed to continue, indeed have been, processing claims they received after the close of ICHEIC. In order to ensure that this undertaking is properly implemented, it would be valuable for Congress to help develop a mechanism to monitor the processing of such new insurance claims (which are not otherwise already supervised).

Second, most of the remaining unpaid, Jewish Holocaust-era policies were issued by companies which did not participate in the ICHEIC process. Thus, it would be helpful for Congress to focus its effort on developing measures to have companies that were not involved in ICHEIC address the issue of Holocaust-era insurance. As a related point, 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 congressional assistance in the efforts to recover such funds, as well as in the broader problem of having Eastern European countries address and resolve, in a meaningful way, the restitution of property confiscated during World War II.

The U.S. Congress has played a major role over the years in efforts to secure Holocaust-era compensation and restitution, as well as to ensure that the Holocaust is not forgotten. You have the gratitude of the survivor community for such support and assistance and we hope that you will continue to provide such help in the future.

Senator Bill NELSON. Thank you, Mr. Kent.

Mr. Jack Rubin.

**STATEMENT OF JACK RUBIN, HOLOCAUST SURVIVOR AND MEMBER OF THE ADVISORY COMMITTEE, HOLOCAUST SURVIVORS OF WEST PALM BEACH, BOYNTON BEACH, FL**

Mr. RUBIN. Good afternoon. My name is Jack Rubin. I live in Boynton Beach, FL. I want to thank our own Senator Bill Nelson for holding this important hearing and inviting me as a Holocaust survivor to speak my own mind about these issues of grave concern. I would like to begin by saying how honored I am to be able to address this committee of the insurance Senate.

I am here on behalf of thousands of Holocaust survivors and family members of Holocaust victims, to ask you to pass a companion to H.R. 1746, the Holocaust Insurance Accountability Act of 2007, without any further delays.

After surviving the Holocaust, I was fortunate to come to America and earn a living and raise a beautiful family in Fairfield, CT. I retired in 1995 and in 1998 I moved to Boynton Beach. I have been very active in several Florida survivors groups, as well as my synagogue and other Jewish organizations in Palm Beach County. I also volunteer as a member of the Holocaust survivors advisory committee of the Jewish Family and Children's Services of Palm Beach County, which serves the needy Holocaust survivors in our community. in addition, I am a member of the executive committee of the Holocaust Survivors Foundation USA, Incorporated, which represents thousands of Holocaust survivors from all over the United States.

I am here today to talk about part of my family history that isn't so happy, our brutal treatment at the hands of the Nazis and their puppets, the Hungarians. I was born in 1928 in Vari, Czechoslovakia, which was annexed by Hungary in 1938. We lived in a building where my father's general store was also located. There was a sign that said the building and premises were insured by "Generali Moldavia." I am certain that my father, who was a careful businessman, had all kinds of insurance, including life insurance, because he spoke about it often. From our conversations, I even remember the name of the agent, Mr. Joseph Schwartz.

We were forced out of our home in April 1944 with only the clothes on our back and one suitcase each and taken to the Beregsastz Ghetto. There the Nazis forced everyone to turn over

their jewelry, watches, wedding rings, and hand over everything of value. I was given a pail to go around and collect all those valuables. We were then deported to Auschwitz and that was the last time I saw my parents.

Mr. Chairman, I was the only son of my parents and I cannot tell you the pain I've been living with all my life. They don't have a burial plot. I can't go by there and say the Kadish. The Kadish is the Hebrew prayer of the deceased. I've been living with this all my life.

After the Holocaust, I had no way to find my papers, such as insurance policies. Our home and our business was destroyed. After ICHEIC was created, I applied because of the esteemed individuals and publicity encouraging applications. I gave them all the information I had, including the name on the building and the name of Mr. Schwartz, the agent. Four years later I received a letter from Generali stating they had no records from their subsidiaries and no records of any policies in my family. This is absurd because I know we had insurance.

ICHEIC did not even ask the company to give records of Generali Moldavia, a known subsidiary, and did not require Generali to produce information about Mr. Schwartz, the agent from our town. ICHEIC just took Generali's word and my claim was denied.

ICHEIC added insult to injury. They sent me a $1,000 check and called it "humanitarian payment." Really, they called me a liar. They tried to give us $1,000 to keep quiet, instead of giving what we demanded all along, the right to control our own destiny and to learn the truth about the way Generali and the companies treated our families.

If you want to get an angry reaction from survivors or their children or their grandchildren, just mention ICHEIC. We all know that ICHEIC was controlled by the insurance companies. Sure there were Jewish organizations present, but we never asked them or anyone else to represent us. We survivors did not ask the Claims Conference or Mr. Kent or Mr. Eizenstat or Mr. Eagleburger to handle our affairs. We can speak for ourselves, but ICHEIC denied us even the obvious level of respect.

We question the deal that everyone talks about, but remember this: Survivors did not agree to any deals and did not agree to any legal peace. The fact that some groups took it upon themselves to pretend like they had the authority is not acceptable to us and never was.

I am here today to ask you, Mr. Chairman, to fix this by passing H.R. 1746 because it will require the companies to open their records and to allow us to go to court for the truth.

I am fighting for this bill to honor my parents, Mr. Chairman, and I owe this to my parents. I cannot understand how anyone can even think that we should be willing to settle for less.

Senator Bill NELSON. Could you wrap it up.

Mr. RUBIN. This is why I was one of the several survivors who appealed the recent class action settlement of the litigation of Generali, those who got burned by ICHEIC and will not benefit from the settlement. This is why we appealed.

If Congress does not act soon, our rights might be totally swept away by this so-called settlement. Decision could come any day.

Please move swiftly and make it clear that the U.S. Congress does not endorse the denial of the basic rights of the survivors.

I would like to make a point, Mr. Chairman. How about the millions of insurance policies that went up in flames in Auschwitz, Dachau, and thousands of killing fields? Why should the insurance companies be the heirs of their Jewish customers? According to Mr. Zabludoff, this is over $17 or $18 billion. There are tens of thousands of needy Holocaust survivors in this very United States who are suffering without the care they need. I see many of them in Palm Beach County and my HSF colleagues see this problem all over America. The local Jewish Family and Children's Services, where I volunteer, never has enough funds to meet the needs of the poor survivors. They cannot afford medical expenses, or their medicines, eyeglasses, home care, nutrition, walkers, or dental care. They cannot afford their rent, utility bills. There are 80,000 survivors of the Holocaust in the United States in this condition. Where is justice to this?

There should be a legal peace—there should be no legal peace with companies until the Holocaust survivors have moral peace. We are far from that today, Mr. Chairman.

Senator Bill NELSON. And thank you——

Mr. RUBIN. Senator Nelson, Senator Nelson, you were one of the first public officials to recognize the problem survivors were facing with long-term care and all their health care needs. You tried to help back in 1998 and 1999. Our community was and it is grateful for the concern you showed for our fellow survivors in need. But the truth today is that not enough has been done, not by corporations, not by governments who injured us and stole from us, and not by the institutions that were supposed to be responsible for helping us.

[The prepared statement of Mr. Rubin follows:]

PREPARED STATEMENT OF JACK RUBIN, HOLOCAUST SURVIVOR AND MEMBER OF THE ADVISORY COMMITTEE, HOLOCAUST SURVIVORS OF WEST PALM BEACH, BOYNTON BEACH, FL

My name is Jack Rubin, and I live in Boynton Beach, FL. I want to thank our own Senator Bill Nelson for holding this important hearing and for inviting me, as a Holocaust survivor, to speak my own mind about these issues of great concern. I would like to begin by stating how honored I am to be able to address this committee of the United States Senate. It is very humbling and historic, as I realize that I am one of a very small number of Holocaust survivors, which includes Elie Wiesel, who has ever had this privilege.

Last Thursday, May 1, was the 63rd anniversary of the day I was liberated. It was also Yom Hashoah, the Day of Remembrance, when Jews all over the world say a prayer for the 6 million martyrs, our loved ones, and the loved ones of millions, who perished at the murderous hands of the Nazis and their collaborators. Today, the fact that I, a survivor of that indescribable hell now known as the Holocaust, will have my words become a part of the official record of this body is an honor and privilege I never imagined.

I am here, on behalf of thousands of Holocaust survivors and family members of Holocaust victims, to ask you to pass a companion to H.R. 1746, the Holocaust Insurance Accountability Act of 2007, without any further delays.

First, I would like to tell you about my life in the United States, and my activities over the years as an integral part of the local and national Holocaust survivor community. I was liberated as I said on May 1, 1945, from hell, by the U.S. Army. I then spent 2 years in a Displaced Persons Camp in Germany. In 1947, I was fortunate to come to America, and I settled in Connecticut. I learned the trade to become a furrier and was fortunate to be able to earn a living as a furrier and raise a beautiful family in Fairfield, CT. I worked hard, was able to retire in 1995, and in 1998

I moved to Boynton Beach. I have been very active in several Florida survivor groups, as well as my synagogue and other Jewish organizations in Palm Beach County. Over the years, I, like many survivors who have been dedicated to Holocaust education, having spoken to thousands of young people in public and private schools about the tragedy our people endured in the Holocaust. I also volunteer as a member of the Holocaust survivors' advisory committee of the Jewish Family and Children's Services of Palm Beach County, which serves the needy Holocaust survivors in our community. In addition, I am a member of the executive committee of the Holocaust Survivors Foundation USA, Inc., which represents thousands of Holocaust survivors from all over the United States.

But I am here today to talk about the part of my family history that isn't so happy, our brutal treatment at the hands of the Nazis and their Hungarian puppets. I was born in 1928 in Vari, Czechoslovakia, which was annexed by Hungary in 1938. We lived in a building where my father's general store was also located. There was a sign that said the building and premises were insured by "Generali Moldavia." I am certain that my father, who was a careful business man, had all kinds of insurance, including life insurance, because he spoke about it often. From these conversations, I even remember the name of the agent, Mr. Joseph Schwartz.

Like all Jews in our town, we were forced out of our home in April 1944 with only the clothes on our back and one suitcase each, and taken to the Beregsastz Ghetto. There the Nazis forced everyone to turn over their jewelry, watches, wedding rings, and hand over everything of value. I was given a pail to go around and collect all valuables. We were then deported to Auschwitz, and that was the last time I saw my parents. I survived Auschwitz and three other camps. Needless to say, after the Holocaust, I had no way to find any papers such as insurance policies. Our home and business was destroyed.

After ICHEIC was created, I applied because of the esteemed individuals and publicity encouraging applications. They promised to open company records and apply "relaxed standards of proof." I filed two claims, naming my father Ferencz Rubin and my mother Rosa Rosenbaum-Rubin, and their birth years. I mentioned the sign on our building for "Generali Moldavia," and the fact that the agent Mr. Schwartz was our agent, who also died in the Holocaust. This was all the information I had, but under the circumstances it was certainly enough to show we had insurance.

Four years later I received a letter from Generali stating that they had no records from their subsidiaries and no records of any policies in my family. This is absurd, because I know we had insurance. Yet Generali did not produce one piece of paper to justify its decision, and ICHEIC did not require the company to produce any proof. They did not even ask the company to give records from Generali Moldavia, a known subsidiary, and they did not require Generali to produce information about Mr. Schwartz, the agent from our town. Don't you think Generali, which even then was a global giant, would have kept information about its insurance agents, and about its subsidiaries? That's what big insurance companies do. But ICHEIC just took Generali's word and my claim was denied.

Then, ICHEIC added insult to injury. They sent me a $1,000 check and called it a "humanitarian payment." Really they were calling me a liar. They tried to give us $1,000 to keep quiet, instead of giving what we demanded all along—the dignity of controlling our own rights, and finding out the truth, and getting what my father was promised when he trusted Generali with his family's security as his insurance company.

Other Holocaust survivors, who I speak with every day, are also beyond disappointed by the way ICHEIC treated us. We are outraged. If you want to get an angry reaction from survivors or their children or grandchildren, just mention ICHEIC. So many people I know had the same humiliating experience. Not only are we disgusted with the way our claims were handled, but we cannot believe ICHEIC took money and used it for ridiculous programs such as summer camp programs and paying college students to keep survivors company. Who made ICHEIC the king of our families' legacies?

Let's face it, ICHEIC was controlled by the insurance companies. Sure, there were Jewish organizations present but we never asked for them or anyone else to represent us. We, the survivors, did not ask the Claims Conference or Mr. Kent, or Mr. Eizenstat, or Mr. Eagleburger, to handle our affairs. We can speak for ourselves, but ICHEIC denied us even that obvious level of respect. We question the "deals" that everyone talks about. But remember this—survivors did not agree to any deals, and did not agree to any legal peace. The fact that some groups took it upon themselves to pretend like they had that authority is not acceptable to us and never was.

ICHEIC was also conducted in secret. Why? To protect the companies, that's why. Once again, we survivors were denied access to the truth. Stealing our money is bad enough, but concealing the truth from Holocaust survivors is a terrible thing. The

companies betrayed us and up until now, the U.S. justice system has blocked our access to the truth. I am here today to ask you to fix this by passing H.R. 1746, because it will require the companies to open their records, and allow survivors and heirs to go to court for the truth.

I know ICHEIC was flawed because I know we had insurance but it wasn't acknowledged. But I am fighting for this bill to honor my parents, because my father bought insurance to provide for us if something happened. I owe this to my parents. I can't understand how anyone can even think we should be willing to settle for less.

And there is another thing. What about the millions of insurance policies that went up in flames at Auschwitz, Dachau, and thousands of killing fields? I was one of the few who survived that hell. What about the millions who died? What about their insurance? Why should the insurance companies be the heirs of their Jewish customers? The survivors and the second generation agree on this point as well—there should be no legal peace for the companies until the Holocaust survivors have moral peace. We are far from that today, Mr. Chairman.

This is why I was one of several Holocaust survivors who appealed the recent "class action settlement" of the litigation against Generali. In 2006, the "class action lawyers" who were supposed to be representing us agreed to a settlement with Generali. Under the settlement, Generali's obligations would have been limited to what was done by ICHEIC. The benefits from the settlement are very small in my opinion, but for those of us who tried ICHEIC and were denied, the impact of the settlement is clear. We get nothing. We are finished. ICHEIC decisions would be final.

Since I personally witnessed how ICHEIC did its business in secret, and allowed companies like Generali to deny claims without any supervision and oversight, and didn't do any independent investigation and didn't require the company to produce records to us, I believed this settlement would be a terrible disservice to survivors. Those of us who were denied in ICHEIC would have no opportunity whatsoever to benefit from the settlement. Therefore, I joined several of other survivors and objected to the settlement. When the judge approved it anyway, we appealed.

What else could we do? If the class action settlement is approved, our rights against Generali will truly be lost forever. I know my father had Generali insurance, but ICHEIC said no. ICHEIC said Generali behaved properly but I know it isn't so. I believe our appeal is valid because we know that ICHEIC did not serve the Holocaust survivors properly and the settlement embracing ICHEIC can't be correct. But if we lose the appeal, then Generali will be able to perpetrate the lie that we did not have insurance with that company. I felt we needed to do everything in our legal rights to protect our ability to get the truth one way or another.

So if this Congress does not act quickly to pass H.R. 1746, I am afraid that all the survivors' rights against Generali might be lost. I am not a lawyer but one sure way to restore our ability to get the truth from Generali or the other companies is to change the law immediately. If the court of appeals decides the class action appeal before Congress acts, I am afraid it will complicate matters. That decision could come any day. Please move swiftly and make it clear that the U.S. Congress does not endorse the denial of basic rights to survivors.

I want to remind this committee that the legislation would not cost companies anything unless we prove our family had insurance. In that case, the companies would have to pay us and pay our lawyer, too. If we lose, we get nothing and our lawyer would get nothing. This legislation would restore our ability to make decisions for ourselves with the advice of our own counsel. That is all we are asking for, Mr. Chairman.

Mr. Sid Zabludoff, an independent economist, has testified several times in Congress. He said the amount of money owed by the companies is at least $17 billion. That is $17 billion, with a "b." That is a conservative estimate of what the companies stole. Yet at the same time tens of thousands of needy Holocaust survivors in these very United States are suffering without the care they need. I see many of them in Palm Beach County, and my HSF colleagues see this problem all over America. The local Jewish Family and Children's Services, where I volunteer, never has enough funds to meet the needs of the poor survivors. They cannot afford their medical expenses, or their medicines, eyeglasses, home care, nutrition, walkers, or dental care. They cannot afford their rent or utility bills. There are 80,000 survivors in the U.S. in this condition. Where is the justice in this?

It is now 2008. The companies succeeded in stonewalling us for 50 years. Then, in 1998, there was ICHEIC. To most of us, that has meant another 10 years of frustration and delay. Let's not get bogged down in obsessing over ICHEIC's successes or failures. It is over. Please focus on the companies' conduct, and on Holocaust survivors' rights to a full accounting of the companies' behavior.

I attended the House Financial Services Committee meeting and I wish every citizen in America could have seen it. Every person at that committee, including Chairman Barney Frank, showed such passion and respect for the rights of Holocaust survivors and showed that they truly understand the meaning of justice. They all ridiculed the arguments we are hearing today again from nonrepresentative groups pretending to speak and act for Holocaust survivors. The Financial Services members insisted on a full accounting for the companies. They did not care about judging ICHEIC. They did not care about protecting reputations. They all said, simply, that the survivors should have our human rights restored by the Congress of the United States. Period. That is also how the survivors feel, Mr. Chairman.

INVOLVEMENT IN OTHER RESTITUTION MATTERS

As a Holocaust survivor, I have witnessed firsthand many of the restitution proceedings over the past 10 years. This has not been a joy for me, but it has been a solemn responsibility. From my standpoint, and I know my views are shared by many survivors, most of what has transpired has not been good. Only in rare instances have the survivors been treated with dignity and respect.

Because of the Holocaust, all of us were financially injured by several businesses and governments. The Nazi terror was so extensive that I and most survivors I know were victimized by so many Nazi collaborators and other profiteers that we have had a legal, economic, and moral stake in several "Holocaust restitution" matters. This includes German manufacturers using slave labor, Swiss banks profiting from dormant accounts and fencing looted assets, and insurance companies failing to pay their customers who entrusted them with their savings. In my case, since my home was annexed by Hungary during the war, I was one of about 60,000 Hungarian survivors now living whose property might have been on the Hungarian Gold Train and illegally taken by the United States Government after the end of the war.

"HUNGARIAN GOLD TRAIN" CASE

The *Gold Train* case, *Rosner* v. *United States of America,* was filed in the United States District Court for the Southern District of Florida, in Miami. I was one of about 15 survivors who attended every hearing in that case before the Honorable Patricia Seitz. We had the chance to see and hear for ourselves the kinds of legal and factual issues the judge was taking into account. This gave us a concrete understanding about how our prospects were faring. Sometimes developments were good, and sometimes they weren't so good. But we were kept informed and had a great deal of input into the way the case was handled by our lawyers.

After nearly 5 years of litigation, the *Gold Train* case was settled with a cash payment of $25.5 million to be used over a 5-year period for social services for Hungarian survivors in need, the creation of an archive to collect and document the history of the Gold Train and Hungarian Jewry, and the issuance of an apology by the U.S. Government. Truthfully, we had all hoped for a larger financial recovery from the United States Government after all those years. But having sat through the case for almost 5 years, we understood that the judge was doing her best to hear us as survivors and the children of prosperous families who had no way to prove in the year 2004 what the U.S. Government did with our property in the late 1940s.

Not that we didn't try. Our lawyers and the historians they hired spent over a year and a half going through documents in the National Archives, the Clinton Presidential Library, and archives in Israel and Hungary to prove our connections to the property on the Gold Train. The judge ordered the Government to open its records to our lawyers, and they found several smoking guns that helped our case a lot. Our lawyers took sworn depositions of the Army's historians and the Government's experts and obtained damning information about the Government's case. Our lawyers persuaded the court to require the Government to submit for mediation with a prestigious mediator (current White House Counsel Fred Fielding) who could get the parties to the table. And, we the survivors and the clients were kept informed all the time.

Eventually, we decided to settle the case with $25.5 million in cash, which would be distributed over a 5-year period to provide vital social services to Hungarian survivors in need all over the world. This wasn't an easy decision because each survivor believed he or she had a right to direct compensation, but the difficulty of proof made it risky to go to a trial. But those of us involved believed that to be able to get funds to supplement the desperate shortfall in social services for Hungarian survivors over a 5-year period, and to have a complete public archive of the Gold Train events, and to receive an apology from the strong but humble U.S. Government, was worth giving up our individual rights.

It was important that every class member was given a clear, complete notice about the settlement and an opportunity to opt out of it if his or her own conscience dictated. Our lawyers insisted that every survivor be told the truth about the settlement in advance of the notice. Everyone was told that they might not receive any money themselves. Yet, only 100 Holocaust survivors chose to opt out. I firmly believe the overwhelming majority of survivors accepted the settlement because they knew the process had been fair, they were told what was going on along the way, and they had confidence in their own lawyers to do what was right, with our input. In other words, the survivors were treated as adults, with dignity and respect for our rights and ability to choose for ourselves what kind or legal and moral result was acceptable to settle the theft of our families' property and legacies.

I had the chance to address Judge Seitz to speak in favor of the settlement. Here is a part of the transcript from that hearing where I and my fellow Hungarian survivors spoke in favor of the settlement in September 2005:

> I was here in March, Your Honor. As you remember, I gave a very short bitter speech [about how] as a 15 year old I was collecting all the valuables when I was in the ghetto. . . .
>
> I know whatever the settlement will be given to us, it will give me much satisfaction that we will be able to help the needy Hungarian survivors. . . .
>
> First, we survivors and our families had the opportunity to seek justice against the United States Government in this court of law under that government's very own laws. And to receive a fair hearing in that process. I have watched Your Honor preside over these hearings and although we didn't always agree with you we know you have been just and fair and tried to apply the law the best way you can.
>
> Second, the survivors have had the opportunity to participate directly in this litigation. We spoke frequently with the lawyers as the case had its ups and downs. We sat in this courtroom and witnessed justice at work. When it came time to negotiate, we had real input and it was part of the settlement. We spoke with the Department of Justice. We spoke with other survivors. . . .
>
> The settlement is one that the survivors feel they had a part in creating. All of its elements are important—specifying the dollars and the services, requiring strict reporting and auditing, using a fair distribution formula, receiving an apology. These were all important to us, and the fact that we had the chance to shape the settlement ourselves along with survivors from around the world was important, and unique.
>
> Third, after reaching a settlement we had the chance to speak directly to this court about what it meant to us. And we had the chance to shake the hand of the Government's lawyers, and thank the United States for rescuing civilization in World War II, and providing many refugees such as ourselves with a home and a chance for a new life. And finally to thank the Government for finally being accountable for the Gold Train.
>
> Thank you very much Judge Seitz in the name of all the Hungarian Holocaust survivors for your fairness and honesty.

Transcript of September 26, 2005, *Rosner* Final Fairness Hearing, at 57–58.

I was very proud to have been a part of the *Gold Train* case, especially after Judge Seitz announced her decision approving the settlement. She told the parties how proud she was to have presided over a case in which the plaintiffs and defendants were so well informed and able to make prudent judgments about the merits of the litigation.

> Here, because of the outstanding work of the lawyers, we have been able to not only resolve the conflict, but to begin a healing process and bring closure. So this is one in which—it is the unusual case in which there is a compromise where I think that the whole of the compromise is better than the sum of the parts that any of us could have hoped for. I am just very proud of everyone in this courtroom and I thank all to have had the opportunity to meet all of you, to work with you, and to be part of this historic moment. God bless you all and God bless the United States.

Transcript of September 26, 2005, *Rosner* Final Fairness Hearing, at 147–48.

Mr. Chairman and members of this committee, please look at the difference between what happened in the *Gold Train* case and what happened with our insurance policies. In the *Gold Train* case, we the survivors were represented by advocates of our own choosing. This never happened in ICHEIC, because surrogates not

of our choosing were the ones at the table. We did not ask them to handle our insurance rights.

In the *Gold Train* case, our chosen representatives had the opportunity, under court supervision, to inspect all of the defendant's records. This never happened under ICHEIC. The companies kept all their documents and only showed us what they wanted to. ICHEIC had no authority to demand production of the kinds of files that would have given claimants the ability to see if the companies were lying or not.

In the *Gold Train* case, we could observe the decisionmaker at work—a United States Federal judge who operated in open court, "in the sunshine" as we say in Florida. In ICHEIC, everything was secret and all survivors ever received were impersonal letters with mechanical denials; denials which came from a "claims process" we now know ICHEIC did nothing to supervise. In fact we now know from Albert Lewis that ICHEIC had an internal policy that without any documentation, claimants had a "heavy burden." This has been called a "phantom rule" because it is opposite of the "relaxed standard of proof" that was promised. You get the picture.

So my experience in the *Gold Train* case should be instructive to this committee. What survivors want and deserve are fairness, transparency, due process, respect, and the ability to make our own decisions about our families' financial legacies. If that happens, even outcomes that do not meet our most optimistic expectations will be acceptable and accepted. It is simply disrespectful for the one group of people who suffered the unique crime now known as the Holocaust should have any less rights than any other consumer who is defrauded or cheated by corporations who exploit one or more catastrophes to deny us our rightful funds. This dignity and respect is precisely what ICHEIC denied us, and what the U.S. courts up until now have denied us. Please don't allow Congress to fall into that same column.

SWISS BANK LOOTED ASSETS CLASS ALLOCATIONS

In the *Swiss Bank* class action, I was among several dozen survivors and survivor groups from throughout the Untied States who objected to the district court's allocation of the Looted Assets Class portion of the settlement. So far that has been $205 million. Judge Korman ruled that 75 percent of the Looted Assets class settlement funds should be given to the Former Soviet Union, while only 4 percent of the Looted Assets Funds were earmarked to help poor survivors in the United States. He concluded the FSU survivors were "poorer" and stated that the tens of thousands of admittedly indigent and elderly American survivors should look to the wealthy Jewish community in the U.S. for help.

We opposed this allocation because the U.S. represents 20 percent of the world's survivor population and nearly 30 percent of the world's death camp survivors. We appealed the court's decision because we believed it was unfair and out of character with the basic notion of fair play of the U.S justice system. The Holocaust Survivors Foundation USA opposed the allocations because they stripped American survivors of their legal rights, providing nothing in return except insult.

The U.S. survivors do not deny that there are needs in the FSU, but we think it is wrong for an American judge to become a philanthropist with survivors' money from a legal settlement. Remember, unlike what happened in the *Hungarian Gold Train* case, the court and the lawyers did not tell the Holocaust survivors in the *Swiss Bank* case how the money would be distributed at the time of the settlement notice. Everyone was in the dark but somehow we were supposed to decide what was fair as a settlement with the Swiss banks without this basic knowledge. This was outrageous and remains a very sore spot for American survivors and our families.

The district court's allocation of the first $205 million in Looted Assets funds was, unfortunately, affirmed by the appellate court.

Today, there is almost $400 million from the Swiss settlement that has been sitting in the bank for over 8 years. It is waiting to be distributed under a formula the judge is supposed to reconsider. But how many survivors have died suffering without food, medicine, and home care while the judge has been sitting on all this money? This has been a great tragedy that survivors cannot forget.

We also cannot understand why the U.S. Congress has not investigated this highly unusual set of judicial actions.

CLAIMS CONFERENCE

Also, the Claims Conference is sitting on hundreds of millions of dollars. Survivors do not believe there has been an adequate accounting of the property obtained from Germany and the uses of those funds. We deserve a full accounting, because survivors are suffering. I am sure you have seen the news stories year in and

year out, including a major article in the Associated Press last week, about how survivors everywhere are desperate for a more serious accounting by all these institutions including the Claims Conference. The needy survivors do not deserve to suffer again.

I hope you will require all institutions to make a complete audit of where the survivors' money has gone, because we know it isn't coming to those who were looted, or those in need.

Senator Nelson, you were one of the first public officials to recognize the problems survivors were facing with long-term care and other health care needs. You tried to help back in 1998 and 1999. Our community was and is grateful for the concern you showed for our fellow survivors in need. But the truth today is that not enough has been done. Not by the corporations and governments who injured us and stole from us, and not by the institutions who are supposed to be responsible for helping us.

When I hear Mr. Kent and the Claims Conference and its affiliated groups and clients echo the threats of the German Government to withhold additional support for Holocaust survivors because of H.R. 1746, it makes me very angry. How dare these groups come here and try to hold our rights hostage to such a threat from Germany. The German Government. Should Holocaust survivors be punished for standing up for our constitutional rights? God forbid. It is a shame, Mr. Kent, and shame on the German Government, and shame on the groups who are lobbying you behind the scenes pretending to have the interests of survivors at heart. They have no brief to interfere with our rights.

I have a simple question for Mr. Kent, and the other Claims Conference acolytes who are now opposing H.R. 1746. Putting aside the gross violation of our constitutional rights, if the reason H.R. 1746 shouldn't pass is to preserve the Claims Conference's negotiating status, what has the CC actually done worth preserving? If 40,000 survivors in the U.S. live in poverty, and another 40,000 are so poor they cannot afford basic food, medicines, health care, home care, and the like, what has the CC really accomplished? What about the thousands of needy survivors in Israel, Europe, Canada, and South America.

We are supposed to give up our insurance rights, Mr. Kent, so you and your colleagues (most of who belong to organizations that get money from the Conference) can continue to beg for a few thousand dollars here and a few thousand dollars there from Germany? Meanwhile, tens of thousands of Holocaust survivors are suffering without enough food on their tables, heat in the winters, or medical care or medicines for their injuries? I am on the front lines, Mr. Chairman. I am the one out there having to tell needy survivors at the Jewish Family and Children's Services that there is not enough funds to pay for their medicines or their wheelchairs or their dental work or for someone to simply come clean the home of an elderly, frail survivor so they can live in dignity.

COMMON THEME

There is a common theme in the restitution area. There has been secrecy, and the deals have been made by people we did not appoint or approve. We have been denied the truth, and that is outrageous. We survivors, who are the most affected, were not allowed to participate and the results are terrible. We need Congress to give meaning to the words "never again" that we always hear. We need Congress to take action to respect the rights of Holocaust survivors.

We are lucky in South Florida that nearly all of our representatives—led by Ileana Ros-Lehtinen and Robert Wexler, and joined by Ron Klein, Tim Mahoney, Debbie Wasserman-Schultz, Alcee Hastings, Kendrick Meek, and Lincoln Diaz-Balart, have cosponsored H.R. 1746. They are willing to stand up to the powerful companies and the German Government and the State Department and confront this scandal head on. All of the money the companies stole should be paid to the survivors or their legal heirs, or if there are no heirs, the money should be used to help needy Holocaust survivors. But we need a lot more support and we are counting on this committee to move this legislation to passage in the Senate.

One of the things I heard in February in the Financial Services Committee is the idea for an extended process where the companies are once again trusted to pay claims without any judicial or governmental oversight. Mr. Eizenstat even suggested that the State Department be charged with reporting the results of this extended new ICHEIC-style process. Now we are hearing about a similar plan involving the State of New York Claims Processing Office. PLEASE DO NOT FALL FOR THIS TRAP. Those who believed the companies would act honorably without the threat of legal liability had their chance, and it was called ICHEIC, and it is over. Let it stay over. Please, no more commissions, no more monitors, no more toothless report-

ing standards that are never honored and never enforced. No more weak substitutes for justice. We want our rights back, and nothing more will do in the year 2008.

I have submitted a few news articles on these subjects, which I hope you will allow for the record.

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[From JTA, the Global News Service of Jewish People]

SURVIVORS STILL SEEK JUSTICE

(By Edwin Black)

NEW YORK (JTA).—Reaction to recent revelations of corporate complicity, unrevealed insurance company involvement and the great number of IBM punchcards among the papers in a secret archive in Bad Arolsen, Germany, have reignited a grassroots campaign among Holocaust survivors to recover Nazi-era insurance claims against companies such as the Italian insurance giant Generali.

Following a series of revelations that began last year in Jewish media, grassroots survivor and second-generation groups in Miami and New York have mounted a fierce campaign in Congress to supersede international agreements brokered by the State Department to settle insurance claims through the International Commission on Holocaust Era Insurance Claims (ICHEIC), as well as a variety of adverse Supreme Court rulings that have denied survivors the right to sue to recover policy claims or disgorge profits from the insurance companies.

The groups have used revelations about the unreleased Bad Arolsen records as a rallying point to prove that their insurance claims have been pushed into oblivion. Key congressional leaders agree and have promised swift action.

Thus, two separate issues—the opening of the Bad Arolsen archives and the quest to recover unpaid insurance claims—have been joined into a single cause among survivor groups and key congressional leaders.

The latest round of efforts began last fall, when officials of survivor groups unsuccessfully demanded that ICHEIC and other authorities postpone the final disposition of claims pending further research in the International Tracing Service files at Bad Arolsen. The groups include such elected bodies as the Miami-based Holocaust Survivors Foundation USA and the Queens, NY-based National Association of Jewish Child Holocaust Survivors.

The International Tracing Service, or ITS, was established by the Allies after the war to help families trace Holocaust and war victims. The Allies forwarded millions of captured documents to the facility in Bad Arolsen. The International Red Cross was given custody and control of the archives, which provided information on individuals only to survivors and their families. A typical family request could take years to process.

In January, Holocaust survivors petitioned Federal Judge George Daniels to reject a settlement with Generali because ICHEIC had failed to publish the names of all Jews whom the company insured before World War II. The petition, which included numerous quotations from the Jewish media about Bad Arolsen's insurance documentation, decried the alleged rush to judgment.

Judge Daniels temporarily delayed a decision, but ultimately finalized the permanent settlement with a limited extension for claims based on discoveries that might emerge from the Bad Arolsen archive.

Having lost in court—and convinced that established Jewish organizations would not aid them—survivor groups lobbied Congress to link the campaign to open Bad Arolsen to the separate campaign to recover insurance claims and compel disclosure of the names of those insured.

On March 28, U.S. Representative Ileana Ros-Lehtinen (R–FL) introduced the Holocaust Insurance Accountability Act of 2007, to enthusiastic support on both sides of the aisle.

The act seeks to supersede international agreements brokered by the State Department to settle insurance claims through ICHEIC. The bill concludes that ICHEIC, which is due to terminate operations soon, "did not make sufficient effort to investigate" or compile the names of Holocaust-era insureds or the claims due to survivors. The bill adds that recent media disclosures about the contents of Bad Arolsen have given new justification to such legislation.

In response, a representative for ICHEIC said the Commission had accomplished its mission of identifying and settling unpaid Holocaust-era life insurance claims by processing more than 90,000 claims and distributing more than $306 million to more than 48,000 claimants. More than half of the funds distributed via ICHEIC were the result of ICHEIC's archival research and matching work, the representative said.

Still, Ros-Lehtinen's bill would require insurers to disclose comprehensive lists of Jewish policyholders from the Nazi era. The legislation also would enable Federal lawsuits to recovery money from insurers, thus overruling ICHEIC's final word and a variety of Supreme Court rulings that have denied survivors' rights to sue or gain access to policyholder names.

The proposed law thus would trump both the executive and judicial branches on Holocaust-era insurance.

The same day that Ros-Lehtinen's bill was introduced, Representative Robert Wexler (D–FL), chairman of the House Foreign Affairs Committee's Subcommittee on Europe, convened an extraordinary hearing on Bad Arolsen. The purpose was to orchestrate congressional pressure on the 11 governments—the United States, France, England, Belgium, Greece, Luxembourg, Netherlands, Poland, Israel, Italy, and Germany—that control the ITS to rush full access to its archives, providing the insurance information that has been submerged for decades.

Members of the Foreign Affairs Committee sat stony and grim-faced, some holding back tears, as the hearing unfolded about the Bad Arolsen archives and their impact on survivors' decades-long effort to recover their insurance claims. Survivor David Schaecter of Miami, who admitted he was "emotionally overcome," spoke of impoverished survivors in South Florida who cannot afford housing or medicine because their insurance payouts were first denied by the insurance companies and then by ICHEIC.

"I am begging this Congress," he implored, "to please believe us. We have been wrongly stripped of our pride and property."

Leo Rechter of Queens pleaded, "Open up Bad Arolsen to expose the Holocaust profiteers."

Representative Albio Sires (D–NJ) held back tears both in the hearing room and in the corridor. Wexler promised to fast-track legislation and action to open Bad Arolsen.

"We will take the next step and then the next step, and then the next step," Wexler said.

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## FOR HOLOCAUST SURVIVORS, IT'S LAW VERSUS MORALITY

(By Adam Liptak—March 14, 2004)

In 1998, after Swiss banks agreed to pay $1.25 billion for keeping the property of victims of the Nazis and for laundering the profits of Nazi slave labor, the question arose: How should the money be spent, given that only part of that sum could be traced back to individuals who had their money stolen?

On Tuesday, a Federal judge in Brooklyn ruled that the poverty of Holocaust survivors in the former Soviet Union required the bulk of the available money, saying that current need is more important than perfect restitution. In essence, he said survivors who live in richer countries should receive less than those in poorer ones.

But that answer leaves some people, including many Holocaust survivors, angry and frustrated. "The whole point of restitution is to compensate people for their actual suffering at the time of the crime," said Thane Rosenbaum, a law professor at Fordham University and the son of Holocaust survivors.

History rather than charity should supply the guiding principles, said Mr. Rosenbaum, the author of a forthcoming book, "The Morality of Justice," which argues that the legal system often fails to achieve moral results. The Swiss bank settlement, he says in the book, is such a case.

"From a moral perspective, it's the victims' money," Mr. Rosenbaum said, adding that it is up to survivors to determine how the money should be used.

Edward R. Korman, the chief judge of the Federal district court in Brooklyn, acknowledged the difficulty of the problem. "A comparison of needy survivors is by definition an odious process," he wrote in the decision issued last week. But morality required him, he said, to send some 70 percent of what may amount to $400 million to survivors in the former Soviet Union, and only 4 percent to survivors in the United States.

Of the 900,000 or so Jewish survivors of Nazi persecution, 19 percent to 27 percent live in the former Soviet Union while 14 percent to 19 percent live in the United States. Those in the former Soviet Union, the judge wrote, live in desperate poverty. The poverty of some American survivors is by contrast "clearly less pressing," he said, given the public assistance and private charity available to them.

But Samuel J. Dubbin, a lawyer for the Holocaust Survivors Foundation–USA, which says it represents more than 50 organizations and 20,000 American survivors, objected to the judge's reasoning.

"You can't say that a survivor in need here is less worthy than a survivor in need in the former Soviet Union," he said. "The reason you can't say that is that this is survivor money. Maybe you could say that if this was community money, if this were charity."

Instead, the foundation asked Judge Korman to base future distributions on pro rata allocations to the nations where large numbers of survivors live and only then require distribution within those nations to the neediest survivors.

"There's not enough money to hand out to all the survivors, unfortunately," said Leo Rechter, a 76-year-old retired banker who was born in Vienna and spent the war in hiding. "The next best solution is that all the needy people be taken care of. The percentage of survivors' money in each country should be allocated to that country," said Mr. Rechter, whose father died at Auschwitz, "and from that money the needy people there should be taken care of."

Judge Korman rejected that and other alternatives. He wrote that trying to adjudicate claims individually would be unwieldy, expensive, and in many cases impossible. A simple pro rata distribution, on the other hand, would yield "literally pennies to each of the millions of individuals" victimized by the Nazis, including all survivors and their heirs. He called the hybrid solution proposed by Mr. Dubbin and the survivors' foundation frivolous and inconsistent with law and morality.

Should other lawsuits for historical wrongs succeed, the problem in the *Swiss Bank* case is likely to recur. Burt Neuborne, who represents the plaintiffs in the settlement, has written that some claims should by their nature give rise to indirect compensation in the form of social programs.

For instance, he said, if lawsuits seeking damages for American slavery ever produce damages, the proper response may be affirmative action or providing money to assist for poor blacks.

And Stuart E. Eizenstat, deputy treasury secretary from 1999 to 2001 and the author of "Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II," an account of the negotiations leading to the settlement, said such suits have an important moral and political aspect that may call for ignoring some usual legal remedies.

"A purely legal response," he said, "does not work."

In this case, all agree that the dispute needs a speedy resolution. The average survivor is 77 years old if living in Israel and 84 if living elsewhere. Their numbers, according to a report issued in 2000 by the court-appointed special master in the case, Judah Gribetz, are projected to fall by 6 to 8 percent each year through the end of the decade and faster afterward.

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## SETTLEMENT APPROVED IN HOLOCAUST VICTIMS' SUIT AGAINST ITALIAN INSURER

(By Joseph B. Treaster—Feburary 28, 2007)

A Federal judge approved a settlement of a class action suit yesterday against an Italian insurance company, ending a long-running dispute over payments on life insurance policies taken out by Holocaust victims.

The settlement provides less money than Holocaust survivors and relatives had hoped to receive from the company, Assicurazioni Generali, and it significantly raised the chances that the insurer would be able to avoid public scrutiny of its records from the Nazi era.

But Judge George B. Daniels of Federal District Court in Manhattan said he was convinced that the deal was the best the survivors and their relatives could get.

"The settlement is not perfect," he told a room of lawyers and a handful of survivors and relatives. But he said that for most families who had bought coverage from Generali, it "may be their only real opportunity for any monetary recovery."

Lawyers representing the survivors had reached an agreement with Generali last summer after another Federal judge dismissed their claims and they decided the odds of winning an appeal were low.

Judge Daniels had interrupted an initial hearing on the fairness of the settlement on January 31 after Samuel J. Dubbin, a Miami lawyer opposing the settlement, appealed for more time to give survivors and relatives a chance to look for evidence to support their insurance claims in long-sealed Holocaust-era archives in Bad Arolsen, Germany.

The United States and 10 other countries that control the archives have agreed to open them and are meeting in the Netherlands on March 7 and 8 to discuss speeding up the process.

At Judge Daniels's urging, Generali and lawyers for survivors and relatives amended their agreement to extend the deadline for filing claims to take account of evidence found at Bad Arolsen until August 31, 2008. The judge said yesterday

that the extension eliminated his major concern. The deadline for all other claims remains March 31.

Before the settlement Generali had paid about $100 million in claims on Holocaust-era policies, mainly through a commission in Washington. It agreed to pay $35 million more as a result of the settlement. The company said the $135 million covered 5,500 claims.

Generali said it had received 3,300 more claims as the settlement has been pending, and Robert A. Swift, a Philadelphia lawyer for the Holocaust survivors, estimated that the company would pay another $10 million on those and other claims made before the deadlines. Generali will pay about $4 million in legal fees.

Mr. Dubbin has contended that Generali sold policies worth billions on which it has never paid claims. But Generali and the lawyers in the class action suit take issue with Mr. Dubbin's estimates.

Mr. Dubbin also argued that Generali had failed to adequately publicize the settlement. He and other advocates for the survivors said that because Generali has refused to publish a full list of its policyholders, tens of thousands of Holocaust survivors and relatives have been unaware that they had reason to file a claim—with the approval of the settlement they would be foreclosed from ever doing so.

Generali has published the names of many policyholders, but contends that survivors and relatives have other ways of knowing whether they are eligible to file claims.

Mr. Swift, who helped draw up the agreement, used almost the same words as Judge Daniels in characterizing the settlement.

In a statement distributed before the hearing, Generali said it viewed the settlement "as an important step in its longstanding commitment to bring fair closure to the Holocaust-era claims process."

In the late 1990s, American lawyers filed lawsuits against more than 20 European insurance companies, accusing them of refusing to pay claims on billions of dollars in policies they had sold to people who became victims of the Holocaust.

The other lawsuits were either dropped or resolved. The settlement ends the biggest case against Generali. But a handful of lawyers, including Mr. Dubbin, are continuing to appeal the earlier dismissal of a group of lawsuits against the insurers. In dismissing the case, Judge Michael B. Mukasey cited a Supreme Court ruling that dealing with Holocaust claims in United States courts could interfere with the President's ability to resolve international disputes.

In an interview, an aide to Representative Ileana Ros-Lehtinen, a Republican of Miami, said the lawmaker was planning to introduce legislation that would require Generali and other insurers to publish lists of policyholders—a longstanding request of survivors and relatives—and would attempt to provide jurisdiction for European insurance cases in American courts.

Generali says its policy is to pay valid claims and has denied accounts by Holocaust survivors that its representatives demanded copies of policies from people who had lost everything and death certificates for policyholders who died in camps.

In the settlement, the company acknowledges no wrongdoing.

"This is a sad day for Holocaust memory and historical justice," said Thane Rosenbaum, a son of Holocaust survivors and a professor at the Fordham University law school. "The only entity that really benefited from this is Generali. They avoided having to pay tens of thousands of claims and they avoided opening up their archives and historical records to reveal what happened, how and why."

Senator Bill NELSON. Mr. Rubin, we need to ask you some questions.

Mr. RUBIN. Yes, please.

Senator Bill NELSON. OK. I'm going—as a courtesy to my colleagues, I'm going to defer my questions until the end. So I would ask Senator Coleman.

Senator COLEMAN. Thank you. Thank you, Mr. Chairman.

Obviously this is an issue of great emotional impact and individuals who have suffered and whose families have suffered greatly. Let's see if we can sort some things out.

Mr. Kent, in your written testimony you talk, and in your verbal you kind of reference this, you talked about the damage H.R. 1746 would have with ongoing negotiations with the German and other governments. Could you give me, on what basis do you make that assertion? Have any governments expressly stated that ongoing

restitution and compensation efforts would be jeopardized if H.R. 1746 became law?

Mr. KENT. Yes, Senator. I can reply to you that, as I said, I've been negotiating with the governments, particularly German and others, for many years. And they have expressed to me in the last few months very clearly—and I emphasize this word, "very clearly"—what is the sense for us to negotiate with you when afterward we will have to the court and start all over again; it would be better for us not to negotiate and let's go to the court; it will take years, 5, 10 years. We'll see. But we might as well stop.

Why I am in this is simply because I have seen the need of the survivors. Jack is right, there is tremendous poverty among survivors, and nobody gives them the help except the so-called Claims Conference basically, and the money is through the negotiations. So if we stop the negotiation, we will not provide the need of survivors.

Senator COLEMAN. You raise the issue of going through the courts. I'd like to turn perhaps to Mr. Rubin on this, just to make the statement that—I believe in your testimony you talked about exaggerated expectations or survivors being disappointed, say false hope. The ICHEIC process was one which had rules of evidence and admission that were different from a court. I would turn to Mr. Rubin. Would there be concern that if these matters were in Federal court the reality is that it may take a very long time for them to be resolved? The standards for the admission of evidence are such that it would be very, very difficult in cases perhaps such as your own.

Do you have any concern that H.R. 1746 would raise false hopes and would make worse the very serious concern that you've laid on the table?

Mr. RUBIN. Not necessarily. At least we have a right to go to court, even if it takes 2 years, 3 years, or 5 years. If not us, our children or our grandchildren will be able to follow it up. They shouldn't get away with it. They stole so much of it that there's not enough money in this world they could repay what they did to us. But let's not stop now. If we cannot do it, our children will do it. I'll make sure of that. I have three beautiful children and four grandchildren. They've been taught what happened to us. They should follow it up if I'm not around.

Senator COLEMAN. There's probably not a lot of time and there are so many questions here. One of the concerns about ICHEIC—I turn to Mr. Kent on this one—has been questions about claims valuations. Did you have any concerns—you were a commissioner and so you played a role in some of that. Did you have any concerns and objections in terms of the calculation of claims valuation?

Mr. KENT. May I just take one moment to reply to Mr. Rubin that, yes, every survivor should have the right to go to the court, but, like you justly said, Senator Coleman, it will take ages. We will not live to it. But in the meantime, the needy survivors that need the help now will get no help. This is why my heart, my soul, is in this, what I am doing for survivors for now, because they need it. They went through hell and they deserve better.

Now, to reply to you, yes, Senator, there was a lot of discussion about the valuation and, practically speaking, there is not the right

way or the wrong way about the valuation. It depends what avenue you will take. Therefore, ICHEIC finally accepted certain valuations.

I might tell you only that I have accepted the valuation as such to be more proper. Were we 100 percent right? No; because there are very different ways to valuate it. But I can only tell you one thing, that when I heard the reports by various people that only 3 percent was given, this is like saying that the insurance commissioners, the insurance company, nobody knew anything. And I can assure you that the insurance commissioners of the United States, of the United States, are not so foolish as to accept valuations that would give only 3 percent value as a payoff. They are not so foolish. They are bright, they are people with integrity. They would not accept it. This is just as a P.S.

Senator COLEMAN. I know my time is almost up, Mr. Chairman. To both witnesses, I appreciate the passion that you bring and the commitment for justice to be done on this issue.

For you, Mr. Kent, I would like to submit for the record, there are some questions about recommendations you've made regarding post-ICHEIC processing.

Senator Bill NELSON. Take the time.

Senator COLEMAN. We have a little time here. Just so I can kind of step forward: One, how would you characterize—I'm concerned about Central and Eastern Europe folks who were not involved, who didn't have an opportunity even to go through ICHEIC. What should Congress do to bring about agreements with the Eastern European countries to ensure survivors there have some remedy?

Mr. KENT. This is a difficult question, but I would say that I would definitely be willing, our organization, to work with you to submit a more detailed proposal. And I would break it, talking from the top of my head, into two categories. There are some Eastern European countries that are right now members of the European Union. Therefore, the members of the European Union, I would be much more stringent that they should apply proper restitution law because, after all, this is what the western civilization is.

So I would have like a two-tier approach to the Eastern European countries, the ones that are in the European Union and the ones that are not. And we will gladly, by your request, write to help you to be more specific in what and how to do it.

[The information referred to above was not available when this document was sent to press.]

Senator COLEMAN. I look forward to that followup conversation.

Mr. RUBIN. May I just ask Mr. Kent one question, please?

Senator Bill NELSON. Did you have a question?

Senator COLEMAN. I've finished my questions.

Mr. RUBIN. May I ask a question? Mr. Kent, which organizations do you represent?

Mr. KENT. I represent American Gathering——

Mr. RUBIN. No; you do not, Mr. Kent. The board voted against it, that you no longer are the chairman of the Gathering. So please, don't misrepresent to this body.

Senator Bill NELSON. The witnesses will direct their questions through the chair. That is the protocol and that is the Senate Rules.

Mr. RUBIN. I'm sorry.

Mr. KENT. I beg your pardon.

Senator Bill NELSON. All right. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

I want to thank both the witnesses for being here. I know this is a very difficult subject. You put a face on the issues. Each one of the victims of the Holocaust has a story. Some have no survivors to tell those stories. Some will never have records ever available to present the unjustified denial of their rightful claims. So this is a very difficult matter.

Mr. Kent, I thank you for your leadership in stepping forward and trying to help find a solution.

Mr. Rubin, I thank you for being here to let us see firsthand a face of the victims of the Holocaust. It's been a long time, and I am worried that people in this country may start to not recognize the atrocities that were done during World War II and that many victims have yet to be satisfied. So I thank you for that.

But I think we have a real problem here with the insurance issues. I look at the process that was set up as a recognition by many countries that a wrong was done and as an effort to develop a workable way to remedy that. The process comes from the point of view of an acknowledgment and a meaningful contribution to the victims in addition to Holocaust education and remembrance. I think that's what was set out to accomplish, because there was no way that we could now reconstruct a clear picture of the claims that were out there. The information that was made available at best would be partial, could never be complete. So it's a very difficult undertaking.

I might just by way of example: When I first came to Congress, which was 21 years ago, I met with the Japanese-American community affected by the internment camps during World War II. They were wronged by their government and felt that there should be a way that they are compensated for what was taken away from them, their personal freedom and their opportunity for advancement during a period of time where they were confined to a camp.

At that time we looked at how to determine the individual values. Now, I know in insurance claims if you have records you may be able to establish the specific dollar amount, but that's not going to be the typical circumstance here. A collective remedy was developed in working with the community and Congress. To me the major part of that was an acknowledgment, an acknowledgment that a wrong had been done. Second, it was a meaningful contribution to try to remedy that. It wasn't perfect. It certainly didn't represent the damage that was done. None of us would have substituted our place with someone who was interned during World War II for the compensation they received.

I'm not sure there is the right answer here, but I think judgments were made on moving forward with this process, and really good people worked on it who were very sensitive to the pain, Mr. Rubin, that you and the victims sustained, to try to find a just solution.

I want to follow on what Senator Coleman said. I have real concern as to taking action against governments that have not acknowledged this problem. We still have many countries in Eastern Europe that have not taken the appropriate steps to deal with not only insurance, but property restitution, and community property restitution. They have the means to do it and they have resisted coming to grips with that part of their history. They use various excuses for not doing it. I think that's where our focus needs to be, to deal with those countries.

Again, there's one part that I'm going to asking the next panel specific questions about and that is how much cooperation we got in opening up the records. I agree with the comments that have been made on transparency. I hope that we have as much information that's available as possible in order to have the best historical record of how people were victimized by the insurance industry during World War II. Additionally to recognize their failure to step forward and accept responsibility until they were sort of required to do so by the actions of people in our country and the international community.

Thank you, Mr. Chairman.

Senator Bill NELSON. Thank you, Senator Cardin. You are a cosponsor along with Senator Gordon Smith and Senator Coleman of a resolution that I'm introducing about those countries that have never stepped up to acknowledge their responsibility.

Senator Menendez.

**STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY**

Senator MENENDEZ. Thank you, Mr. Chairman.

I want to echo a lot of what my colleague Senator Cardin said. I appreciate the passion that you both bring to the issue and the sense of purpose.

I am here today because I have actually heard from constituents on both sides of this point of view in New Jersey. So I don't come to the issue with a preconceived idea of what is right or wrong. I wanted to listen and learn. So I appreciate hearing from both of you.

I do have a question or two in pursuit of being further educated in this respect. Mr. Kent, let me ask you, what do you see as the principal reasons for European insurance companies not releasing the list of policyholders from the prewar period?

Mr. KENT. This is a complicated issue, but to try to put it in perspective let me say to you that every country—that includes our country—we have a privacy law. So when we are talking about records of maybe 8 million insurance policies that were written between 1933 to 1945, they would have to open privacy law. Every country—Germany, Italy, Switzerland, France—each one have privacy laws. And we have encountered it in our negotiations. It was almost an impossible thing to conquer.

Finally, what we have also arranged, No. 1, that we have to—the bottom line to it was that we have eventually released over 520,000 names that we have acquired from the so-called list. One of the reasons we were able to go around some of the privacy law was that we have worked through—it cost a lot of money, but we

worked through Yad Vashem and we have a sounding process, that we were able to take the list of the total companies and sound which were kind of a Jewish sounding name. This is one of the reasons we got around the privacy law. This is why it is so complicated.

If I have the way of saying right now, we were talking here a lot of times about justice. I heard the word "justice" mentioned so many times. Justice cannot be given to me or to Jack, because justice would be to get our parents, our cousins, our mothers back. There is no way to it.

So what we are trying to do is to create what was so appropriately named in the book that Ambassador Eizenstat wrote, "Imperfect Justice." We're trying to create out of this chaos, out of the Holocaust, out of this madness, something that we can help some people that are still alive.

Senator MENENDEZ. I appreciate that. Since my time is eaten up, I'll take a moment to interrupt you.

I understand the privacy thing, but I also could view the alleged bar of privacy for the purposes of limiting liability and damages. So there's a flip side to that that makes me concerned.

Let me ask you this: In your testimony, which I read, you talk about your concern that pursuing legislation would undermine previous commitments and also the possibility that Germany and other governments would continue and expand upon the funds that have so far been brought to date. How real are those negotiations in terms of what meaningful possibilities do they present?

Second, you also talk about that in fact some of the insurance companies that have participated in this process say they will continue to honor claims by Holocaust victims and their heirs using the relaxed standards of proof recognized by ICHEIC. What mechanisms are there to guarantee that process?

Mr. KENT. This, Senator, is one of the issues which I mentioned previously, right now previously in my testimony, that it would be important for both of us, for all of us, to work together to see that we can somehow create certain means which are maybe not yet right now in effect to make sure that the continuing process of processing the claims continues.

Senator MENENDEZ. So that's an aspiration; that's not something that's under way?

Mr. KENT. No; but in the mean time we have from them not only verbal, but also written assurances that they are going to process these particular claims as long as they get the claims. Now, we also discussed this with the New York—with the New York insurance commissioners. They are going to provide some of the claims and they promise that they will do it.

I welcome, as far as I am concerned, any other suggestions that we can put together that the Congress can also be, and call it, and supervise the processing of the claims.

Senator MENENDEZ. Mr. Chairman, with your indulgence. And the question about how real are these negotiations with Germany and other countries for expanding upon their commitment to date?

Mr. KENT. Are you talking right now about——

Senator MENENDEZ. In your testimony you talked about Germany. In your testimony on page 3, you talk about the ongoing ne-

gotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding.

Mr. KENT. This is very real. It's not only real; this is one of the main reasons why I am so much against this particular bill, because this bill will not solve the problem for now, for the needy survivors. The real negotiation with the Germans contains many things. For example, millions of dollars for home care. Where do we get money for home care? This is the real negotiation with the Germans. We got a few years ago $10, $12 million. We got $15 million right now. We're talking about $45 to $80 million for home care. This is pending.

If you ask me my opinion right now, unfortunately I would say it might be stopped, because I have received verbal statements from ambassadors from Germany that, what's the sense of negotiating if we have to go to the court later on? Let us wait and go to the court. So we'll take a year, 5 years. Then yes, we will wait until it gets through the court.

We have pending Social Security for thousands of survivors, because the Social Security in Germany is so cockeyed that some people got it, some people didn't get it. For example, in one family one person of the family was in the same camp, got it, the other one didn't get it. We are trying to straighten it out.

So we have many. We have article 2 fund, where people are getting thousands of dollars, hundreds of thousands of dollars when you take totality. We have a lot of negotiations, and we're getting it every year. So this is real, it is very real.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator Bill NELSON. We want to thank the two of you. Both of you are Holocaust survivors. And we particularly wanted the two of you to be the first panel, to hear from the people who are affected the most. You've done, both of you, a very admirable job. Thank you for lending your passion and your expertise to the deliberation of this issue. Thank you very much.

Now I would like to call up the second panel.

If you could take your seats, we're ready to go.

As the witnesses are taking their seats, you'll notice that we have tried to balance out this issue so that we can hear both sides. Secretary Eagleburger and Ambassador Eizenstat will present one side. Mr. Rosenbaum and Mr. Dubbin will present another side. And then we want to hear from Ms. Rubin, who is here for the State of New York claims processing office. So we will go in the order in which the agenda has been printed.

I remind you again, 5 minutes, and the clerk of the committee will stand at the end of 5 minutes and if you could wrap up at that point.

Secretary Eagleburger.

## STATEMENT OF HON. LAWRENCE EAGLEBURGER, FORMER SECRETARY OF STATE AND FORMER CHAIRMAN, INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS (ICHEIC), CHARLOTTESVILLE, VA

Mr. EAGLEBURGER. Thank you, Mr. Chairman. Thank you for the opportunity to appear before you today. I appreciate the commit-

tee's efforts to examine the issues underlying the Holocaust-era insurance claims, including the work of ICHEIC, and I certainly remember our earlier cooperation, sir, when you were still operating in the vineyards instead of up here at the higher level.

ICHEIC's mission was to identify and compensate previously unpaid Holocaust-era insurance policies. Everyone working for ICHEIC was committed to achieving our mission and there was passion in their work. We were successful in our work, resolving more than 90,000 claims and ensuring that over $306 million was offered to Holocaust survivors and heirs for previously unpaid policies.

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

Justice was done. Justice has been done.

The commission included many U.S. insurance regulators, representatives from Jewish organizations, insurers, and the State of Israel. Credit also goes to the NAIC for their efforts to resolve the complex issues of unpaid Holocaust-era insurance claims.

We only came to appreciate the challenge as we worked through the undertaking. We were creating a process to address claims that were over 70 years old, from more than 30 countries, in more than 20 languages, involving currencies with no relevant value and with little documentation.

To start, we researched the prewar and wartime insurance market and then invested heavily in extensive global outreach, utilizing all means available and emphasizing that anyone, regardless of the documentation they possessed, should file a claim. We established an agreement on relaxed standards of proof and created valuation standards that could be calculated without the usual policy documentation.

We also developed an extensive research database and a matching system. 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 were no known 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. The Pomeroy-Ferras Task Force, utilizing outside experts, helped establish the size and the scope of the insurance market to determine appropriate settlement amounts.

ICHEIC's archival research was similarly critical to build the information provided by claimants, constructing an ICHEIC research database that ultimately could be matched with companies' information. As a byproduct of this research, ICHEIC published the names of over 519,000 potential Holocaust-era policyholders on the Web site. While historically important, 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 also that our credibility depended on adequate oversight. ICHEIC established four key controls: First, two-stage

independent third party audits; second, an executive monitoring group that could conduct real-time evaluations of companies; third, an in-house verification process to cross-check every decision on every claim that named a company; and fourth, an independent appeals process.

The successful settlement of ICHEIC claims, coupled with restitution efforts during the immediate postwar period and the ongoing work of existing entities to resolve the remaining unpaid insurance policies within their respective jurisdictions, addresses a preponderance of the prewar insurance market. Assertions that billions remain unpaid do not bear scrutiny.

Moreover, for any claims that may remain outstanding, every company that was a member of the commission, as well as the German Insurance Association and the Shoah Foundation, reaffirm their commitment to continue to review and process claims sent to them.

[The prepared statement of Mr. Eagleburger follows:]

PREPARED STATEMENT OF HON. LAWRENCE S. EAGLEBURGER AND DIANE KOKEN, FORMER CHAIRMAN AND VICE CHAIRMAN, INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS (ICHEIC), CHARLOTTESVILLE, VA

Chairman Nelson, Senator Vitter, members of the subcommittee, we appreciate the opportunity to appear before you today, and thank you for the work you have 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. We also want to thank you, Chairman Nelson, for your significant contributions to the work of International Commission on Holocaust Era Insurance Claims (ICHEIC) as a founding member of the Commission during your term as Florida's State Treasurer, Insurance Commissioner and Fire Marshal.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) resolved more than 90,000 claims for Holocaust survivors and their heirs. This testimony will provide 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.

Chairman Nelson, you are uniquely situated to appreciate the Commission's challenges and approach. In your role as Florida's insurance commissioner, you were central to driving the Commission's creation, and organization, and to ensuring both the mission—to identify and compensate previously unpaid Holocaust-era insurance policies—and also building the concept of humanitarian funds, to be able to provide at least in part some form of "coverage" for the many Holocaust victims who did not survive, or had heirs survive to make claims.

I was selected to chair ICHEIC in the Commission's early days, and remained committed to achieving our mission throughout what was a long and difficult process. As you know, Diane Koken was a member of the Commission throughout her tenure as Pennsylvania Insurance Commissioner, from 1997–2007, and remained as vice chair until ICHEIC closed. We believe ICHEIC was largely successful in accomplishing its mission. We were joined in this effort by many State insurance regulators from all parts of the country, major Jewish groups and survivors' organizations, the State of Israel, as well as European insurance companies and associations. We commend all these participants who worked 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 60 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 imme-

diate 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 prewar insurance market.

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. Since that time, four of the five ICHEIC companies—AXA (which also now controls Winterthur), Generali, and Zurich—wrote to Diane Koken directly, in the context of her testimony before the House Financial Services Committee in February, to reaffirm the commitments they made at the ICHEIC meetings. The German Insurance Association and the Dutch Insurance Association respectively sent letters to Chairman Frank of the House Financial Services Committee, commenting on the legislation, in which they referenced their ongoing commitments to process claims.

Our primary concern throughout our service to ICHEIC has been assisting Holocaust survivors, and the families of those who perished, seeking to recover the proceeds of unpaid prewar insurance policies.

We appreciate the care we must take with the expectations of survivors and their heirs; we know that the path to closure is a difficult one. In the late 1990s, the question of Holocaust-era asset restitution reemerged 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 prewar life insurance policies of those who had been persecuted during the war. They 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 other survivors. 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 prewar 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. With ICHEIC, we established 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 the heirs of any Holocaust victims who may have held policies, 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 worldwide knew how to file claims, developed a Web site 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 decisionmaking practices to make sure they complied with ICHEIC rules and guidelines.

As we offer more detail on each of these steps, we 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

[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.

claimants, was a substantial proportion of the estimated market share; and (2) the degree to which the combined experience, authority, and responsibilities of U.S. 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 U.S. 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 U.S. 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 nonpayment 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, we 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 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 5 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.

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

[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."

with U.S. 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 Web cast in which I participated in as ICHEIC chair.

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 Web site, 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 5 years that the Commission accepted claims, it received 120,000 claim forms in more than 20 languages from more than 30 countries.[7]

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 decisionmaking 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 trilateral 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 known 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 prewar 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 sepa-

[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.

rate but related humanitarian claims payment process for unnamed, unmatched 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 nondocumentary 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 inter-war 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 Web site at www.icheic.org. Arrangements have been made for this Web site 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. Since many claimants had little or no information about specific insurance policies, ICHEIC also conducted archival research to locate documents that were relevant to Holocaust-era life insurance claims. ICHEIC commissioned experts to conduct research in public archives and repositories in Central and Eastern Europe, Israel, and the United States to collect as much relevant information as possible. These efforts led to the creation of a database that provided a critical tool used by companies and ICHEIC to further enhance information provided by claimants and thus chances of identifying policies on submitted claims.

ICHEIC's research spanned 15 countries and included over 80 archives. Researchers reviewed three types of records. The first, representing the bulk of the material reviewed, consisted of Nazi-era asset registration and confiscation records. Files pertaining to the post-war registration of losses made up the second category. The third category was comprised of insurance company records located in public and regulatory archives. ICHEIC researchers located almost 78,000 policy specific records. This research augmented 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.

Concerns were raised at the House Financial Services hearing in February that German archival records remain sealed. A misimpression was left about the impact on ICHEIC research. Under German data protection laws documents are always available to the individuals or their heirs or representatives who are the subject of the documentation—e.g., postwar compensation, even while records containing personal information are not accessible to the general public until 50 years after the date of the documents. Moreover, since asset declarations predate the war, they are actually fully accessible. In addition, in February 2002 the German Parliament passed an amendment to the Archives Law, allowing still broader access to personal records of victims of Nazi persecution.

ICHEIC conducted research in German archives and repositories first in 2000, and again from late 2002 through April 2003.[8] Through this research many asset declaration files were reviewed and a considerable number of polices were identified. Overall research in German archives contributed information on 41,540 insurance policies belonging to 27,886 policyholders.

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

[8] As part of ICHEIC's agreement with the German foundation "Remembrance, Responsibility and Future."

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 Web site 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 Web site also carried a clear warning that finding a name on the Web site 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 Web site (www1.yadvashem.org/pheip).

The broad obligation to publish potential policyholder names as described in the legislation, H.R. 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 prewar proportion of the persecuted population (as determined by ICHEIC's research) was only a fractional part of the prewar 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.[9] 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.

H.R. 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 prewar and Holocaust-era Europe. With one axis representing the company responsible for life insurance poli-

[9] 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."

cies during the relevant period and the other representing the country of issue, the point of interception identified the current day successor responsible for specific prewar 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 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 $1,000 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.[10]

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 U.S. 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 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, as no one here today knows better than does Chairman Nelson, we were able through amicable and inclusive dialogue to voluntarily adopt a new approach toward the resolution of unpaid Holocaust-era insurance claims for the benefit of Holocaust survivors and their families and those who did not survive.

[10] 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.

In the end, it was about people and about justice. We recognize that no Commission can resolve the wrongs done by the Holocaust. We 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.

Senator Bill NELSON. OK, if you could wrap up, Mr. Secretary.

Mr. EAGLEBURGER. I have. I did.

Senator Bill NELSON. Thank you very much.

Ambassador Eizenstat.

**STATEMENT OF HON. STUART E. EIZENSTAT, PARTNER, COVINGTON & BURLING LLP AND FORMER SPECIAL REPRESENTATIVE OF THE PRESIDENT AND SECRETARY OF STATE ON HOLOCAUST ISSUES, WASHINGTON, DC**

Ambassador EIZENSTAT. Thank you for the hearing, Mr. Chairman, and for your role as insurance commissioner in getting this process started.

I've testified 13 times before congressional committees on this issue. We were able to settle with a variety of countries for $8 billion in compensation, benefiting more than a million and a half survivors of the Holocaust and other victims of Nazi atrocities or their heirs. Insurance was a part of that negotiation.

Our country has a long history of negotiating lump sum settlements on behalf of the claims of nationals through executive agreements, dating back to 1799. In many cases such agreements have provided that individual claims be submitted, as here, to a commission to adjudicate and pay the claims of individual claimants. So the ICHEIC process was not in any way revolutionary.

In typical settlement negotiations with foreign countries, the U.S. Government is the sole negotiating power on behalf of American claimants. But here there was more protection for U.S. citizens than that. There were attorneys, some of the premier class action attorneys in the country, representing the class of survivors. The State of Israel actively participated at the instance of the Prime Ministers of Israel. Jewish groups such as the Claims Conference and the World Jewish Restitution Organization also insisted on favorable terms for Holocaust survivors and their families. The interests of survivors and their heirs were broadly and vigorously represented through all the negotiations.

It's the policy of the United States Government to resolve Holocaust claims through negotiation, not litigation. The reason was speed, because of the age of victims and the length of time for which justice had been denied; also because of foreign policy considerations in working with our European allies, including Germany, and the State of Israel.

It was also the policy of the United States, which I enunciated on numerous occasions, that ICHEIC would be the sole remedy for resolving insurance claims. This was reiterated in a letter I wrote to Secretary Eagleburger at the end of November 2000. This was motivated by the desire to get as many companies as possible to participate in the ICHEIC process so as not to be constrained by the limited jurisdictional reach of U.S. regulators and U.S. courts over foreign insurers.

This is critical to understand. The only companies that would be subject to jurisdiction of U.S. courts are those that do business

here. We were trying to get an even broader universe of companies engaged in the ICHEIC process, and we were able to do that. Ultimately, many European insurers who did not conduct business in this country and therefore would have been beyond the reach of U.S. courts participated in the ICHEIC process. Indeed, as Secretary Eagleburger indicated, ICHEIC actually paid policies in full under the same basis for those companies that were liquidated, nationalized, and no longer in existence. And if you filed a claim even against an existing company and you had no proof, you still got a humanitarian claim.

The role also of German insurance companies is critical to understand. If legislation like the House legislation were to pass, it would upset all the work we did on behalf of victims, because we could not have settled for 10 billion deuschmarks the slave labor cases with German companies. Insurance was the critical element. Allianz and the other German companies said: If you don't settle with all German companies, including insurers, no payments, period.

So we had to negotiate with all of them. We ended up, of the 10 billion deuschmarks, $5 billion, taking $550 million and passing it through to Mr. Eagleburger's ICHEIC commission. And I can assure you my negotiations with the gentleman on my right were almost as difficult in terms of how much of that we passed through as they were with the Germans and the class action lawyers.

Mr. EAGLEBURGER. It's all right.

Ambassador EIZENSTAT. ICHEIC was ultimately successful. It paid $306 million to 48,000 Holocaust victims and their heirs under legal standards that would never have survived in an individual court case, highly relaxed standards. They paid $169 million for humanitarian programs and humanitarian claims as well.

Now, as a consequence, if we pass legislation similar to what the House does it would upset all the work we did, all the reliance that companies paid money for in Austria, in Germany, in Switzerland. They paid money to get legal peace. If they hadn't gotten legal peace and an assurance from the executive branch of that, they wouldn't have paid these $8 billion that we were able to achieve.

Please don't upset that assurance.

It would also affect ongoing negotiations that I think the United States should be engaging in more vigorously with countries like Poland. This is where your resolution comes, Mr. Cardin. Poland has done nothing, nothing, nothing, on restitution. If we finally get them to do it, how would they do it with any confidence if they thought the Congress would come back and allow suits at a later date?

Now, how do we proceed? There is a way to accomplish some measure of additional justice. First, the ICHEIC companies have assured the world that they will indeed process——

Senator Bill NELSON. OK, could you wrap up.

Ambassador EIZENSTAT [continuing]. Claims according to ICHEIC standards. We should hold them to that. And what we should do—and I've laid it out in my testimony—is require them to submit to the U.S. Government through the State Department's Office of Holocaust Issues, which I helped create, and to the insurance commissioners and to the New York State Office, with copies

to the Congress, to show which claims have been submitted, how they dealt with those claims under the ICHEIC standards.

We should also ask them to put back on the Web page the 500,000 names, so if people didn't see them the first time they could easily access those. And you should hold continued oversight hearings to hold those companies to their pledge that they will continue to process these claims according to ICHEIC standards.

[The prepared statement of Ambassador Eizenstat follows:]

PREPARED STATEMENT OF AMBASSADOR STUART E. EIZENSTAT, PARTNER, COVINGTON & BURLING LLP AND FORMER SPECIAL REPRESENTATIVE OF THE PRESIDENT AND SECRETARY OF STATE ON HOLOCAUST ISSUES, WASHINGTON, DC

Mr. Chairman, Ranking Member Lugar, I want to thank you, and the members of the committee, for inviting me here today to testify on the very important issue of Holocaust-era insurance claims. For many years, the Foreign Relations Committee has focused on Holocaust compensation and restitution matters. You have provided a strong voice of moral leadership on a wide variety of Holocaust-related issues, and I, therefore, thank each of you for that leadership. Senator Nelson, your leadership as Insurance Commissioner of Florida was indispensable in highlighting the importance of addressing Holocaust-era insurance policies and providing justice to victims and their families.

Over the years, I have testified before various committees of the Congress 13 times on Holocaust issues, 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.

There are five things I would like to accomplish through my testimony today. First, I will address the emergence of the International Commission on Holocaust Era Insurance Claims ("ICHEIC"). Second, I hope to enhance the subcommittee's understanding of the United States Government's Holocaust compensation and restitution efforts during the period I served as the administration's leader for these issues—particularly regarding the executive agreement between the United States and Germany and the resulting German Foundation—and how ICHEIC fit into these broader efforts to secure compensation and restitution for Holocaust victims and their heirs. Third, I will suggest that the bill currently pending in the House, H.R. 1746, the Holocaust Insurance Accountability Act, as currently drafted, threatens the integrity of the U.S. Government's longstanding policy of resolving Holocaust-era claims through negotiation, not litigation. Fourth, 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 since the European insurance companies are committed to continuing to process future claims using ICHEIC's loose and flexible standards, and undercuts the successful U.S. Government policy of finding nonlitigious ways to compensate Holocaust victims and their families without resort to costly, lengthy, and uncertain lawsuits. Finally, I will recommend measures the Congress could take which, in my opinion, offer a greater potential to assist Holocaust survivors and heirs than does H.R. 1746.

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 50-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 offered a useful path to obtain restitution and compensation. Indeed, several Federal judges dismissed Holocaust-related claims for slave labor payments.

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. You, Senator Nelson, were also a key leader. You and the other insurance regulators had seen a growing number of claims relating to unpaid Holocaust-era insurance policies. In response, you and your colleagues 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 nonpayment 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, including insurance 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 the only European insurance companies 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. Ultimately, 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. Those efforts began in the early 1950s. West German Chancellor Konrad Adenauer expressed, in September 1951, the need for Germany to provide Holocaust victims with "moral and material indemnity." In October 1951 and in an effort to avoid direct negotiations with West Germany (East Germany having refused any responsibility), the State of Israel, led by Prime Minister David Ben-Gurion helped create the Conference on Jewish Material Claims Against Germany (the "Claims Conference") along with 23 Jewish organizations that were Claims Conference members. These actions led to the two 1952 Luxembourg Agreements with West Germany on one side and the State of Israel and the Claims Conference, respectively, on the other. Under these and later agreements which together became known as the German "Federal Indemnification Laws," Germany has paid some 100 billion marks (equal to more 60 billion euros or 100 billion in today's dollars) to Holocaust survivors and heirs around the world.

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 the House Banking 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 it was the foreign policy of the United States 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 as well.

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 11 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; you, Senator Nelson; and your colleagues inspired.

U.S. GOVERNMENT'S BROADER RESTITUTION AND COMPENSATION EFFORTS

ICHEIC and the insurance claims it processed were only one part of the U.S. Government's broader Holocaust restitution and compensation efforts. As noted above, the United States was limited in its ability directly to pursue restitution and compensation during the cold war, although Germany paid substantial sums beginning

in the early 1950s. I first became involved in these issues when I was asked, in the mid-1990s while serving as U.S. Ambassador to the European Union, to encourage the newly independent states of Eastern Europe to restore to their Jewish communities communal property (including Synagogues, cemeteries, and community centers) that had been taken during World War II. Soon, however, I became the administration's point person for a much broader effort.

The single largest piece of the broader effort was the executive agreement between the United States and Germany as a part of which the German insurance companies participated in the ICHEIC process. 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.

As an initial matter, the United States has a long history of negotiating "lump sum" or similar settlements of its nationals' claims through executive agreements, a practice which dates back to 1799. Typically, executive agreements settle the claims of individuals against a foreign state. In the case of Holocaust claims, individuals had claims against foreign corporations as well as against foreign states. As the Supreme Court noted in its *Garamendi* decision, however, this "distinction does not matter." It does not affect the United States Government's authority to settle claims through executive agreement. Additionally, in many situations, such executive agreements have provided that individual claims be submitted to a commission, which would adjudicate and ultimately pay the claims of individual claimants. So the ICHEIC process was not revolutionary in this respect either.

In typical settlement negotiations with foreign countries, the United States Government is the sole party negotiating on behalf of, and seeking to protect the interests of, individual American claimants. In the case of our Holocaust-related negotiations, however, the interests of the survivors and heirs were represented by a number of different groups, each of which had every reason to seek the best settlement possible. First, they were represented by a number of the United States' premier class action lawyers. Second, the State of Israel actively participated, in the person of Bobby Brown, in all negotiations. Third, Jewish groups, such as the Claims Conference and the World Jewish Restitution Organization ("WJRO") insisted on favorable terms. The WJRO is an umbrella organization of 10 other Jewish groups created in 1992 by the State of Israel and the World Jewish Congress to represent the interests of world Jewry in regaining Jewish property after the fall of communism.

As shown, the interests of survivors and heirs 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 that it was in the foreign policy interest of the United States that court cases against German companies for wrongs committed during the Nazi era be dismissed on any valid legal ground, and the U.S. Government 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. It was and remains the policy of the United States Government that Holocaust claims should not be resolved by litigation.

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 to the various classes of claimants; 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 1 billion marks was to cover property claims not fully captured by earlier German compensation and restitution programs. Of the one billion marks, 550 million marks were allocated to 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 Jewish 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 United States-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 a critical 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 German 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. I was negotiating with the German insurance industry, the plaintiffs' attorneys, and the Jewish groups, on the one hand, and with Secretary Eagleburger, on the other. My negotiations with Secretary Eagleburger, chairman of ICHEIC, were difficult since he wanted the moneys allocated from our German settlement to ICHEIC.

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 United States-Germany 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. 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 legal 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 Claims Conference.

ICHEIC paid claims regardless of whether the company which issued the claimant's policy was actively participating in the ICHEIC process. This is important, because it meant that individuals who owned policies issued by companies that were liquidated, nationalized, or otherwise no longer existed, could still submit a claim to ICHEIC and be paid the full value of the claim. Approximately $31 million was paid out on such so-called "8a2" claims. The normal relaxed ICHEIC standards applied equally to these claims.

In the final analysis, ICHEIC successfully compensated individuals for their Holocuast-era insurance policies. Much has been said about the substantial administrative costs ICHEIC incurred, which amounted to approximately 17.4 percent of the funds it paid out. But it is important to understand what is included in this 17.4 percent figure. It includes all costs incurred by ICHEIC in publicizing its programs;

in researching all claims at no cost to the claimants; in creating and staffing U.S. and European offices to work with local claimants; and in maintaining a call center that potential claimants could contact to receive more information about and assistance with the ICHEIC process.

H.R. 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 is 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 is based also on 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 currently pending in the House 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 companies that have been deemed by the United States Government to be entitled to "legal peace," thereby undermining the word and credibility of the U.S. Government itself.

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.

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, such as the Claims Conference, continually seek to increase payments under our existing arrangements. It will impair the ability of those groups to successfully negotiate such enlargements in the future if Congress passes the bill. Third, the United States Government continues to seek agreements with other governments and industries that have not yet dealt fully with Holocaust restitution and compensation. Its ability to negotiate likewise would be impaired. Countries and companies will be unwilling to negotiate with survivors' groups or the United States Government if it appears to them—not unreasonably—that the United States is incapable of maintaining its end of a bargain.

H.R. 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, jurisdictional arguments, 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). Such as cause of action would likely raise the hopes of survivors without offering them a real chance at additional recovery. But most importantly, litigation would take time—time that survivors on the whole do not have.

A BETTER WAY FORWARD

I urge the committee to find a better way forward than H.R. 1746. I understand fully the desire to create a cause of action and to require publication of all Holocaust-era insurance policies as an aid to potential claimants. I have already noted my concerns about a new cause of action. I also am concerned that the Holocaust Insurance Registry proposed in the bill would place 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 standards, I believe that the better way forward is, first, to ensure that ICHEIC companies continue to process all claims submitted to them using ICHEIC's relaxed standards as they have pledged to do, and, second, to require that those companies submit periodic reports to an appropriate office of the United States Government on their claims processing. This reporting should include the number of new Holocaust-era claims submitted, the number granted, the reasons for any refusal, and the amount offered in compensation. The report could be submitted to the State Department's Office of Holocaust Issues, or some other appropriate office, and it should also be shared with the National Association of Insurance Commissioners and New York State's Holocaust Claims Processing Office ("HCPO"), to assist in their efforts to aid individuals with Holocaust claims. The HCPO, which will assist any individual—not just New Yorkers—in making Holocaust-related claims, is working in concert with the National Association of Insurance Commissioners to provide this continuing service.

Congress also should hold periodic oversight hearings to assure that claims submitted are being handled properly and in conformity with ICHEIC standards. These requirements would strengthen U.S. policy of resolving Holocaust claims through nonadversarial processes and could be complied with without forcing European 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.

Third, I suggest that is necessary that the list of approximately 500,000 names published by ICHEIC be made available in perpetuity, perhaps on the Web sites of the National Association of Insurance Commissioners, the HCPO, and the State Department's Office of Holocaust Issues. Additionally, the ICHEIC insurance companies should publish newspaper notices in the United States and Europe bringing to the attention of the general public the existence of the list, of the companies' willingness to process future claims under ICHEIC standards, and of the availability of the HCPO in assisting with claims.

Finally, I would suggest that efforts of the Congress and the rest of the U.S. Government should focus on those countries and industries that have done nothing yet to compensate victims of the Holocaust.

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 to ICHEIC. They have agreed to do so using favorable ICHEIC standards of evidence and burden of proof and to do so without cost to claimants. In a letter of April 23, 2008, the German insurance association ("GDV") recently has committed in writing to continue to process both named and unnamed claims according to ICHEIC standards and has expressed its willingness to report to the

State Department or other appropriate agency on the results of such claims. Congress should hold the GDV and other ICHEIC companies to this commitment.

CONCLUSION

In conclusion, I would simply like to say that I appreciate and share the emotions which motivate the desire on the part of Congress to do something to help Holocaust survivors and heirs. However, as one who has spent many years working diligently on Holocaust compensation and restitution issues, I urge the Congress to err on the side of discretion and to consider the potentially catastrophic effect that certain measures, like H.R. 1746, would likely have on existing and future efforts to secure some measure of justice for victims of the Holocaust and would likely do so without giving survivors any additional real chance of recovery. At the same time, I would support legislating a reporting requirement to ensure that European insurers pay claims in the future under ICHEIC standards and do so with continuing congressional supervision. I would support republication of the ICHEIC list of names and renewed efforts to inform the public of the availability of claims processing by the ICHEIC companies and assistance by the HCPO. Finally, I would encourage the United States Government to focus its resources on obtaining restitution and compensation from countries and industries that have done nothing to atone for their role in the Holocaust.

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DEPARTMENT OF STATE,
*Washington, DC, May 5, 2008.*

Hon. BILL NELSON,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR NELSON: I am writing to you to transmit Administration views on H.R. 1746, the "Holocaust Insurance Accountability Act of 2007." I understand that you are planning a hearing on May 6 on what may become a Senate version of this bill. We continue to oppose this bill.

While we appreciate the intentions behind this proposed legislation, we believe it would undermine the policy the United States has advanced for the past decade. The bill would, if enacted, directly conflict with a number of U.S. bilateral agreements with other countries on Holocaust-related compensation and thus create significant foreign relations problems for the United States. Moreover, we believe that the International Commission on Holocaust Era Insurance Claims (ICHEIC) has already achieved many of the objectives of the draft legislation.

The Administration has long sought to ensure that Holocaust survivors receive a measure of justice for their suffering and that the survivors and heirs of Holocaust victims obtain compensation for property stolen during the Holocaust. We continue to do so.

An enclosure to this letter outlines in more detail our concerns. Should you seek more information, I will be happy to discuss this matter personally with you.

Sincerely,

DANIEL FRIED,
*Assistant Secretary of State (P)*

Enclosure.

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ADMINISTRATION VIEWS ON H.R. 1746

We oppose H.R. 1746, the "Holocaust Insurance Accountability Act of 2007," which would support a federal cause of action in certain Holocaust-related insurance matters. While we appreciate the intentions behind this proposed legislation, we believe it would undermine the policy the United States has advanced for the past decade. The bill would, if enacted, directly conflict with a number of U.S. bilateral agreements with other countries and create significant foreign relations problems for the United States. Moreover, we believe that the International Commission on Holocaust Era Insurance Claims (ICHEIC) has already achieved many of the objectives of the draft legislation.

The policy of the United States with respect to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is and has been that concerned parties, foreign governments, and nongovernmental organizations should act to resolve such matters through dialogue, negotiation, and cooperation, not through litigation. Examples of the successful implementation of this policy include Executive Agreements with Germany and Austria which have facilitated the pay-

ment of billions of dollars to victims of the Nazi era, including those with claims based on unpaid or confiscated insurance policies.

Similarly, the United States has supported ICIIEIC since its establishment and has consistently stated its belief that the ICH–EIC should be viewed as the exclusive remedy for unresolved insurance claims from the Nazi era. ICIIEIC members included organizations representing Holocaust survivors, U.S. insurance commissioners, and foreign insurance companies, and the Department of State has been an observer on ICHEIC's governing body since its inception. Any interested party is welcome to review the work of the ICHEIC, via the Commission's Web site, www.icheic.org, or by consulting the report conducted by the National Association of Insurance Commissioners at www.naic.org.

ICHEIC's efforts resulted in the payment of approximately $300 million to some 48,000 claimants—beneficiaries or heirs of beneficiaries of policies issued to Nazi victims during the period 1920 to 1945—the vast majority of whom could never have otherwise received anything. It published a list of 500,000 names and provided widespread publicity during a four to five year claims period. While some claimants had documents regarding policies, the vast majority of them did not. Nevertheless, at no cost to the claimants, ICI: LEIC undertook the research and found policies in many cases. On such policies, ICHIEC paid the full amount plus interest since World War II, usually this amounted to $10,000 to $20,000 per documented claim, but occasionally it was much more. In addition, some companies, against which there were valid claims, had gone out of business. Nevertheless, ICHEIC and the participating companies paid the claims.

In addition to the $300 million paid out for claims, ICHEIC also made available $169 million mainly for social welfare projects that benefited Holocaust survivors. These funds do not include millions of dollars devoted to insurance claims outside of ICHEIC, such the $25 million earmarked for insurance claims by the Austrian General Settlement Fund (created pursuant to a U.S.-Austria agreement), which is continuing to pay claims. We estimate that over $500 million dollars have reached Holocaust survivors and heirs as payments for insurance claims and related projects.

None of this would have been possible if the foreign governments and companies providing these payments believed they would be subject to continuing litigation in United States courts over Holocaust-era claims. In return for $6 billion in payments to Holocaust victims, including to holders of Holocaust-era insurance policies, the United States agreed, with respect to German and Austrian companies, that continuing litigation would be contrary to its foreign policy interests and that those companies should instead have "legal peace." The United States has made these interests clear in numerous courts, all of which have dismissed litigation that would have undermined these important policy goals.

The proposed legislation would take the opposite course. Its primary effect would be to enable and facilitate renewed litigation, even where the claims at issue had already been explicitly settled in U.S. courts. We believe such litigation would be acrimonious, expensive, and ultimately unsuccessful. In addition, it would cause significant problems for the foreign relations of the United States, especially with respect to countries with which we have bilateral agreements and which will see enactment of this legislation as a repudiation of such agreements. If such legislation is enacted, we expect it will be extremely difficult to achieve cooperation from other countries in their taking additional domestic steps on Holocaust restitution matters.

The Administration is well aware that the ICHEIC process was not perfect. There can be no "perfect" justice when it comes to the Holocaust. But, in our judgment, H.R. 1746 would detract from rather than advance the cause of bringing some measure of justice to Holocaust survivors and other victims of the Nazi era, a cause for which the United States has been in the forefront for the past 60 years.

Senator Bill NELSON. Thank you, Ambassador Eizenstat.

Mr. Rosenbaum.

## STATEMENT OF THANE ROSENBAUM, JOHN WHELEN DISTINGUISHED LECTURER IN LAW, FORDHAM UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. ROSENBAUM. Senator Nelson, other Senators on the committee: Thank you so much for convening today this afternoon's hearing.

My name is Thane Rosenbaum. I'm grateful for being invited. I'm a law professor at Fordham Law School, specializing in the area of

human rights and moral justice. I've written a number of books on Holocaust-related themes, both fiction and nonfiction, and I've written hundreds of articles for all of the major newspapers in the United States and outside of the United States dealing with Holocaust-related matters, including restitution.

What I'd like to do is set the moral table, because when you're dealing with an atrocity your starting point must always be the moral dimension. There are some matters that need to be clarified. There's somewhat of a misunderstanding, and let me see if I can assist the committee in a way that might be helpful.

First the question of what is restitution. Restitution doesn't even occur unless the victims feel restituted. It's the first priority. It's the moral dimension of what restitution means, that victims need to feel satisfied.

Senator Cardin earlier said something about acknowledgment and I was interested in that, but acknowledgment is not enough. Acknowledgment is symbolic and it's significant in its own right, but the victims themselves must walk away and feel respected and dignified and treated as if there was a just resolution. Acknowledgments are not provided for Senators or for me; acknowledgments are for the victims. It is they who have to feel good.

The Holocaust survivors by and large throughout all of these restitution proceedings, unfortunately, have not felt good about what has been done on their behalf, have not felt restituted, partly because they've been infantilized. They have not been able to participate in the process. They have not been able to make decisions for themselves. They have not been able to confront the people who have harmed them. They have not been able to seek the truth of their family histories. They have not been able to achieve any discovery.

Essentially, what this legislation does is restore to survivors their dignity and give them a private right of action. Essentially, it liberates the survivor again, and this time it's for the purposes of controlling his or her own destiny in order to finally participate in the process.

Another misunderstanding is that there's something extreme or Draconian about this legislation, and I don't believe that it does. It strikes me that the legislation is a very unaggressive, almost passive, bill. It's not a legislation of disgorgement. If anything, it's merely legislation of access and empowerment. It provides the survivor with a legal remedy and a legal forum in which to pursue that remedy.

The passage of this legislation in both Chambers of Congress doesn't result in the exchange of one dollar in insurance payments to survivors. All it really does is provide the threat of a lawsuit, essentially, by requiring the publishing of the names of policyholders and the historical justice that's achieved through such disclosure, and through access to the courts by requiring insurance companies to settle cases on fair and reasonable terms.

The legislation functions as an implicit reminder to play fair, to make things right, to give survivors an opportunity to regain their property and honor. Insurance companies have nothing to fear unless they have something to hide.

Under ICHEIC, that's exactly what happened. The insurance companies were able to hide. Why? Well, the insurance companies were included within ICHEIC. There was no meaningful document discovery. There was an absence of truth-seeking in very fundamental ways. Lawsuits, the threat of lawsuits, opens up the process, not just to survivors. Senator Nelson certainly knows that law suits create yet another invitation for State insurance commissioners to participate and get back in the game. It places pressure on the European industries to make public what they've done. It calls attention to these matters to the public and to the media. Congressional pressure can be reinvigorated and renewed, of course, by this legal pressure.

I published an op-ed in yesterday's New York Sun. It was really an invitation for the insurance industry to regain their goodwill, to not hide behind ICHEIC and to finally do what's right.

My final point goes to a point that we've heard again today from Mr. Eizenstat. We've read it repeatedly. It's this question of rough justice and legal peace. I have an enormous amount of respect for my friend Stuart Eizenstat, an enormous amount of respect. But I can tell you, I've been a law professor for 17 years. I don't have the slightest idea what he means when he says rough justice and legal peace.

I have a vague idea. These terms have become fashionable, they've been acceptable terms of art in these proceedings. But what he's really saying is that under these circumstances of Holocaust restitution we really don't accept—we can't expect justice, we can't expect it in any meaningful way. We must accept inadequate justice, insufficient justice, substandard justice, discounted justice, essentially rough justice.

Now, why? I'll sum up in a second. Will that be all right, Senator Nelson? Thank you, sir.

Senator Bill NELSON. If you could wrap up.

Mr. ROSENBAUM. I will, sir. Thank you.

I would think that in this instance, given the enormity of the Holocaust, as with all victims of genocide, we would expect the exact opposite. The Nuremberg prosecutors didn't accept rough justice. We accept that victims of genocide are an iconic people, the possessors of forbidden knowledge. We don't settle for less than complete justice. We actually should ultimately settle for more.

This basic idea that we should accept something as if it's better than nothing is obviously not enough. It's not enough for survivors because they're not satisfied. It hasn't in any way relieved their resentment or their sense of unjust resolution in this case. So ultimately there's no sense of restitution.

The victims of the Holocaust and genocide in general require not rough justice, but actual moral justice; not legal peace, but moral peace. This is not about making governments and corporations feel better about themselves so they can sleep easier at night. In fact, it ought to be about allowing survivors to feel restituted in some truly meaningful way.

Senator Bill NELSON. Thank you, Mr. Rosenbaum.

Mr. ROSENBAUM. And to also allow the dead to rest in peace.

Thank you, chairman.

[The prepared statement of Mr. Rosenbaum follows:]

PREPARED STATEMENT OF THANE ROSENBAUM, JOHN WHALEN DISTINGUISHED LECTURER IN LAW, FORDHAM UNIVERSITY SCHOOL OF LAW SCHOOL, NEW YORK, NY

Mr. Chairman, and the Senators on this committee, let me begin by thanking you for inviting me to testify here today in connection with the Senate's consideration of H.R. 1746, the Holocaust Insurance Accountability Act. My name is Thane Rosenbaum. I am a law professor specializing in the area of human rights and moral justice. Over the years I have written a great number of books, articles, and essays that concerned Holocaust-related themes and issues. I have been quoted in various national news media stories on matters involving Holocaust restitution. I have been a Yom HaShoah (Holocaust Memorial Day) speaker at synagogues, churches, universities, and public memorials in cities all across America. In fact, last week I was simultaneously writing this statement while preparing to deliver a Yom HaShoah address.

Finally, I am the only child of two Holocaust survivors, both concentration camp victims, neither of whom are alive today. I have made no claims for restitution relief on behalf of my parents. I am here today at your invitation and without any tangible benefit to myself. Indeed, I am here only because when it comes to the Holocaust, this committee, this Chamber of Congress, is the appropriate place to be.

Let me begin by stating that what you do here today is vitally important on so many grounds, most especially, for reasons of humanity and morality. Given my emotional, familial, and professional involvement in all things related to the Holocaust, I want to thank and commend you for convening this hearing. To my mind, there is great potential that your efforts here today will lead to righting a historic wrong and vindicating the rights of those who were the principal victims of the Nazi genocide.

The voice of the Holocaust survivor has, tragically, and for far too long, been silenced throughout these restitution initiatives. And, in making this assessment, I am including here the measures taken against Swiss Banks, German industries for their use of slave labor and the confiscation of gold bullion and artwork, and now the matter of European insurance companies and their unconscionable denial of claims and $17 billion in unjust enrichment, which forms the centerpiece of this committee's hearings for today.

Along the way, however, throughout each of these restitution efforts, the Holocaust survivor has been repeatedly stripped of his rights, separated from his property, and deprived of his dignity. No one ever bothered to stop and ask Holocaust survivors what they wanted. There was so little curiosity as to whether Holocaust survivors even had an opinion about how to best redress the crimes committed against them. And there has been great neglect from those who were purportedly entrusted to guard their interests. Finally, and perhaps most insultingly of all, Holocaust survivors have been readily dismissed and deemed too insignificant to speak for themselves. Self-appointed surrogates stepped in as custodians and proxies and immediately regarded the survivors as too unsophisticated to define their own interests and dictate the terms of how to proceed against those who had harmed them—six decades after their improbable survival.

So few people can claim to have endured what they survived, and yet so many presume to speak for them, and speak so casually about what they should accept as restitution for the nightmares they experienced firsthand. Rare has been the case where Holocaust survivors meaningfully participated in the negotiations that have presumably addressed their losses, their property, and their family history.

It is, in fact, grossly ironic that Holocaust survivors have been so infantilized during the last days of their lives. Those who survived the Nazi death camps as indefatigable teenagers have, in their old age, been reduced to voiceless reminders of fraud and neglect. After the recent various disclosures of wartime thefts of the Nazis and the complicity and self-dealing of other European nations and corporations, the objective should have been to find ways to empower Holocaust survivors to reclaim their property and discover the truths of how they were so cruelly defrauded and deceived. Instead, the very opposite outcome occurred. The failure of ICHEIC is but one example of how these well-meaning restitution initiatives only served to further marginalize and degrade Holocaust survivors during their greatest hour of need and during the final hours of their lives.

What you do here today is a most righteous task. You have the power to enable a depleted community of Holocaust survivors, many of whom are living in poverty, to restore their rights, their dignity, and, most especially, their voice.

Restitution is primarily about righting a historic wrong. It is about providing relief to those who have been subjected to the most unimaginable forms of human suffering. And it is relief in the broadest sense—relief that actually makes victims feel relieved. Restitution is not only about the recovery of assets and the receipt of mon-

etary compensation. That is too simplified an understanding of restitution—the language and mindset of lawyers rather than the wishes of moral men and woman. At its deepest most profound core, restitution demands the public acknowledgment of loss and the public reckoning that is achieved only by learning the truth. This is what historical justice means: The duty that is owed to victims, and the duty that is owed to history, can only be achieved when the truth is discovered, internalized, and preserved.

The legislation before you serves this broad moral purpose. First and foremost, H.R. 1746 restores the survivor his voice and decisionmaking authority. It allows victims to finally receive their day in court and opportunity to testify to their losses—both personal and financial—in their own words and with their own appointed representatives. This legislation would also enable survivors to confront those who have harmed and defrauded them, and to do so in the most human terms possible—not as faceless entities folded into a vast, anonymous government bureaucracy, but as principals seeking to vindicate their rights in American courtrooms.

Furthermore, H.R. 1746 would require European insurers to publish the names of all Holocaust-era insurance policies. For various and apparent self-condemning reasons, they have been reluctant to do so. This legislation would finally compel full disclosure as to these insurers' postwar misdeeds, and it would result in the necessary truth-seeking that has been entirely absent from these proceedings for well over a decade. By finally acknowledging the names of, and being held accountable for their conduct toward, their customers, European insurance companies will invariably be forced to disclose how, and by how much, they benefited from the murder of those whose lives they were contractually entrusted and obligated to insure.

In addition to achieving the historical justice that comes with truth, the threat of private lawsuits would empower Holocaust survivors to negotiate on their own terms, without surrogate institutions that otherwise seek to aggregate, standardize, and depersonalize claims. Institutions don't take things personally; individuals do. Restitution relief always requires some form of personal engagement—sometimes minimal, sometimes symbolic, but always personal. Given the enormity of their loss and the grotesque moral failure that gave rise to that loss, Holocaust survivors must retain substantively meaningful self-determination over their family histories. Anything less is neither moral nor consistent with the objectives of restitution. Private lawsuits permit such personal engagement; courtrooms, after all, are places where individual losses are counted and damages are assessed.

Under ICHEIC, however, which had the ostensible purpose of maximizing efficiencies and reducing costs, each survivor became simply a number that needed to be processed in order to establish that something was done, regardless of whether that something amounted to anything meaningful or just. In the vast majority of cases, such processing resulted in the alarmingly swift denials of casually disposable claims. ICHEIC was all too focused on maintaining global friendships and generating goodwill for future negotiations that may, ultimately, have nothing to do with the Holocaust at all. The legal and moral claims of the individual Holocaust survivor, however, ended up being the collateral damage of these perceived international commitments.

There can be no restitution if the victim does not ultimately and actually feel restituted. This is precisely why so many of these restitution initiatives, and especially ICHEIC, despite all good intentions, have failed so miserably on moral grounds. The fundamental imperative to measure success only by looking at the score sheet of actual victims went completely ignored. No one asked Holocaust survivors how they felt about the tactics deployed on their behalf, or whether they were satisfied, or what they actually wanted. There are many possible remedies in addition to the face value of an insurance policy. Many survivors wanted to know the truth of their family histories—who purchased the policy, when and where? Other victims merely wanted to assist other Holocaust survivors in need. Instead, government leaders, Jewish institutions, and class action lawyers blithely went about their business as if they had the moral authority to speak for survivors and determine their level of satisfaction—or ignore their wishes altogether.

Yet, what is undeniably true is that in order for restitution to have meaning—both in a strict moral and legal sense—it must offer a pathway to the relief of human misery and resentment. If restitution doesn't actually produce relief and dissipate resentment, then it may be many things, but it is decidedly not restitution. It is a halfhearted legal resolution that resolves nothing, a mere symbolic gesture, or, as my friend Stuart Eizenstat repeatedly proclaims, it is a measure of rough justice, a way to achieve some legal peace.

But the entire concept of legal peace is such a curious idea; one that is purely legal and not at all moral. Peace for whom? Governments? Corporations? Lawyers,

diplomats, and government negotiators who wish to rest much easier, or, more peacefully, at night? Something is terribly twisted here. After all, doesn't our duty to achieve peace and secure restful nights remain only with the survivor? And do we not have an equal duty to the memory of the dead? Isn't that what is meant by "rest in peace"? Why should the legal peace offered to nations supersede the moral peace owed to actual victims?

Notions of rough justice and legal peace only appease the interests of governments, corporations, and morally lazy judges; they do not restitute and restore victims. These proclaimed remedies are, by definition, perfunctory—placebos that carry no moral weight or currency with the victims for whom these self-congratulatory measures were intended to benefit. In the end, short of bringing about relief, the futility and frustration of these restitution efforts have given rise to an unrelievedly mechanized process that has only added insult to injury.

In the case of ICHEIC, its legacy, unfortunately, will be remembered for this familiar pattern of institutional callousness and neglect. European insurance companies stole premiums (or shared them with Nazi and Axis authorities), refused to pay on policies and failed to fully disclose the names of their Jewish customers, even though they were quite aware of the existence and special vulnerability of this particular class of insureds. Indeed, they marketed life insurance policies specifically to Jews, knowing full well that everything about European Jewry was soon to become irreparably short-lived. And then, after profiting from the premiums, they handed over their Jewish files and records to the Nazis without regard to this breach of fiduciary and contractual duty. Despite this level of duplicity and deceit, with a guilty party that was, stunningly, this guilty, ICHEIC, a public entity created to achieve justice, failed to achieve justice or to give victims any sense that it was capable of advancing their interests and fighting their cause.

The recovery of 3 percent of the $17 billion in unpaid Holocaust-era insurance policies hardly amounts to even rough justice. This is particularly true given the amount of poverty in the Holocaust survivor community and the astonishing wartime and postwar theft of the European insurance industry, whose entities are now counted among the largest corporations in the world. The relative benefit derived from these ill-gotten gains, in which a mass shakedown of insurance policies would help these insurers grow to become financial behemoths, compared with the suffering of so many in the Holocaust survivor community, is a laughably poor demonstration of "rough justice." Moreover, ICHEIC authorized the use of funds to promote Holocaust education over the needs of destitute Holocaust survivors; and the majority of claimants received $1,000 humanitarian payments in lieu of the proceeds of their policies, which has far more in common with a consolation prize than any true sense of justice, even of the "rough" variety.

Mr. Eizenstat speaks with a certain degree of conviction as if ICHEIC was a success, as if all of its advertised benefits upon creation were actually realized, as if the Holocaust survivor community should be grateful for the relaxed standards of proof that ultimately resulted in tens of thousands of claims NOT being paid. We are reminded that the great benefit of ICHEIC is that Holocaust survivors were spared attorney's fees; through the beneficence of ICHEIC, Holocaust victims were shielded from having to engage in costly and protracted litigation in order to vindicate their rights, the very thing that H.R. 1746 would unleash.

But in not having to hire a lawyer, what did Holocaust survivors receive in return? The overwhelming majority was treated with the indignity of having their claims rejected, making a mockery of the presumed liberal evidentiary standards under which their claims were supposed to have been evaluated. ICHEIC stood in the shoes of the insurance companies, and, ultimately, echoed the same defenses that were uttered decades ago: Show us a death certificate or get lost. The token $1,000 humanitarian payments trivialized their actual losses and exonerated European insurers for now, and for history. What insurance company wouldn't sell life insurance policies if it knew that the lives that were being insured were so dispensable and worthless that six decades later, with the premiums long invested and with no dividends to pay out, the contract could be discharged with a mere check for $1,000?

The point, all along, should have been to disgorge the insurers of their wartime booty and disclose the truth of their postwar deceit. Instead, ICHEIC administrators flew first class and initially spent more money on administrative expenses than in the payment of actual claims. The overall consequence of ICHEIC has produced not only the widespread feeling of justice denied and a windfall preserved for the European insurance industry, but also a renewed sense of resentment among the Holocaust survivor community—this time compounded and directed not only against their former insurers, but also America's deeply flawed ICHEIC experiment.

And that's precisely why this is a job for the legislative branch. Indeed, it should have always fallen to Congress to establish the rights of those who had been defrauded in this sordid arena of international commerce, and to establish the jurisdiction of Federal courts in the service of redressing these crimes.

The powers of the executive branch to conduct foreign policy surely cannot be expanded to allow the suppression of facts in the hands of foreign corporations that collaborated with the Nazis and defrauded its customers. Whether there is a compelling foreign policy interest here or not, the executive branch simply cannot preempt and cancel the rights of citizens to avail themselves of American courtrooms. Unless Congress acts decisively in this matter, the forfeiture of these legal rights is exactly what will have happened. The legal and moral authority of the Holocaust survivor to seek justice in his or her lifetime, surely under these circumstances, should supersede all other considerations of a political, as well as foreign policy, nature.

As Mr. Eizenstat is here today to reaffirm, the executive branch always operates under a different set of priorities. Surely the State Department would prefer that European insurers look upon the American Government favorably for having spared them from lawsuits in the United States for crimes committed over 60 years ago. But absent a formalized agreement that would have purported to deprive Holocaust victims of a private right of action, of which there is none, nor, constitutionally speaking, could there ever be one, all that remains is the presumption that the insurers are somehow entitled to full immunity—a position the government never agreed to when the German Foundation was negotiated, and, never could have agreed to.

To deprive Holocaust survivors of their day in court constitutes a twisted manipulation of realpolitik, the privileging of vague notions of international diplomacy over the moral duties that are fundamentally owed to victims of genocide. (The irony, of course, is that the State Department's obsession with realpolitik resulted in the abandonment of the Jews during World War II. Now, over 60 years later, similar concepts of global "diplomacy" are being reintroduced with respect to the vindication of the rights of these very same victims.)

In order to have negotiated a payment of $5 billion from the German Foundation as compensation for slave labor ($3 billion of which was set aside for non-Jews; $1 billion for Jews; and another $1 billion for other compensatory purposes), Mr. Eizenstat maintains that it was necessary to limit the future rights of Holocaust survivors to sue insurance companies for claims arising out of their policies. Under what moral criteria is it appropriate for one group of victims, who had once purchased insurance contracts that entitled them to legal relief in any country in the world in which the insurer did business, to forfeit those rights as an inducement for the German Foundation to make restitution for slave labor—an obligation they should have undertaken years earlier and without regard to whether Jews owned insurance policies that were never honored? Did anyone consult Holocaust survivors to see whether they were willing to waive their legal rights under their insurance contracts in order to ease the negotiations on behalf of an entirely different category of Nazi victims?

Moreover, in every sense of the word, Holocaust survivors stand as a separate category of Nazi victim. Their position is unique because the Nazis deemed them so; indeed, the Final Solution was conceived entirely for them. Slave laborers were surely victims of war, but they were decidedly not, by definition, selected for extermination and destined for the murderous flames of the Holocaust. While non-Jewish slave laborers surely deserve restitution, why should the insurance policies of those who stood fixedly atop the hierarchy of Nazi suffering be leveraged in order to bring German industries to the negotiating table to pay restitution to others? The $5 billion restitution payment for slave labor is worthy and impressive, but it devalues the nature of victimhood and the relative experiences of suffering by calling it a Holocaust settlement, and it should have no bearing on whether Jewish policyholders of life insurance can bring lawsuits against the companies that had defrauded them.

Imagine if Mr. Eizenstat were testifying here today and took a similar position with respect to the victims of Hurricane Katrina. What if he told us that the casualties of a natural disaster could not avail themselves of Louisiana courtrooms in their pursuit of legal remedies against corporations that failed to honor their property insurance contracts? And what if the reason behind this forfeiture of rights was some foreign policy objective that necessitated the negotiating away of these legal remedies—rights otherwise guaranteed by contract and enforceable under American law—all for the purposes of achieving some other benefit for another party that had never before weathered a hurricane? What would this committee say if we were to invalidate those insurance contracts, and for these professed reasons?

Let's look at a different type of injury and even a different class of victim—for instance, the makers of dangerous substances and defective products; and, more spe-

cifically, unwitting consumers who were damaged by say, tobacco smoke or faulty seatbelts. Should the competing considerations and nuances of foreign policy—with all that give and take and winks and nods—stand in the way of smokers and car accident victims to seek redress, under either tort and contract law, against those who may have harmed them? Would this body stand for that?

Yet, today, in this hearing, we are faced with the legacy of the Holocaust. Holocaust survivors—as would be the case with the survivors of any genocide—have always been understood to be deserving of special treatment and protection. They were not, in any ordinary sense, the consumers of defective products. On the contrary, there was nothing voluntary about the nature of their victimhood. They couldn't simply have chosen to stop smoking or promise never again to step inside a car. They were the victims not of consumption, but rather human barbarism. For this reason, they stand in a privileged position in the eyes of the world, largely because they are eyewitnesses to the very thing that humanity is all too afraid to look at—the reflection of unimaginable evil. Holocaust survivors are the custodians of this forbidden knowledge, and therefore the range of responsibility that is owed to them is greater than any courtesy that might otherwise be exchanged in the course of international diplomacy.

Realpolitik has no place in the world of atrocity. In this instance, and with respect to this legislation, the burden to do what is right is higher, because the burden that Holocaust survivors endured was greater. This committee, this Chamber of Congress, has, with H.R. 1746, an opportunity to grant Holocaust survivors the return of their rights and the restoration of their dignity, both of which have been withheld from them—throughout these restitution proceedings—for far too long. And in empowering Holocaust survivors and exposing European insurers to the imperatives of truth, this committee will also serve as a moral voice that the United States offers no protection to those who profit from the suffering of others and who take advantage of the spoils of man's darkest hour.

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[From the New York Times, June 14, 2007]

## LOSING COUNT

(By Thane Rosenbaum)

The Holocaust has always been marked by numbers. There was the numbering of arms in death camps and the staggering death toll where the words six million became both a body count and a synonym for an unspeakable crime. After the Holocaust, Germany performed the necessary long division in paying token reparations to survivors. More recently, Swiss banks and European insurance companies have concealed bank account and policy numbers belonging to dead Jews.

Only with the Holocaust have dehumanization and death been as much a moral mystery as a tragic game of arithmetic. And the numbers continue, although now largely in reverse.

After 60 years, Holocaust survivors are inching toward extinction. According to Ira Sheskin, director of the Jewish Demography Project at the University of Miami, fewer than 900,000 remain, residing primarily in the United States, Israel and the former Soviet Union. Most are in their 80s and 90s. Unless immediate measures are taken, many of those who survived the Nazi evil will soon die without a proper measure of dignity.

According to Dr. Sheskin's data, more than 87,000 American Holocaust survivors—roughly half the American total—qualify as poor, meaning they have annual incomes below $15,000. The United Jewish Communities, the umbrella organization of the American Jewish Federations, determined that 25 percent of the American survivors live at or below the official federal poverty line. (The poverty figure in New York City is even higher.) Many are without sufficient food, shelter, heat, health care, medicine, dentures, eyeglasses, even hearing aids.

Conditions worldwide are similar. It's a sad twist that the teenagers who mastered the art of survival so long ago have been forced, in their old age, to call on their survival instincts once again.

It doesn't have to be this way. Although the various global financial settlements represent only a small fraction of the Jewish property that was plundered during the Holocaust, they still amount to billions of dollars. Which raises questions: Why aren't the funds being used to care for Holocaust survivors in whose name and for whose benefit these restitution initiatives were undertaken? Why weren't survivors permitted to speak for themselves in the very negotiations that led to the recovery and distribution of their stolen assets?

Take the Swiss bank settlement, for instance. A federal judge in Brooklyn distributed 75 percent of the looted assets to survivors in the former Soviet Union, leaving only 4 percent for destitute survivors in the United States, even though roughly 20 percent of the world's Holocaust survivors live in America. Assets that had been stolen by the Swiss were once again diverted, this time by the charitable inclinations of a judge who, ignoring the voices of survivors, severed the connection between the victims of the theft and the proceeds of the recovery.

On the matter of insurance, a federal judge in Manhattan recently approved a settlement in which fewer than 5 percent of the life insurance policies that had been sold to Jews would be restituted, allowing the Italian insurer, Generali, to escape with more than $2 billion in unjust enrichment. By not requiring Generali to disclose the names of policyholders, the settlement amounts to a coverup. Tens of thousands of Holocaust survivors are being kept from the truth and will likely be foreclosed from bringing individual claims against the corporation that defrauded them.

The Jewish Claims Conference, an organization established in the 1950s to recover and distribute Jewish property, has assets under its care estimated at $1.3 billion to $3 billion, which includes a vast inventory of cash, real estate, and artwork. Despite the urgency of human suffering, the conference insists that it cannot respond to the unmet needs of Holocaust survivors.

Meanwhile, it spent about $32 million last year on programs dedicated to "research, documentation, and education." Some of those millions went to a program that paid $700,000 to a "consultant"—a friend of the organization's president—who, in an interview with The Jewish Week, couldn't recall what he had been asked to consult on. While the conference supports many worthy projects, it is controlled not by survivors but by surrogates, and operates with limited oversight and financial accountability.

The Holocaust, so large an atrocity, has a way of overshadowing everything, including its survivors. In focusing on the past in order to prevent history from repeating itself, we have forgotten those who are the direct casualties of this crime. Amid all the Holocaust hoopla the survivors have become secondary.

This neglect is widespread. Even the United States Holocaust Memorial Museum has regarded itself as primarily a home for historians and a monument to history, but not as an institution that places survivors first. Yet without their anguished presence the museum would not exist.

One demonstration of its inattentiveness involves the imminent transfer to the museum of electronic copies of Germany's Bad Arolsen archives, which hold 50 million documents pertaining to the fate of more than 17.5 million victims. Unfortunately, the museum has failed to commit to making the archives accessible on the Internet so that they can be accessed as easily by Holocaust survivors as by visiting scholars.

So what can be done to honor those who survived but who seem to have been forgotten?

First, all traceable assets held by the claims conference and the negotiated settlements with Swiss bankers and European insurance companies must be returned to their owners, with the remainder used for survivor needs.

Second, Congress should pass the proposed Holocaust Insurance Accountability bill, which would require insurers to publish the names of policyholders and allow survivors to resolve claims on fair and truthful terms.

Third, all Holocaust documentation, like the Bad Arolsen archives and the recently disclosed Austrian war records, must be made readily accessible. Survivors and their families must have easy access so family histories can be recovered and property claims verified. These archives cannot be just the province of scholars.

Finally, if both the World Jewish Congress and the claims conference fail to achieve transparency in their operations, then Congress or law enforcement should publicly account for the funds that have been controlled by institutions that survivors never elected and did not authorize.

Surviving the Holocaust, which was against all odds, is still a numbers game. The percentages are always against the survivors. Nearly murdered, shamefully defrauded and with the clock ticking, they wait for justice, accountability and, most of all, respect.

Senator Bill NELSON. Thank you, Mr. Rosenbaum.

Mr. Dubbin.

**STATEMENT OF SAMUEL J. DUBBIN, PARTNER, DUBBIN & KRAVETZ, LLP, MIAMI, FL**

Mr. DUBBIN. Mr. Chairman, I'm Sam Dubbin from Miami. I want to thank the chairman for holding the hearing and the others in attendance.

I am here because, as a South Florida attorney, I was asked by members of the survivor community back in 1997—in fact, it was at a hearing held by Commissioner Nelson at the time—to get involved on their behalf, because their experience with the institutions that were charged with their affairs were not good. They felt they had been excluded all those years. They worried that with the issues coming up over asset restitution that they would be left out of the dialogue and out of the discussion. It's on their behalf that I sued some insurance companies. We tried to get Judge Korman in the Swiss Bank case to make an adequate provision of assistance for survivors in the United States.

They are the ones who, because ICHEIC closed with such paltry results, have insisted that, instead of the nontransparent, nongovernmental, non-due process-oriented system that was produced, that they get a chance to go to court, where a judge and a jury can examine the conduct of the companies and get to the truth. So I'm here on their behalf.

Now, I have a lot to say about ICHEIC and the legal peace process, but I want to start with the overriding point here because I think it's crucial. The argument being made is that the elders, the philosopher kings who have taken it upon themselves to do what they think is right, they think what the survivors should accept, have basically said: You should accept, not full payment of your insurance claims; you should not accept the full truth about what these companies did with your families' policies; but you should accept what we give you, because we want to try to help people in general.

So they want to sacrifice property rights for doing something for the general good. Now, as you know, Mr. Chairman, I was at the forefront of trying to get a guarantee that all survivors had adequate long-term care and that the companies that stole billions be the ones to supply that.

So this goes to your question, Mr. Menendez. If they're saying that people's property rights, guaranteed by contracts entered into in good faith, enforceable in the courts of this country for the last 200 years, should be sacrificed, should be thrown out, so that they can continue negotiations, the question is: What's the purpose of the negotiations?

The data show that 80,000 survivors in this country either live below poverty or are so poor they can't afford food, medicine, dentistry, and the like. Unless the goal—why isn't the goal to make sure that every one of those survivors has what they need? That's not what you heard. You heard that we're trying to get a few more pension dollars, we're trying to get a few more payments here, a few more payments there.

The burden should be on those who want to substitute their judgment for what the survivors want and need to justify the status quo. The status quo is a failure, and you've heard that from your constituents and you're going to continue to hear it. So that

is not an adequate substitute because that's what Germany owes the victims. That's what they owe the victims, not rough justice, not legal peace. And that's what they haven't gotten today, and that's what the Claims Conference is not obtaining for them in these various negotiations. That's the principal question for those who talk about what other discussions are being "threatened."

So let's talk quickly about, and I hope I get some questions about the ICHEIC issues per se, because States all over the country in 1998 passed laws requiring the companies doing business in their States to disgorge information, to produce records of how they treated customers after the war, to pay claims, and to be susceptible to court action. Congress was considering similar legislation and that's what brought the companies to the table, make no mistake about it. It wasn't some abstract desire to do right.

The ICHEIC process was set up and the way that that—it was supposed to publish the names within a year and pay the claims within 2 years. The names were not published until late 2003, Germany ended up publishing about 400,000 names. But they did not publish their names until the summer of 2003, when the deadline for filing claims was almost over.

Generali, one of the biggest companies, published 10,000 names up until mid-2003 and then published another 30,000, again at the end of the deadline. But they sold well over 150,000 policies to Jews easily, and the names of the Generali subsidiary customers were not even published on the ICHEIC Web site. So when they talk about the publication of names, it was woefully, disgracefully inadequate and it's not an adequate substitute.

The valuations? Two hundred fifty million dollars in claims were paid, $31 million in $1,000 humanitarian payments. Those aren't payments on claims. For them to stand here and tell you that those were payment on claims, when Mr. Rubin told you that that was an insult, there is a disconnect here between what the survivors believe they were getting and what the establishment thinks that they were giving them.

So the problem then became that court cases by people—let me just tell you another fraction. The Germans and ICHEIC paid 10 cents on the dollar on the fair value. They paid at the same rate they were allowed to restitute policies for after World War Two. So when we hear that fair value was paid by German companies, that's not true. My question is, they paid $82 million when a conservative valuation would have been $550 million. Why should Germany today be paying Marshall Plan valuations? That's the system that was imposed on survivors, or would be imposed unless you act and enact a bill like H.R. 1746.

[The prepared statement of Mr. Dubbin follows:]

PREPARED STATEMENT OF SAMUEL J. DUBBIN, PARTNER, DUBBIN & KRAVETZ, LLP, MIAMI, FL

My name is Samuel J. Dubbin. I would like to thank you, Chairman Nelson, and all the members of the subcommittee, for holding this hearing on the vital and very urgent problems facing Holocaust survivors and heirs with unpaid insurance policies. The bottom line from my clients' perspective, and thousands of other survivors and families they represent, is that congressional action to restore survivors' rights is long overdue.

For the past decade I have had the privilege of representing Holocaust survivors and family members in attempting to recover assets looted by a variety of govern-

ments and global businesses. In the eyes of the survivors and heirs I represent, the restitution enterprise has mostly failed. In their eyes, the interests of victims and families have been given the lowest priority, with the interests of governments, international corporations, and institutions having conflicting agendas taking precedence. I am here today because they are crying out for justice, and for a fair shake from the American political system. Today, the focus of my testimony will be on the problem of unpaid insurance policies that were purchased by Jews in Europe prior to World War II but never paid to the insureds or their rightful heirs.

BACKGROUND REPRESENTING HOLOCAUST SURVIVORS AND HEIRS

I will begin by describing how I became involved as a lawyer for survivors. Between 1993 and 1996, I served in the Clinton administration as Special Assistant to Attorney General Janet Reno and Deputy Assistant Attorney General for Policy Development in the Department of Justice, and as Chief Counsel to the National Highway Safety Administration (NHTSA) in the U.S. Department of Transportation. After I returned to private practice in Miami, a group of survivors in South Florida (the South Florida Holocaust Survivors Coalition) approached me because they feared that they would be excluded from a meaningful role in the emerging public negotiations, lawsuits, and settlements over "Holocaust asset restitution."

They explained that for decades, Holocaust survivors had been excluded from major decisions affecting their rights and welfare, as nonsurvivor organizations purporting to speak on their behalf controlled these processes without the consent of the victims themselves. Meanwhile, tens of thousands of survivors in their seventies, eighties, and nineties were suffering without adequate home and health care, nutrition, shelter, dental care, and other essentials of life. This shocked me, Mr. Chairman, because one article of faith throughout my adult life has been that victims of the Holocaust occupy a hallowed place in the conscience of every civilized person and institution, and deserve every consideration possible in the recognition of the unique horror they endured. In practice, their experience has been quite the opposite.

As you recall, Mr. Chairman, the coalition leaders worked with you in 1998 when you were the Florida State Treasurer and Insurance Commissioner to enact legislation in Florida to hold insurers accountable for policies sold to their parents and grandparents before WWII. The law required insurers doing business in Florida to disclose names of policyholders and allow survivors and heirs to bring lawsuits in Florida courts for unpaid policies. It also negated any statute of limitations defense for cases brought within 10 years, and, as with other insurance consumer statutes in Florida, provided for treble damages and attorneys fees for successful claimants. The legislation the survivors are asking Congress to enact, H.R. 1746, is an almost identical measure at the Federal level.

The survivors in Florida also recall with admiration your efforts to obtain guaranteed long-term health care coverage for all Holocaust survivors in the State (and ideally everywhere), and to find a funding source beginning with some of the global insurers who profited from the Holocaust. Unfortunately, the industry succeeded in ducking your efforts and those of some of your NAIC colleagues to do the right thing at the time, and have managed to avoid a full and honest public accounting for their war-time and post-war conduct.

In the year 2000, the South Florida Survivor Coalition leaders joined with elected survivor leaders from throughout the United States who had also reached the conclusion that it was past time for survivors to speak and act for themselves. They formed the Holocaust Survivors Foundation USA, Inc. (HSF), which has become the leading grassroots voice for survivors' rights to obtain a full and transparent accounting of assets looted during the Holocaust, to recover assets traceable to living survivors and heirs whenever possible, and to ensure that all survivors in need receive priority funding from restitution proceeds which are truly "heirless." I have been the organization's legal counsel since its inception. HSF's activities have been widely reported over the last 8 years in national Jewish media such as the Jewish Telegraphic Agency, the New York Jewish Week, the Forward, as well as in national media such as the New York Times, the Wall Street Journal, the Los Angeles Times, the Miami Herald, South Florida Sun Sentinel, Palm Beach Post, and Associated Press. More information about HSF's activities and goals can be found at its Web site, www.hsf-usa.org.

SUMMARY OF HOUSE LEGISLATION—H.R. 1746

H.R. 1746 is essential to require the insurers doing business in the American market to open their records, publish the names of policyholders from the prewar 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 most survivors and heirs have no knowledge of the fact that these companies sold their parents or grandparents or aunts or uncles insurance before WWII.

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 H.R. 1746 to substitute for a decent respect for the financial and human rights of Holocaust survivors.

H.R. 1746 provides a legally enforceable remedy that survivors and family members have a right to control themselves. It places survivors where they would have been in 1998 after 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, hundreds of thousands of unpaid policies worth $18 billion in 2007 dollars if not more 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.

OVERVIEW OF REPRESENTATION OF SURVIVORS' INTERESTS IN LITIGATION

Briefly, I wanted to give the committee an overview of my experience representing Holocaust survivors and heirs in litigation involving asset restitution.

SWISS BANK LOOTED ASSET ALLOCATIONS

In 2000, Swiss Bank Class Action Judge Edward R. Korman earmarked a total of $205 million in looted assets funds (from Swiss banks' fencing looted property) for the needs of poor survivors around the world, with 75 percent of the funds allocated for the Former Soviet Union (FSU) and only 4 percent for the survivors in the United States. The leaders of the HSF and several other survivors and survivor groups challenged the allocations because American survivors represented 20 percent of the class members (all living survivors) and almost 30 percent of the death camp survivors, including tens of thousands who are indigent. The FSU was given $16 million per year, and about $800,000 per year was provided for the 80,000 poor or near-poor U.S. survivors. Under the settlement, most needy U.S. survivors received nothing, yet their rights were extinguished.

The U.S. survivor leaders believed it was legally and morally wrong for the Judge to use money obtained in the settlement of their legal rights for others who he personally regarded as being "needier." My firm, Dubbin & Kravetz, LLP, represented their challenge and appeal of Judge Korman's allocations formula. The Second Circuit Court of Appeals acknowledged that it was unprecedented for a court to give the overwhelming majority of settlement funds to a small minority of the class, and to deprive most class members any benefit from the settlement. However, it affirmed the allocation because of the wide discretion afforded district courts in class action settlements. The Supreme Court denied certiorari review of the survivors' appeal. Several Holocaust survivors and HSF leaders who appealed that decision testified about their perspectives in the Europe Subcommittee of the House Foreign Affairs Committee on Foreign Affairs in 2007. *See,* Testimony of Leo Rechter and David Schaecter before the Europe Subcommittee of the House of Representatives Foreign Affairs Committee, March 27, 2007, and Testimony of Alex Moskovic and Jack Rubin before the Europe Subcommittee of the House of Representatives Foreign Affairs Committee, October 3, 2007.

HUNGARIAN GOLD TRAIN

My law firm was one of three firms which successfully represented Hungarian survivors seeking restitution and an accounting against the United States Government for the United States mishandling of property of the Hungarian Jews that was placed on the "Hungarian Gold Train" by the Hungarian Nazi collaborators and ob-

tained at the end of World War II by the United States.[1] The case was litigated in the United States District Court for the Southern District of Florida, *Irving Rosner* v. *United States of America*. After nearly 5 years of extremely intense litigation, the case settled, with the U.S. Government agreeing to (a) provide over $21 million for social services for Hungarian Holocaust survivors in need over a 5-year period ($25.5 million minus attorneys fees and minus the cost of creating the Gold Train archive); (b) to create of an archive of the history of the Gold Train and the fate of Hungarian Jews in World War II; and (c) issue an apology for its handling of the Hungarian victims' property on the Gold Train. Mr. Jack Rubin, a Holocaust survivor from Boynton Beach, FL, who is testifying at this subcommittee hearing, was active in the *Gold Train* case and has discussed it in his statement.

INSURANCE LITIGATION

I have also represented several survivors and heirs and beneficiaries with claims against European insurance companies.[2] In addition, I assisted several survivors and heirs over the years who attempted to navigate the ICHEIC system. In that role, I have observed firsthand many of the inconsistencies, irregularities, and failures voiced by survivors and reported in the media over the past several years.

In the case of Thomas Weiss, M.D., Generali denied for years that it sold his father (Paul Philip Weiss) any policies. In June 2000, he brought a lawsuit against Generali in State court in Miami. Within months of the suit being filed, Generali finally disclosed the existence of one policy owned by Mr. Weiss. Mr. Weiss's name later appeared more times on the ICHEIC Web site, along with the names of many of his brothers and sisters who died in the Holocaust. When Dr. Weiss attempted to secure information about those names, Generali refused unless he could give the birth dates of his father's brothers and sisters—all of whom were killed in the Holocaust before Dr. Weiss was even born. Other survivors and heirs in my experience were given similar impossible hurdles to overcome in the quest for family policy information from ICHEIC and other companies, including Allianz.

Dr. Weiss's case was removed to Federal court and consolidated in New York with the other putative "insurance class action cases." These included cases brought against Generali, Allianz, AXA, RAS, Victoria, Basler, Zurich, Winterthur, and other European-based insurers.[3]

In 2001, Generali moved to dismiss the case in favor of mandatory resolution by ICHEIC. The District Court, Judge Michael Mukasey, rejected Generali's argument in part because he found ICHEIC was "clearly unsatisfactory":

> Defendants have moved to dismiss in favor of a private, nongovernmental forum that they both created and control, the continued viability of which is uncertain. Because of these shortcomings, ICHEIC cannot be considered an adequate alternative forum.

Id. at 355.

Among the court's findings was that ICHEIC was "manifestly inadequate because it lacks sufficient independence and permanence." Id. at 356. It held:

> ICHEIC is entirely a creature of the six founding insurance companies that formed the Commission, two of which are defendants in this case; it is in a sense the company store. . . . The concern that defendants could use their financial leverage to influence the ICHEIC process is not merely theoretical. . . . ICHEIC's decisionmaking processes are and can be controlled by the defendants in this case. . . .

Id. at 356–57.

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[1] The case was initiated by Jonathan Cuneo, of Cuneo Gilbert & LaDuca, and Steve Berman of Hagens Berman Sobol & Shapiro; they contacted my firm due to my representation of the survivor community.

[2] In February 1998, the House of Representatives Financial Services Committee held its first hearing on the subject of unpaid Holocaust victims' insurance policies. One of my clients, Dr. Thomas Weiss, testified about the policies he believed his father purchased before the war from Assicurazioni Generali, S.p.A. which remain unpaid to this day. I also represented Holocaust survivor Arthur Falk in litigation against Winterthur Insurance Company, a Swiss entity. Mr. Falk testified before the House of Representatives Committee on Government Operations in November 2001. The case settled.

[3] After the German Foundation Agreement, in 2001, the cases against the German insurers were voluntarily dismissed. They were not settled on a classwide basis, but were dismissed without prejudice to the rights of all others who were not named plaintiffs. This is significant because, if the Agreement was supposed to forestall any further litigation, the case would have had to have been settled under full Rule 23 notice and hearing procedures.

However, in 2003, the United States Supreme Court held in *American Insurance Association, Inc.,* v. *Garamendi,* 539 U.S. 396 (203) case, that executive branch actions supporting ICHEIC, though not required by the terms of the U.S.-German Executive Agreement, preempted traditional State law powers of regulators to investigate insurers' practices toward its customers. After *Garamendi,* Judge Mukasey held that *Garamendi* mandated that he dismiss the Generali cases, even though there is no executive agreement between the United States and Italy nor any other indication of executive branch interest in Generali. However, the Supreme Court and Judge Mukasey both noted that Congress had not addressed disclosure and restitution of Holocaust victims' insurance policies, leaving the door wide open for congressional action today.

All plaintiffs, including Dr. Weiss, about 20 other individuals, and the putative class action plaintiffs, appealed Judge Mukasey's decision. On August 25, 2006, the "class action" lawyers entered into a settlement agreement with Generali. The settlement in effect adopts the results of ICHEIC as binding on those who tried and failed in the process.

I was asked by several survivors including Floridians Jack Rubin, Alex Moskovic, and David and Irene Mermelstein, Fred Taucher of Seattle, Washington, and Hans Lindenbaum of Israel, who had attempted unsuccessfully to navigate ICHEIC's labyrinths, to file objections to the settlement. The district court judge, George Daniels, stated that he had a very limited role and was not at liberty to judge ICHEIC's effectiveness, and approved the settlement. He decided that given Judge Mukasey's dismissal of the cases, the class members were better off with "something," however paltry and unpredictable it might be. About 250 class survivors and heirs opted out of the settlement, and my clients appealed the decision.[4]

The 20-plus appeals (including Dr. Weiss's) of Judge Mukasey's decision applying *Garamendi* to the Generali cases is still pending in the Second Circuit Court of Appeals, as is the separate appeal of Judge Daniels' approval of the class action settlement. The Mukasey appeals are fully briefed and the parties were recently informed that oral argument has been tentatively set for the week of June 9, 2008. In addition, the appeal by Mr. Rubin, Mr. and Mrs. Mermelstein, Mr. Taucher, Mr. Moskovic, Mr. Lindenbaum, Ms. Hareli, and Mr. Grinstein of the class action settlement is also fully briefed and awaiting a decision.

IMPACT OF LEGISLATION ON PENDING APPEALS

In my judgment as a lawyer, the appeal of Judge Mukasey's dismissal of the Generali litigation is very strong. *Garamendi* allowed much greater deference to executive branch actions untethered to any act of Congress in the area of preemption, or international commerce, than had ever preceded it, and Judge Mukasey went even further in the Generali case. Since those decisions, recent Supreme Court precedent limiting the executive branch's ability to "make law" governing enemy combatants without congressional authorization strengthen the Generali appeals. See, e.g., *Hamdan* v. *Rumsfeld,* 126 S.Ct. 2749 (2006).

Nevertheless, the pending appeals make congressional action urgent. If H.R. 1746 or a similar measure is enacted that clarifies that survivors and heirs continue to have a right to sue insurers in U.S. courts notwithstanding the *Garamendi* decision, the Second Circuit Court of Appeals would have no choice but to apply that law and reverse Judge Mukasey's decision and remand for the cases to go forward. *Plaut* v. *Spendthrift Farm, Inc.,* 514 U.S. 211 (1995). Similarly, if such legislation is enacted while the class settlement appeal is pending, the court would undoubtedly have to revisit the underlying basis for the district court's approval of the settlement, i.e., its pessimistic view of the chances of the restoration of survivors' rights to go to court to sue Generali and other insurers. Why should survivors and heirs have to await judicial decisions when Congress has remained silent and can change the dynamic with the legislation now on the table.

The missing element in the survivors' battle for justice against recalcitrant insurers has been Congress. Despite numerous hearings documenting ICHEIC's inconsistencies and shortcomings, for reasons that are impossible for my clients to fath-

[4] On October 2, 2007, the Second Circuit Court of Appeals reversed the class settlement because the parties failed to provide individual notice to everyone who had applied to ICHEIC and whose names and addresses were available to Generali. The court ordered a new notice program and new deadlines for responses, a fairness hearing, and a new briefing schedule. A new notice program ensued which generated an additional 250 opt-outs, but the district court again approved the settlement citing primarily the fact that the cases had been dismissed by Judge Mukasey. Mr. Rubin, Moskovic, Mr. and Mrs. Mermelstein, Mr. Taucher, and Mr. Lindenbaum were joined by Israeli survivors Hanna Hareli and David Grinstein in appealing the settlement in January 2008, which is still pending.

om, Congress has been silent. This is Congress's last opportunity to fulfill what should be a simple and straightforward duty to give every survivor and heir a chance to get to the truth about their families' policies, uninhibited by any political or institutional machinations or agendas.

BACKGROUND OF JEWISH PEOPLE'S INSURANCE POLICIES AND INSURERS' CONDUCT

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 ICHEIC's creation and operation. That unhappy story is rooted in the tragic events intertwined with the Holocaust, the greatest crime in human history.

HISTORY

In the inter-war years, insurance was one of the few means available for people to protect their families, both in Western and Eastern Europe. Most banking systems were not safe (e.g., no FDIC insurance) and many currencies were unstable. 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 U.S. dollar denominations.

One of the key selling points of many companies was the contractual right to receive policy proceeds "wherever the customer 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 Nazism 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 in other companies' policies is abundant in the record that has developed, limited though that is considering ICHEIC's secrecy.[5]

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, and such data was also gathered in areas that became occupied. This information pointed the way for the Nazi regime to use the Gestapo to target Jews they could now locate by address for forced "assignment" of cash and other assets such as insurance policies. The plaintiffs who sued the 20 or so major European insurance companies in the late 1990s all alleged that the insurers and their affiliates (including reinsurers) participated in and benefited financially from the confiscation of Jewish-owned insurance policies ("short-rating"). These allegations have not been denied in court, and much has been written and published to corroborate this point. For example, historian Gerald Feldman wrote in Allianz and the German Insurance Business, 1933–1945, Cambridge University Press, 2001:

> The companies licensed to operate in the Protectorate were also affected by the particularly rigorous and systematic seizure of Jewish insurance assets, so that by July 1942 the Prague Gestapo was able to report 54.4 mil-

[5] As another example, Generali's marketing brochures and policies highlighted the availability and value of overseas assets—including assets in America—that would ensure the customers' ability to collect their benefits outside of 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).

> lion Czech crowns in confiscated repurchase values, the bulk of which came from the portfolios of Generali (20.1 million), Victoria (13.8 million), RAS (5.9 million), and Star-Verisherungsanstalt (4.6 million).

Feldman, at 356.

Professor Feldman's book and other studies and records clearly document how Allianz and other German, Swiss, Austrian, and Italian insurance companies willingly participated in confiscation activities throughout Europe.

After World War II, as Holocaust survivors and their families struggled to reconstruct their lives, insurers refused to honor the policies they had issued to insure property the Nazis seized and the lives of those who perished before firing squads and in Holocaust death camps. The companies 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 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 their families for decades.[6]

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 in and profiteering from the murder and plunder of Europe's Jews. The Bergier Report on insurance is disturbing but not surprising in its description of the Swiss insurers' dishonesty toward and disrespect for its Jewish customers. For example, despite the fact that Swiss insurers had 9 percent of the German market, "[i]n 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. (Emphasis supplied). 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."

Bergier Report, at 460.

Public denials of insurers' Holocaust profiteering have continued even in the supposed recent environment of "truth and transparency." In 1998, Allianz AG Board Member Herbert Hansmayer sought the Congress's sympathy for the company's alleged 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 in war-ravaged Germany.

Transcript of February 12, 1998, Hearing before the House of Representatives Committee on Financial Services.

But Mr. Hansmayer's ploy was contradicted months later in a detailed article in the Wall Street Journal in November 1999, which explained that Allianz's immense current power in the German financial world originated from its rich cash reserves available at the end of WWII:

> 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.

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[6] 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.

Steinmetz and Raghavan, "Allianz Eclipses Deutsche Bank As Germany's 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 started examining the conduct of insurers in the U.S. market who sold policies to European Jews before World War II. 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 as premiums on family policies. Others described 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, including Florida, passed legislation requiring European insurers 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 for the filing of claims. Congress was poised to pass similar legislation when foreign governments and insurers persuaded nonsurvivor Jewish organizations and State insurance commissioners to create an "international commission" to supposedly standardize the process and avoid "costly, protracted litigation." The International Commission for Holocaust Era Insurance Claims (ICHEIC) consisted of six companies, three "Jewish organizations" (the Claims Conference, the WJRO, and the State of Israel), and 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 the chairman breaking any ties when necessary. Congress stayed its hand from enacting legislation.

Five years later, after several scandals were reported 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 multiyear waits for responses from ICHEIC, denials without any explanation other than "no match found"; demands for information that no survivors or legal heirs could be expected to know; and denials by companies even in the face of documentary evidence that policies existed. Nevertheless, Congress again failed to act directly to address the companies' conduct or to assist survivors at that time.

However, that year, Congress did mandate, in section 704 of the 2003 Foreign Relations Reauthorization Act, that ICHEIC provide reports on its operations and the companies' performance to the U.S. State Department. In spite of this congressional mandate, ICHEIC refused to supply the required reports every year. 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 life insurance and annuity policies outstanding valued at $600 million 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 policies in force in 1938 was conservatively estimated to be worth $18 billion. This estimate, by economist Sidney Zabludoff, is conservative because it uses a 30-year U.S. bond yield to get to current value, whereas insurance companies also invest in equities and real estate. Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and before the House of Representatives Foreign Affairs Committee Subcommittee on Europe, October 3, 2007.

When ICHEIC closed its doors in March 2007, it had paid less than 3 percent of the unpaid value of the policies and had left several hundred thousand policies unaccounted for. The body paid out $250 million in recognition of insurance policies, it paid $31 million in $1,000 "humanitarian payments" and allocated another $165 million for "humanitarian projects" through the Claims Conference (including funds unrelated to survivors' needs). So, even if one adds all of ICHEIC's claimed payments, totaling about $450 million, ICHEIC generated less than 3 percent of the money stolen from European Jews' insurance funds.

Meanwhile, ICHEIC's cost of operations exceeded $100 million, though the exact cost has not to my knowledge been widely published. To this day, Congress has not

examined ICHEIC's operations despite this terrible track record. ICHEIC operated in virtual secrecy for 9 years, disclosing only the barest minimum of information about its processes. Today's challenge for Congress is not to focus on ICHEIC, which has completed its mission. However, a review of ICHEIC's performance is necessary for the record because *Garamendi* and other decisions rely on ICHEIC as the reason to limit Holocaust victims' legal rights. Therefore, some particular concerns about ICHEIC's operations are examined later in this statement.

ARGUMENTS AGAINST H.R. 1746

Opponents of H.R. 1746 have coalesced around three 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.

*H.R. 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 percent of the total amount owed to Jewish Holocaust victims and heirs. The Preamble to H.R. 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.

Mr. Eagleburger also says the legislation's sponsors do not provide substantiation for the figures cited. He is incorrect. In fact, the Preamble to H.R. 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. Professor Belth updated his 1998 estimate to $309 billion in 2007. *See,* Letter from Professor Joseph Belth to Baird Webel, Congressional Research Service, January 24, 2008.

The $17 billion estimate is based on an analysis 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 at the House Financial Services Committee on February 7, 2008. He used a base total value of nearly $600 million for the total value of Jewish policies in force in 1938, which was a consensus of ICHEIC participants. He then subtracted out the amount of policies paid for in post-war restitution programs (assuming 70 percent for most West European countries and 10 percent for East European countries). He then 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 conservatively estimated at $17 billion in 2006 prices. Therefore, the opponents' criticism is unfounded.

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 H.R. 1746.

The Pomeroy Ferras Report actually agrees in large part with Mr. 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 the outstanding current value of the Jewish life insurance policies.[7] That is what

[7] The Pomeroy-Ferras Report states: "The Task Force did not want to make any proposal of a valuation process in order to bring the Holocaust exposure to a 1999 value." International Commission on Holocaust Era Insurance Claims, Report to Lawrence Eagleburger, Chairman, by the Task Force cochaired by Glenn Pomeroy and Philippe Feras on The Estimation of Unpaid Holocaust Era Insurance Claims in Germany, Western and Eastern Europe, at 6–7.

Consequently, the opponents of H.R. 1746 are incorrect when they defend ICHEIC with such broad and inaccurate statements as the one Mr. Kennedy made before the Financial Services Committee: "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." 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, at 6.

Mr. Zabludoff did in his 2004 article, using consensus numbers, to which the Preamble to H.R. 1746 refers.

In his Europe Subcommittee testimony in October 2007, State Department representative Christian Kennedy's argued that the total current unpaid value is $3 billion, as opposed to the $17 billion estimated by H.R. 1746. Although Ambassador Kennedy gave no explanation for his $3 billion number, it was later explained to be an estimate of the 2003 unpaid value of policies using the "ICHEIC valuations" as a base. The ICHEIC valuation system was, 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 in the ICHEIC, not a value determined by economists or by a judge and jury under expert rules applicable in litigation.

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 and their families.

H.R. 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 Web site, ICHEIC paid $250 million for unpaid policies. ICHEIC made an additional 31,000 payments of $1,000 each (totaling $31 million) which were termed and treated as "humanitarian" in nature.

The "humanitarian 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. *See,* Testimony of Israel Arbeiter before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and Testimony of Alex Moskovic and Jack Rubin before the U.S. House of Representatives Committee on Foreign Affairs, Subcommittee on Europe, October 3, 2007.

*"Legal Peace"*

The insurance industry, the German Government, the State Department, and certain organizations that were part of ICHEIC (and their affiliates) oppose H.R. 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. Today, opponents of H.R. 1746 want to give German insurers more than they were able to negotiate for in 2000, and more than the U.S. Government has the constitutional authority to provide.[8]

Even though the U.S. never agreed to the immunity now demanded by Germany, unprecedented court decisions have held that survivors may not sue insurers over policies sold to their loved ones before WWII. But, even those very court decisions limiting survivors' access to courts today cite the absence of congressional action on the subject, an obvious acknowledgement of Congress's authority to guarantee access to courts through legislation. *American Insurance Association* v. *Garamendi,* 539 U.S. 396 (2003), In *re Asscurazioni Generali, S.p.A., Insurance Litigation,* 240 F.Supp.2d 2374 (S.D.N.Y. 2004). H.R. 1746 would restore survivors' rights to sue recalcitrant insurers; rights that were never questioned prior to *Garamendi.*

The basis now cited for the "legal peace" argument is the "$5 billion" German Foundation agreement. That agreement arose from the dismissal of the lawsuits filed by Holocaust survivors against German manufacturers seeking compensation for slave labor they were forced to perform to survive. The courts held that international treaties settling WWII, which encompassed infliction of personal harm during the war, precluded 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.

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[8] 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 and make it publicly available so that survivors, heirs, the general public, and Congress can be completely informed about the formulation of this public policy decision that has profoundly and adversely affected thousands of Holocaust victims and families.

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 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. Eizenstat, at 268. As part of the "settlement," Germany agreed that its insurers would participate in ICHEIC, subject to a cap on their potential exposure. The "cap" was determined without any independent audit or investigation or analysis of the actual amount of insurance theft the German companies committed. The arbitrarily determined cap for all German insurers and those who sold in the German market was approximately $200–$250 million—with a portion earmarked for policies and a portion earmarked for humanitarian programs. The U.S. agreed in return that if German companies were sued in U.S. courts, it would file a "statement of interest" in the case stating that it would be in the "foreign policy interest of the U.S. for the case to be dismissed "on any valid legal ground."[9] The President did not agree to abolish survivors' right of access to courts, nor could he have done so.

The fact that Congress did not legislate directly on this problem until 2003 does not mean that Members of Congress were satisfied with these developments. Several Members of Congress immediately protested the executive branch's decision to include survivors' insurance rights within the German Foundation settlement, which was always believed to be limited to slave labor. These members 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, Attorney General of the United States.

Several of these Representatives also wrote to the Solicitor General of the United States to protest the inclusion of insurance in the German-U.S. Agreement, and 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 (Emphasis supplied).[10]

In response to concerns raised by U.S. Congressmen, the Justice Department made it clear that under the agreement, the Government did not purport to eliminate Holocaust survivors' legal claims against German insurers. Assistant Attorney General Raben, correctly stated that the terms of the agreement only required the Government to 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

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[9] The language of the agreement states: "(1) The United States shall, . . . inform its courts through a Statement of Interest, in accordance with Annex B, and, consistent therewith, as it otherwise considers appropriate, 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 asserted against German companies as defined in Annex C and that dismissal of such cases would be in its foreign policy interest." Annex B provides more detail on what the Government would say: "The United States will recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine)."

[10] Even Roman Kent, according to ICHEIC minutes, did not agree that insurance belonged in the slave labor agreement: "Mr. Kent . . . said the insurance question should not have been grouped with the slave labor, as they are separate issues." *See,* ICHEIC Minutes, November 15–16, 2001. Ironically, today, he is one of the institutional defenders of the proposition that Congress should not pass legislation to restore survivors' rights, because if it does Germany would consider it a breach of trust and withhold funding for new programs periodically negotiated by the Claims Conference.

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 maximalist position now being taken by the administration and others, that at the time of the agreement, the Justice Department also acknowledged that if ICHEIC did not prove to be an effective forum for solving survivors' claims, even the limited protection that had been 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.

In 2003, the United States Supreme Court in the *Garamendi* case held by a 5–4 vote that though the executive agreement between the U.S. and Germany did not expressly preempt State law, there was a separate "Federal policy" favoring "non-adversarial resolution" of Holocaust victims' claims that preempted the California Insurance Commissioner's power to subpoena records from German companies. In that case, several Members of Congress filed an amicus brief supporting California's primary jurisdiction over insurance regulation and opposing the unlegislated "implied" expansion of Federal executive authority to preempt State law. Unfortunately the congressional amici's position was not adopted by the court, however.

This much is certain. No insurance company, and no country obtained any agreement from the United States Government to abolish survivors' and heirs' right of access to courts. No State legislature enacted any law proscribing survivors' or heirs' rights to sue insurers. H.R. 1746 does not overturn any U.S. Government promise to provide legal immunity to international insurers, in spite of all the rhetoric that it would "break faith" with the companies and countries that joined ICHEIC. To the contrary, they all exploited the practical impediments created by ICHEIC through the hushed tones of "international diplomacy." The fact that the promises of ICHEIC never occurred are irrelevant legally; it could never have preempted State law rights prior to *Garamendi* and *Generali II.* Unfortunately, the courts have for the moment accepted the sweeping interpretation of executive authority advanced against survivors, even though no legislature has or could erect such barriers. But Congress clearly has the authority to enact legislation to correct any interpretation or supersede any provision of the executive agreement. *Weinberger* v. *Rossi,* 456 U.S. 25 (1982).

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' sacred investments 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 injustice. 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, H.R. 1746 invokes fundamentally congressional prerogatives, which the executive branch's unilateral actions undermine in an intolerable and harmful fashion.

*Other issues precluding "legal peace"*

Congressman Wexler, in response to Ambassador Kennedy's "legal peace" argument at the Europe Subcommittee hearing in October 2007, asked what the survivors and heirs with possible insurance rights received in exchange for the "deal" the Department now says should be "honored." He pointed out the 3-percent 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 adverse 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 Congress 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 policyholder names*

ICHEIC was supposed to begin with a comprehensive dissemination of names of policyholders in order to inform survivors and family members about the possibility of an unpaid policy in their family, but only a fraction of policies, including only 10 percent from Eastern Europe, were published. Most were published in mid-late

2003, after the filing deadline had been extended twice and shortly before the final deadline.

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 policyholder 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 *Garamendi* decision. Several members of the committee, and the survivors and survivors' advocates who testified, expressed their dismay with the ICHEIC. The concerns raised included the inadequacies in the dissemination of policyholder names that had occurred after nearly 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.")

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 Web site, 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.

Mr. Waxman continued, with a critique of the failure of the ICHEIC to publicize names of policyholders from the areas of Europe in which large numbers of Jews lived and owned businesses:

> 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 Web site: 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 prewar Jewish population exceeding 400,000. In Romania where close to 1 million Jews lived, only 79 policyholders have been identified. These countries were the cradle of Jewish civilization in Europe. Clearly, these numbers demonstrate that claimants are far from having a complete list.

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

It is true that in mid-2003, 5 years after ICHEIC was created, 3 years after the German-U.S. executive agreement, and after two extensions of the published filing deadlines for ICHEIC claims, an additional 360,000 names were added to the ICHEIC Web site from Germany, and in late 2003 approximately 30,000 more names of Generali customers were published. However, these were published long after the vigorous publicity that had occurred fully 3 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 claim-

> ants 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 3-year delay in reaching 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.

Several of the legislation's opponents argue that the "nonadversarial" ICHEIC process, which avoided the necessity of "costly, prolonged litigation," was superior as a way for survivors to obtain redress of their claims against the culpable insurers. For example, Ambassador Kennedy stated:

> 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.

Kennedy Financial Services Testimony, February 7, 2008, at 5.

However, that argument, with ICHEIC taking 9 years to complete its work and recovering only a small fraction (3 percent) of the victims' losses, would seem to falter under its own weight. Rather than speedy and effective, ICHEIC was slow, bureaucratic, and seriously defective, as has been well-documented in the public record.

However, a few examples of actual cases will illuminate for this committee the realities of how ICHEIC operated, which was stifling bureaucracy and no oversight to enforce even the nobler goals and rules adopted at the beginning of the process.

Take, for example, the case presented by the GDV in its materials distributed to Members of the House in opposition to H.R. 1746. The GDV describes the odyssey of ICHEIC claim number 00010595, which was first made to ICHEIC on January 11, 2000. It was sent by ICHEIC to the GDV on May 28, 2003. GDV sent the claim to the "responsible insurance company' over a year later, on September 20, 2004. The company offered the claimant a payment on December 20, 2004. So, ICHEIC's grand efficient and claimant-friendly process took 4 years, 11 months, and 19 days to pay in the example cited by the GDV. Is this the "speedy alternative to litigation" that Congress would embrace?

Another example is provided by the New York Legal Assistance Group (NYLAG), which represents hundreds of indigent clients in the New York City area. NYLAG also objected to the Generali class action settlement based on its clients' ICHEIC experiences and filed an amicus curiae brief in the court of appeals. One of the cases they presented to the court was that of Miklos Griesz. Mikos Griesz was a named beneficiary of his mother's policy, that Generali had that information in its records including the Policy Information Center (PIC), but that they all failed to inform Mr. Griesz of that fact because he filed as a beneficiary of his father's policy, not his mother's. Generali sat on that information for more than 4 years, without ICHEIC doing anything to help. That isn't unusual—the ICHEIC process really didn't have any kind of enforcement mechanism built in unless a claimant filed an appeal of a denial.

Mr. Griesz submitted his ICHEIC claim on April 6, 2000. His claim form listed Generali as one of two possible companies that sold a life insurance policy to his father Arnold Griesz in Budapest, Hungary. It also identified three possible heirs, "my mother, my brother, and myself." On February 24, 2004, the Generali Trust Fund in Israel (GTF) denied the claim on the basis that "no match [was] found." However, it the evidence later unearthed show that all that time, Generali had a record that it sold a policy to Alice Spiegel Griesz, which listed "her son Miklos" as a beneficiary. Yet, in nearly 4 years, Generali and the GTF either did not find this vital piece of information in its files that Miklos Griesz was a named beneficiary on a policy (sold in Hungary), or they withheld the information from the

claimant and erroneously denied the claim on the ground that there was "no match found."

Even after Mr. Griesz's counsel found his mother's name on the PHEIP Web site and the appellate arbitrator ordered the company to search its records for a match of the mother's name, Generali's response was not a model of full disclosure nor what would be expected in a system with "relaxed standards of proof." It reported:

> That there is an insured in the archives of Assicurazioni Generali named Alice Spiegel Griesz. We wish to clarify, however, that this is the first time the claimant has brought this name to our attention.

It is fortunate for Mr. Griesz that he had the assistance of the New York Legal Assistance Group, which recruited two top New York City law firms to assist in Mr. Griez's claim. The appellate arbitrator eventually required Generali to pay, but under the normal ICHEIC protocol, the ICHEIC system did not prevent the case from lasting more than 5 years. Without his own counsel Mr. Griesz likely would have never recovered even though Generali had sold his parents insurance and had that information in its records.

In normal litigation, Generali's conduct in denying Mr. Griesz's claim while it held information that he was beneficiary under a policy issued to his mother would constitute bad faith and subject the company to treble or exemplary damages. E.g., *Allstate Indem. Co.* v. *Ruiz,* 899 So.2d 1121 (Fla. 2005) ("if an insurance carrier engages in outrageous actions and conduct that constitutes an intentional tortious act, it may be liable for bad faith damages). This information was in Generali's possession for decades, yet Mr. Greisz did not recover his family's legacy for over 60 years. Why shouldn't he have the option of a judicial remedy if he chooses that route?

*Hundreds of thousands of relevant archive files were not reviewed*

Another significant 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 many 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." No explanation was given for leaving most of the 700 boxes unsearched.

Another entry, for an archive in Berlin, 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 examined 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. Today, the imperative of requiring the companies to disclose its records, not ICHEIC's performance, is the only relevant matter.

THE ICHEIC "AUDITS" WERE LIMITED AND SECRET UNTIL ICHEIC CLOSED

Opponents of H.R. 1746 cite the audit program as a reason to defend the process. But the public and policymakers 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, determined that the

Generali Trust 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.

Moreover, the ICHEIC audits were extremely limited. 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 to abandon the field in favor or ICHEIC. For example, the Deloitte & Touche LLP Stage 2 audit "passing" Generali Trieste, which was not even issued until March 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.

What ICHEIC did not require was a comprehensive disgorgement of relevant company files, which survivors and heirs would have access to in litigation. So, Congress must be careful about drawing any conclusions about the insurers' arguments that ICHEIC audits should give them confidence about the integrity of the companies' performance and undermine the need for legislation such as H.R. 1746.

APPEALS WERE BIASED AGAINST CLAIMANTS

Another ICHEIC "safeguard" was the availability of an appeal mechanism for claimants who were dissatisfied with company decisions. However, after ICHEIC closed, one of the appellate judges, former New York State Insurance Superintendent Albert Lewis, disclosed that he was pressured by the ICHEIC legal office to deny appeals on claims he considered valid, based on a "phantom rule" that violated the published ICHEIC rules. He disclosed that he was pressured by ICHEIC's legal office to require claimants without documentation but with credible anecdotal evidence of a policy to overcome a "heavy burden" to prevail.

In an amicus curiae brief submitted to the Second Circuit Court of Appeals, Mr. Lewis revealed 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 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." Mr. Rubin's family was forcibly removed from their home in April 1944 and taken to the Beregsastz Ghetto, and then deported to Auschwitz. His parents perished in the Holocaust but he survived. 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. He even noted that "[t]he agent's name was Joseph Schwartz. He did not survive the Holocaust."

Mr. Rubin 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. The arbitrator 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).

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 thousands of 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 Web site, that "the person named in your claim was not the same person."

ICHEIC DID NOT REQUIRE COMPANIES TO DISGORGE INFORMATION IT PROVIDED ABOUT 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 they "could not identify who was Jewish" among its customers

after WWII, hence shouldn't be viewed as monsters for failing to pay policies of Jews who were Holocaust victims. However, contrary to such statements, records have surfaced that reveal at least 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.

In addition, documents such as Generali's letter to the "Prefect of Milan," in which the company did indeed identify its Jewish customers to authorities, repudiates the companies' denials:

> 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?

How much more information like that lies in their records? No one knows because ICHEIC did not probe that issue nor require the companies to disclose all records pertaining to their interaction with the authorities during the war, nor their internal accounting records or board minutes showing how they dealt with Holocaust victims' policies after the war.

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.

For example, Florida's Legislature and Insurance Commissioner have consistently rejected the proposition 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 Insurance Commissioner Bill Nelson, now chairman of this committee, 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: "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." [11]

The principal Senate sponsor of the Florida Holocaust Victims Insurance Act and Senate Resolution 2730, State Senator Ron Silver, 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

[11] 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.

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:

> 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 S.R. 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 H.R. 1746*

Perhaps the most cynical objection raised to H.R. 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 3 percent of the funds owed by these insurers to Holocaust victims' families has been repaid, after an excruciating 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 percent of their unjust enrichment.

The provisions of H.R. 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, H.R. 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 H.R. 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, H.R. 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.

## REPORT TO CONGRESS: GERMAN FOUNDATION "REMEMBRANCE, RESPONSIBILITY, AND THE FUTURE"—BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, MARCH 2006

[As required by Section 704 of the Foreign Relations Authorization Act, FY 2003 (as enacted in Public Law 107–228)]

### INTRODUCTION

Section 704 of the Foreign Relations Authorization Act, FY 2003, as enacted in Public Law 107–228, requires the Secretary of State to report to the appropriate Congressional committees on the status of the implementation of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation "Remembrance, Responsibility, and the Future," signed in Berlin on July 17, 2000, and, to the extent possible, on payments to and from the Foundation and on certain aspects of the functioning of the International Commission on Holocaust Era Insurance Claims ("ICHEIC"). This is the seventh report submitted pursuant to that law.

### BACKGROUND

The United States Government played a critical role in a multilateral effort that resulted in the establishment of a Foundation under German law entitled "Remembrance, Responsibility, and the Future" ("Foundation"). The Foundation was capitalized with 10 billion German Marks (DM), valued at the time at approximately five billion dollars. Since June 2001, the Foundation has been making payments to survivors in recognition of the suffering they endured as slave and forced laborers. The Foundation also covers other personal injury claims and certain property loss or damage caused by German companies during the Nazi era, including claims against German banks and insurance companies. Further background is available in previous reports submitted to the committees.

### IMPLEMENTATION OF THE AGREEMENT

The United States and the Federal Republic of Germany have taken various steps to implement the Foundation Agreement. In August 2000, a German law establishing the Foundation took effect. In October 2000, the United States and the Federal Republic of Germany exchanged diplomatic notes to bring the Foundation Agreement into effect. The United States note indicates that the German law, as clarified and interpreted by several German Government letters, is fully consistent with the Foundation Agreement, which sets forth the principles that shall govern the operations of the Foundation.

The United States Government has filed statements of interest recommending the dismissal, on any valid legal ground, of lawsuits brought against German companies for wrongs committed during the Nazi era, and is committed to do so in future cases that are covered by the Foundation Agreement.

On May 30, 2001, the German Bundestag declared that "adequate legal certainty" had been achieved for German companies in the United States. Under the law establishing the Foundation, this declaration by the Bundestag authorized the Foundation to make funds available to the seven partner organizations (foundations that had previously been established in Belarus, the Czech Republic, Poland, Russia and Ukraine, as well as the Conference on Jewish Material Claims Against Germany and the International Organization for Migration) that would make payments to individual recipients.

### FUNDS AVAILABLE TO THE FOUNDATION

By early 2002, the entire sum of 10 billion DM had been made available to the Foundation by the Federal Republic of Germany and by German companies.

### PAYMENTS FROM THE FOUNDATION

As of December 2005, approximately $5.1 billion (4.265 billion Euro or 8.3 billion DM) had been paid to approximately 1,646,000 surviving slave and forced laborers. This represents 98 percent of the funds (8.1 billion DM plus an additional amount from interest earnings) available from the Foundation's capital for slave and forced labor payments. The remaining funds will continue to be paid out over the next six months. A breakdown of payments by partner organizations follows:

| Partner organization | Number of recipients | Amount (in euro) |
|---|---|---|
| Belarus/Estonia | 129,000 | 345,300,000 |
| Conference on Jewish Material Claims | 154,000 | 1,116,800,000 |
| Czech Republic | 76,000 | 209,200,000 |
| International Organization for Migration | 87,000 | 366,300,000 |
| Poland | 483,000 | 971,000,000 |
| Russia | 245,000 | 392,000,000 |
| Ukraine | 472,000 | 864,500,000 |
| Total | 1,646,000 | * 4,264,800,000 |

* Approximately US$5.1 billion.

ICHEIC

The law establishing the Foundation provides funds to ICHEIC for the payment of claims arising from unpaid insurance policies issued by German insurance companies, as well as for the associated costs, and also a contribution to the ICHEIC humanitarian fund. The Foundation Agreement provides that insurance claims made against German insurance companies will be processed according to ICHEIC claims handling procedures and under any additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.

Following two earlier extensions, the deadline for filing claims was extended to December 31, 2003. The later filing deadline was designed to provide additional time for applicants, assisted by a publicized list of names, to determine whether to file a claim. Applicants who contacted ICHEIC prior to the December 31 deadline to obtain claim forms had until March 31, 2004, to complete the form and send it so that ICHEIC receives it by that date.

The Department of State was unable to obtain such information on the ICHEIC claims process as required by section 704(a)(3)–(7). Some information about ICHEIC, including statistics on claims and appeals, however, is publicly available on ICHEIC's Web site (www.icheic.org).

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[From the Wall Street Journal, Nov. 1, 1999]

## ALLIANZ ECLIPSES DEUTSCHE BANK AS GERMANY'S PREMIER POWER

(By Greg Steinmetz and Anita Raghavan

MUNICH, GERMANY.—Not much happens in corporate Germany without input from the country's largest insurer, Allianz AG.

In September, when German conglomerates Veba AG and Viag AG announced their $14 billion merger, a pivotal question was whether Allianz would go along. Earlier in the year, truck maker MAN AG said it planned an acquisition spree, and investors immediately asked if Allianz had signed up. Investment bankers have tried to lure German drugmaker Schering AG and other companies in Allianz's portfolio into mergers for years. Instead of going to the companies, the bankers often go first to Allianz.

In the U.S., Allianz is best known for owning Fireman's Fund and the controversy over missed insurance payments to Holocaust survivors. In a bid to expand its reach, it has reached an agreement to buy a 70% stake in Pimco Advisors Holdings LP, a U.S. asset-management company, for $3.3 billion, people familiar with the situation say. Allianz plans to list its shares on the New York Stock Exchange, but in the sprawling U.S. insurance market, it remains just a face in the crowd.

Back home, it's another story. Here, Allianz is known as the "spider in the web" of Germany Inc. In the clubby world of German business, where few degrees of separation stand between the top companies, no organization has more board seats or larger stakes in major German corporations than Allianz.

IMAGE PROBLEMS

"We are not always embarrassed by having the label 'powerful,'" says Diethart Breipohl, the company's chief financial officer. "But we would prefer the label global or European." He says the company's image creates problems overseas. Headlines with the words colosso tedesco (Italian for giant German) or le giant allemand (French for giant German) tend to scare the public, he says.

Allianz has been a power broker for decades. What's new is how its influence is increasingly unrivaled. Power in corporate Germany used to cleave evenly between Allianz and Deutsche Bank AG. Deutsche Bank is the world's biggest bank in terms of assets, but in the past few years the balance of power in Germany has shifted to Allianz.

That's partly because of Deutsche Bank's embarrassing string of slip-ups. It stumbled with its investment-banking strategy and got blamed for some of Germany's most high-profile corporate disasters, including Metallgesellschaft AG, which brushed with bankruptcy six years ago because of trading losses.

Meanwhile, Allianz has stayed clear of trouble while increasing its muscle. It expanded outside Germany and has done well in its key domestic growth market, eastern Germany. Since 1994, Allianz's share price has sharply outperformed Deutsche Bank's. Allianz now has a stock market value of $71 billion, considerably larger than that of its Frankfurt rival.

DEUTSCHE BANK TRIMS STAKE

Indeed, some of Allianz's success has come at the expense of Deutsche Bank, which used to be a close partner but is now its biggest rival. On Thursday, Deutsche Bank, in an effort to further unwind its relationship with Allianz, reduced its stake in the insurer to 7% from 9.1%, selling off $1.5 billion of stock in the process.

The relationship began unraveling in the early 1990s when Deutsche Bank broke an unwritten truce with Allianz by going into the insurance business. At the time, Deutsche and Allianz owned stakes in each other and each sat on the other's board. At a 1993 board meeting, the rivalry broke into the open. Deutsche Bank's then chief executive officer, Hilmar Kopper, came to an agenda item about insurance, prompting Allianz's chief executive, Henning Schulte-Noelle, a stern figure with a dueling scar on his cheek, to excuse himself.

As Mr. Schulte-Noelle was leaving, Mr. Kopper quipped, "No, why don't you stay? We have no secrets, and perhaps you can give us some good advice." Mr. Kopper says the remark was meant in good faith, but others saw it as sarcastic.

Shortly after Deutsche Bank entered into insurance, Allianz countered by stepping up its interest in banking. In 1992, it raised its stake in Dresdner Bank AG to 22% from 19% and might have kept going had federal cartel authorities not ordered it to stop.

TENSIONS SURFACED

Two years ago, tensions surfaced again when Deutsche Bank bought a stake in Bayerische Vereinsbank AG, the biggest bank in Allianz's home state of Bavaria. Rumors flew that Deutsche Bank wanted to buy up the rest. Eager to block Deutsche Bank, Allianz sanctioned an $18 billion merger between Vereinsbank and Bayerische Hypotheken- & Wechsel-Bank AG. Allianz held stakes in both banks. At the time, the deal, which created HypoVereinsbank AG, was the largest bank merger in European history.

Allianz remained a powerful force after the merger. When the merged bank fell on hard times, shareholders looked to Allianz for a solution. Allianz sanctioned the departure of the bank's supervisory board chairman. Then, on a Sunday morning last April, Mr. Schulte-Noelle sat in his office with Kurt Viermetz, the former vice chairman of J.P. Morgan & Co., and offered Mr. Viermetz the job. Mr. Viermetz accepted.

Economists question whether the German economy benefits from a company with so much power. Growth has been sluggish in Germany, and one factor is the slow pace of corporate restructuring. To get growth moving, German companies need to step up the pace of reform, even if it means allowing foreign companies to come in and do it, economists say.

DIFFICULT FOR FOREIGNERS

But Allianz stands in the way. "If you have these Allianz-type networks, it's hard for foreign investors to come in and break them up," says Paul Welfens, an economist at the University of Potsdam. In situations where a company might best be served by layoffs or asset sales that only an outsider would undertake, Allianz's solution is often inferior, he says.

One example might be the case of MAN, a truck maker that also makes printing presses and has other business. Analysts say it makes little sense for those operations to be under the same roof. Sensing value in a breakup, investment bankers have been circling MAN. But instead of selling out, MAN is instead looking for acquisitions.

The reason, bankers say, is because Allianz protects it. Allianz heads an investment group that owns more than a third of MAN's stock. Though Allianz could make a tidy profit by selling, bankers suggest it won't because it fears a backlash. As Germany's largest seller of life and car insurance, Allianz worries about its reputation and wouldn't want to be blamed for sponsoring layoffs.

Mr. Breipohl, the Allianz finance chief, disagrees. "Job losses are not something you want to be associated with," he concedes, but he notes that MAN's stock has performed well so there isn't any reason to break up the company. If the objective is to realize value by breaking up MAN, Allianz can do it without the help of outsiders, he says. "Investment banks are always useful but we also have the in-house experience to conduct such a process should it be necessary."

TAKEOVER OF SCHERING

Allianz is also blamed for holding up a takeover of Schering, the large, Berlin-based pharmaceutical company in which it owns 10%. Two years ago, Eli Lilly & Co. of the U.S. approached Schering about a $8 billion takeover, according to people familiar with the situation. Schering told Lilly to go away. Schering and Lilly wouldn't comment.

Mr. Breipohl denies having heard about Lilly's approach. But bankers say they have gone directly to Allianz with other takeover plans for Schering and been turned away.

Allianz could profit handsomely by unloading its Schering stake. But given that Schering is one of the bright lights of German industry, Allianz wants to avoid blame for letting the company slip into foreign hands, investment bankers say.

Mr. Breipohl says that isn't so. In principle, he says, Allianz would never stand in the way of a foreign company buying a German company as long as the price was fair. "We are not the defenders of corporate Germany, and we would not want to be perceived as playing that role," he says. He notes that Allianz made possible the takeover of Germany's BHF Bank by the Dutch bank ING and the takeover of the Berlin waterworks by Vivendi SA of France.

OPPOSITION TO FRENCH FIRM

But there was at least one occasion when Allianz openly opposed a foreigner. In 1992, French insurer AGF sought to take control of a German insurer, Aachener & Muenchener Beteiligungs AG. Threatened by the presence of a big French insurer on its home turf, Allianz led a group of financial companies that bought a large stake in Aachener.

At the time, Allianz said its investment in Aachener was purely an investment. Now Mr. Breipohl concedes that Allianz was unhappy with AGF's foray into Germany. It wasn't because it feared a French competitor, he says. Rather, it was because AGF was then controlled by the French government. "If you have to compete against the state, regardless of whether it is a domestic or foreign government, then something is wrong," he says.

That stake later proved extremely valuable. Two years ago, Italian insurer Assicurazioni Generali SpA made a hostile bid for AGF, which had been privatized some years before. The hostile bid prompted AGF to look to Allianz as a white knight. Allianz agreed to let Generali take over Aachener, and Generali dropped its bid for AGF. Allianz is now one of the biggest insurers in France.

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.

GRUDGING MOVE

Mr. Breipohl says it did so grudgingly. Compared to the U.S., Germany has few companies big enough for Allianz to invest in, so it had no choice but to concentrate on the big players.

Fundamental to Allianz's character is discretion. While Deutsche Bank CEO Rolf Breuer is often seen before the cameras and often gives interviews, Mr. Schulte-Noelle is more reticent. Deutsche's twin towers are fixtures in the Frankfurt skyline. But visitors have to hunt to find Allianz's five-story headquarters tucked behind a Munich university. Deutsche executives sit as board chairmen on a number of German companies. Allianz has a rule that executives take no job higher than deputy chairman. Mr. Schulte-Noelle sits on nine corporate boards and is deputy chairman of three.

Allianz prefers discretion because it is a target. For decades, Germans have debated the powers of banks and insurance companies, which have broader powers than they do in the U.S. Populist politicians want to rein them in.

But Allianz will speak out when cornered. This year, the government of Chancellor Gerhard Schroeder sought to raise taxes on insurance companies. Helmut Perlet, a top Allianz official, threatened to relocate some Allianz operations outside Germany if the government didn't relent. A few days later, the government slashed the tax increase.

Senator Bill NELSON. Thank you, Mr. Dubbin.

Ms. Rubin.

**STATEMENT OF ANNA B. RUBIN, DIRECTOR, NEW YORK HOLOCAUST CLAIMS PROCESSING OFFICE, NEW YORK STATE BANKING DEPARTMENT, NEW YORK, NY**

Ms. RUBIN. Good afternoon, Chairman Nelson and members of the committee. Thank you for the opportunity to appear before you today and share my knowledge on the important issue of Holocaust-era insurance claims. As Director of the Holocaust Claims Processing Office, I am pleased to be able to provide some insight into New York State's attempt to provide some measure of justice to the victims of a painful chapter in world history.

For over 10 years, the State of New York has been at the forefront of efforts to ensure a just resolution of unresolved claims for assets lost due to Nazi persecution and in June 1997 established the HCPO as a division of the New York State Banking Department. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. The goal of the HCPO is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

Since its inception, the HCPO has assisted nearly 2,300 individuals from 41 States and 24 countries in making claims for insurance policies. For the most part, the claims are for compensation of life, dowry, and education policies. To date, the combined total of offers extended to HCPO claimants for bank accounts, insurance policies, and other asset losses amounts to more than $118 million, over $28 million of which is compensation for insurance policies.

Claims received by the HCPO range from the purely anecdotal to the partially or even fully documented. In response to the complex nature of restitution claims, the HCPO developed a systematic method, broadly described in four steps, to handle cases. First, individual claims as assigned to members of the HCPO's staff who assist in securing documentation through research in domestic and international public and private archives.

Second, the HCPO determines where to file a claim. In order to submit a claim to the appropriate company or claims process, it is necessary to establish what present-day company or process is responsible for the policy in question. For claims for policies issued by companies still in existence, finding the appropriate successor is relatively straightforward. But for others determining the successor is more complex.

Third, the HCPO staff submits claims to all appropriate companies, regulatory authorities, governments, and any independent organization established to resolve these claims. Prior to establishment of ICHEIC, the HCPO submitted claims for insurance policies

directly to the issuing insurance company or its present-day successor if one could be located. With the launch of ICHEIC, the HCPO transferred over 2,100 insurance claims to the commission for settlement. The HCPO also submitted claims to a variety of other processes, either directly or in accordance with ICHEIC's partnership agreements. Throughout, the HCPO closely monitored the progress of these claims.

Since ICHEIC has ceased operation, ICHEIC member companies, as well as members of the German Insurance Association, reiterated their commitment to continue to review and process claims sent to them, and now once again the HCPO deals directly with insurance companies to resolve outstanding claims.

The final step in the HCPO process involves evaluating decisions and working with claimants on payment or appeal. The HCPO reviews a decision to ensure that it adheres to agreed-upon processing guidelines. Decisions are discussed with claimants and staff follow up with the organization issuing the determination as needed. In addition, we help arrange for payment to be made directly to claimants.

For the past decade the HCPO has been successful in obtaining closure for many Holocaust victims and their heirs who have been trying to arrive at resolution for more than half a century.

Recently, the National Association of Insurance Commissioners, the HCPO, and the Banking and Insurance Departments of New York State have begun discussions of a proposal by which the NAIC will provide financial support for the HCPO's efforts at monitoring and reporting the insurance claims.

Like the missing property we search for, no two claims are alike. Each requires conscientious individual attention and painstaking effort. The process of restitution is difficult and distressing for claimants. The HCPO's successes show that it is possible to obtain compensation for assets lost during the Holocaust era through open and mutual cooperation and at no cost to Holocaust victims or their heirs.

Thank you again for the opportunity to discuss the HCPO and I would be happy to address any questions you may have.

[The prepared statement of Ms. Rubin follows:]

PREPARED STATEMENT OF ANNA B. RUBIN, DIRECTOR, HOLOCAUST CLAIMS PROCESSING OFFICE, NEW YORK STATE BANKING DEPARTMENT, NEW YORK STATE INSURANCE DEPARTMENT, NEW YORK, NY

Good afternoon, Chairman Nelson, Ranking Member Vitter, and members of the subcommittee. Thank you for the opportunity to testify before you today and share my knowledge on the very important issue of Holocaust-era insurance claims. As director of the Holocaust Claims Processing Office (HCPO), I am especially pleased to be able to provide some insight into the work of New York State in its attempt to provide some measure of justice to the victims of a painful chapter in world history. Today I would like to provide you with background on the HCPO and in particular our experience working on Holocaust-era insurance claims, our cooperation with numerous compensation organizations, and our more recent efforts to assist individuals with outstanding insurance claims.

I. INTRODUCTION TO THE HOLOCAUST CLAIMS PROCESSING OFFICE

For over 10 years New York State has been at the forefront of efforts to ensure a just resolution of unresolved claims for assets lost due to Nazi persecution. As you are undoubtedly aware, disputes over Holocaust-era dormant Swiss bank accounts and unpaid life insurance policies came to the forefront in the late 1990s. During

those early days, before settlements and claims processes, New York State recognized the need for an agency to assist individuals attempting to navigate the emotionally charged maze of Holocaust-era asset restitution and, as a result, established the HCPO as a division of the New York State Banking Department in June 1997. The HCPO is jointly funded by the New York State Banking Department and the New York State Insurance Department.

The HCPO was initially intended to assist individuals hoping to recover assets deposited in Swiss banks. It soon became apparent that claimants also needed help recovering a range of other property and by the end of its first year of operation, the HCPO expanded its mission to assist in the recovery of assets held in non-Swiss banks, proceeds from Holocaust-era insurance policies, and works of art that were lost, looted, or sold under duress between 1933 and 1945.

The HCPO is the only government agency in the United States that assists individuals to file claims with a variety of multinational restitution processes. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. To date, the combined total of offers extended to HCPO claimants for bank accounts, insurance policies, and other asset losses amounts to more than $118 million, $28.3 million of which is compensation for insurance policies. (*See,* Section 1.—New York State Banking Department Holocaust Claims Processing Office Annual Report.*)

The goal of the HCPO is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

## II. THE HCPO'S INSURANCE CLAIMS

Overall, the HCPO has handled in excess of 13,000 inquiries, of which 4,300 have been insurance-related inquiries from individuals in 46 States and 29 countries. Of the 4,300 insurance-related inquiries, the HCPO assisted 2,290 individuals from 41 States and 24 countries in making claims for insurance policies. For the most part the claims are for compensation of life, dowry, and education insurance policies.

## III. HCPO CLAIMS RESEARCH

Claims received by the HCPO range from the purely anecdotal to the partially or even fully documented. Some claimants are able to furnish documentation such as the actual policy or premium receipt; handwritten lists kept by families that itemized their assets; and prewar and wartime confirmation letters from insurance companies referencing policy numbers and policies. In other instances, claimants document policy ownership through Nazi-era asset declarations; in some cases policy ownership is revealed by postwar compensation files.

Those who cannot provide documentation often know significant details. Claimants know there was insurance; they even recall purchasing it, and they remember perhaps the name and location of the agent. They remember accompanying parents to medical exams, or to photographers for dowry policy photographs.

Individual claims are assigned to members of the HCPO's staff of seven professionals—comprised of historians, economists, political scientists, lawyers, art historians and linguists—who provide assistance in a variety of ways. They assist in securing documentation through research in domestic and international public and private archives. As a result, the HCPO has cordial working relationships with archives, historical commissions, financial institutions, trade associations, and governmental colleagues at the Federal, State, and local levels in many different countries. This network enables the HCPO to research prewar, Nazi-era, and postwar documentation to obtain evidence about an individual's asset ownership, details of the dispossession, and prior attempts at recovery.

Claimants have approached the HCPO convinced that the policies they are seeking were written by one company and the HCPO's research has been able to determine that it was in fact quite another. For instance, a claimant, originally from Vienna, approached the HCPO relatively certain that his father's life insurance policy was written by Der Anker or Phönix. Neither Der Anker nor UNIQA (the Phönix successor) had any record of a policy. The HCPO obtained a copy of the claimant's father's asset declaration from the Austrian Federal Archives, which revealed a Victoria life insurance policy, and even cited its repurchase value as of July 1938. In turn, the HCPO submitted the claim to the International Commission on Holocaust Era Insurance Claims for resolution.

## IV. HCPO SUBMISSION OF CLAIMS TO APPROPRIATE ENTITIES

With as much information in-hand as possible regarding the claimants' insurance policies, the HCPO must still determine where to file the claim. In order to submit

a claim to the appropriate company or claims process, it is necessary to first determine what present-day company or claims process is responsible for the policy in question. For claims for policies issued by companies still in existence, finding the appropriate successor is relatively straightforward. But for others, determining the successor is more complex.

A considerable amount of the HCPO staff's time is devoted to successor company research. Researching successor companies is complicated by the following facts: Policies written in contested geographical areas were transferred to a variety of companies and different portfolios within these companies; the prewar Nazi consolidation of the insurance industry and the postwar reconstruction; and in some instances nationalization of the industry led to further changes in corporate structures. Moreover, the ravages of war and the passage of time have left many companies with little or no documentation regarding their prewar holdings or the holdings of their subsidiary companies.

Published industry handbooks and government statistical bulletins from the relevant time period help the HCPO determine where companies did business and provide some information regarding the aggregate statistics of the prewar insurance market as well as the market share of individual companies. For example, it is possible to state with some certainty which companies sold life insurance policies in Germany and Poland in 1936 and that in that same year the domestic German insurance market comprised 48.78 percent of the continental European insurance market, whereas the Polish market made up 0.68 percent of the market. (*See,* Section 2.—Overview of the Interwar Economy and European Insurance Industry.*)

Once all of the HCPO's research is complete, the HCPO's role changes from detective to advocate and facilitator. The HCPO staff submits claims to all appropriate companies, regulatory authorities, governments, and any independent organization established to resolve these claims.

*A. The International Commission on Holocaust Era Insurance Claims*

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in October 1998 by the National Association of Insurance Commissioners in cooperation with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. ICHEIC was charged with establishing a process to address the issue of unpaid insurance policies owned by victims of the Holocaust. To accomplish this task, ICHEIC entered into agreements with European insurers and created mechanisms by which the Commission was able to identify, settle, and pay individual Holocaust-era insurance claims, at no cost to claimants, using relaxed standards of proof. With the launch of ICHEIC's claims process in February 2000, the HCPO transferred over 2,100 insurance claims to the Commission for settlement. The HCPO worked closely with ICHEIC staff in Washington and London, participated in working groups, provided technical assistance and ensured claimants' concerns were adequately addressed.

*B. The Austrian General Settlement Fund*

The Austrian General Settlement Fund (GSF) Law of 2001 created the legal basis for dealing with the financial claims of Holocaust victims. The Austrian Insurance Association and its member companies passed a unanimous resolution in April 2001 to contribute $25 million to the GSF. The GSF has assumed the task of processing the insurance claims of Holocaust victims and their heirs. The HCPO has submitted claims on behalf of over 360 claimants either directly or through the GSF's partnership with ICHEIC. The HCPO continues to monitor these claims and conduct additional research.

*C. Other claims processes*

In addition, HCPO insurance claims have been forwarded to a number of other entities for resolution, including the Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust (GTF), the Holocaust Foundation for Individual Insurance Claims (Sjoa Foundation), the Claims Resolution Tribunal (CRT), and the Belgian Jewish Community Indemnification Commission (Buysse Commission). Claims were submitted to these organizations either in accordance with ICHEIC's partnership agreements with these entities or directly by the HCPO.

*D. Insurance companies before and after ICHEIC*

Prior to the establishment of ICHEIC, the HCPO submitted claims for insurance policies directly to the issuing insurance company or its present-day successor, if one could be located. At ICHEIC's final meeting in March 2007, all ICHEIC member companies, as well as over 70 companies in the German Insurance Association,

through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims sent directly to them in accordance with ICHEIC's relaxed standards of proof. Since ICHEIC ceased operations at the end of March 2007, the HCPO has once again resumed dealing with insurance companies directly to resolve outstanding claims.

V. RESOLUTION OF CLAIMS

Once a company or claims process has completed its review of a claim and reaches a determination, the HCPO reviews the decision to ensure that it adheres to that entity's published processing guidelines. Since claimants may lose track of all the claims they have submitted, and since each agency has unique and often complex guidelines, the HCPO helps claimants to understand these guidelines in order to interpret decisions.

In the event that a claimant disagrees with a company or claims process determination of his or her claim, the HCPO guides claimants through appealing the decision and offers whatever further assistance it can. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various release and waiver forms and by following up with the claims agency to confirm payment.

VI. NAIC PROPOSAL

Recently, the National Association of Insurance Commissioners (NAIC), the HCPO, and the Banking and Insurance Departments of New York State have begun discussions of a proposal by which the NAIC will provide financial support for the HCPO's efforts at monitoring the insurance claims submitted to European insurers now that ICHEIC has ceased operation. It is anticipated that the HCPO will serve as the primary contact point for insurance companies and claimants with inquiries concerning Holocaust-era policies and ICHEIC guidelines. In order to facilitate the monitoring effort, the NAIC and its members will work with the HCPO to develop a bulletin on claims reporting, to help inform claimants of the opportunity to submit claims and the HCPO's ability to assist them. The HCPO will report the results of its monitoring activities to the NAIC.

Through this partnership, the HCPO will oversee the processing of any claims submitted through the HCPO to insurance companies to ensure compliance with ICHEIC's relaxed standards of proof. By monitoring and regular reporting, and by serving as a primary contact point for insurance companies and claimants, the HCPO can facilitate a process that will hopefully obviate the need for recourse to the judicial process. (*See,* Section 3.—Correspondence between the NAIC and New York.*)

VI. CONCLUSION

Like the missing property we search for, no two claims are alike; each requires conscientious individual attention and painstaking effort. The process of restitution is difficult and distressing for claimants; however, the HCPO's successes show that compensation for assets lost during the Holocaust era is still possible. Experience has taught that the HCPO can greatly minimize the difficulties in dealing with matters of Holocaust-era asset compensation.

*[EDITOR'S NOTE.—The information referred to above is located in the Appendixes to this hearing transcript.]

Senator Bill NELSON. Thank you, Ms. Rubin.

Senator Coleman.

Senator COLEMAN. Thank you.

Ms. Rubin, why don't I start with you. I appreciate the work that you've been doing. You indicated that the HCPO has been successful in obtaining closure for Holocaust victims. Is some of that closure through the ICHEIC process?

Ms. RUBIN. Yes, sir.

Senator COLEMAN. I don't know if I can—the Professor talked about "restituted." I'm not sure that any victims can ever be restituted when their parents are gone, their brothers are gone, their sisters are gone. But in terms of just this process, is it your

sense that there has been some successful closure by going through the ICHEIC process?

Ms. RUBIN. Through our experience, we have been able to obtain closure for claimants, either by showing that the policy had been paid out prior to the war, had been compensated immediately after the war, or compensated through the ICHEIC process.

Senator COLEMAN. I'm not sure that you can answer this, but one of the issues on which there's been a lot of discussion has been the valuation of insurance claims, the Zabludoff study that estimated claims in the $17 billion area, other studies, more recent information, that it's been less. But can you provide any insight as to, what's the universe of claims that are out there?

Ms. RUBIN. The universe of remaining claims?

Senator COLEMAN. Well, yes. Do you have any sense? Who should we look to? I've seen different studies here. Perhaps someone else can respond to that, but what are we looking at? What's the present day value of insurance claims that are still out there?

Ms. RUBIN. I can tell you that from the HCPO's experience, since ICHEIC closed we've only received about a half a dozen new claims. We have recently attempted to assess the scope of the market by reviewing the premium income from 1936 as a sample prewar year, to assess the size of the market. It is difficult to assess how many claims might remain.

Senator COLEMAN. Is there anybody else who can give—Mr. Dubbin, if you can respond?

Mr. DUBBIN. Sure. There is no exact number, obviously, because there's no exact census. But based upon the agreed-upon base value from the Pomeroy-Ferras report of $600 million in valuation in 1938, Mr. Zabludoff, who is an economist, using a 30-year bond rate as a multiplier, calculated that the value today of those policies would be $18 billion.

The number of those claims—the number of policies that remain uncompensated in any way is clearly several hundred thousand, several hundred thousand.

Now, there was a statement earlier that the work of ICHEIC and subsequent analyses verified that what was paid in by ICHEIC basically ratified their decisions. But ICHEIC itself never made an effort to bring that 1938 value up to current date. The Pomeroy-Ferras report, "did not want to make any proposal of a valuation process in order to bring the Holocaust insurance exposure to a 1999 value." That wasn't done by anybody until Mr. Zabludoff in his published article in 2004.

So when ICHEIC paid back, generously speaking, $300 million out of $17 or $18 billion, that's a lot. But the emphasis of the legislation—I mean, if it was only a half a billion, if it was only a half a million, the point of the legislation and what survivors want is the right to go to court, because they're the only citizens in this country who can't sue an insurance company who stole money from their families, the only Americans who don't have access to the courts.

Senator COLEMAN. I only have time for one more question.

Ambassador EIZENSTAT. May we answer that?

Senator COLEMAN. Yes, Mr. Eizenstat, and then I do, just one other question that I'd like to at least put on the table.

Ambassador.

Ambassador EIZENSTAT. Let me take an initial stab and then let the Secretary conclude. On your specific question, first of all, the enormous bulk, the great percentage, Senator Coleman, of the policies written for Holocaust-era victims were written by those companies that participated in the ICHEIC process, either the Dutch companies, the Swiss companies, the German companies—Generali—or by companies that no longer exist, that were nationalized, that went out of business.

Claims were permitted by ICHEIC and pursued by ICHEIC processes for all of those companies—all the German companies, even if they weren't subject to jurisdiction of a U.S. court; all the Dutch companies, even if they weren't subject to the jurisdiction; Generali; the Swiss companies, and the like. Again, as I emphasized, payments were made as well for those companies that no longer existed, that could never have been sued.

So the notion that there are hundreds of thousands of claims that haven't been paid—one wonders where the companies are. Now, what I suggested in my testimony is that, have the ICHEIC companies publish newspaper notices reminding people that they're willing to continue to pay and process claims, giving them the Web site to the 500,000 names that were published based upon the research of ICHEIC itself, going through State archives, going through insurance archives.

The notion that discovery in an individual class action is going to do a better job than all of this, against companies who couldn't be subject to jurisdiction, is very difficult, frankly, to comprehend.

Senator COLEMAN. Ambassador Eagleburger.

Mr. EAGLEBURGER. I would refer you all to the HCPO document that was submitted and its appendix 2. And I understand this is complicated and so I will try to make it short, in fact too short perhaps, and you can correct me if I do things incorrectly.

But if you look at that chart—let me back up. I think that the Zabludoff and other, whatever other estimates may have been made, are fundamentally flawed. I think they are much too high and there's no supporting evidence for them.

Now, in regard to the HCPO document here, very quickly, let me simply say that, first of all, there are issues such as the propensity to insure, the number of Jewish policyholders in the first place in a population. Let me give you just one example to try to demonstrate what I'm getting at. If you look at this chart, you will find that Poland, with a population of 32,133,000 in 1936, had a Jewish population of 2 percent of that total figure and as a consequence of that if you can find any way in the world in which you can judge from the fact that in the Polish case, if you take a look at it, in the Polish case there were very few who insured in the first place—I'm going to have to shorten this or it'll take forever.

But my point is, and we could work on it later if it makes it any easier—we can submit something for the record. But the fundamental point is that the statistics simply do not give you any sense that their figures are in the neighborhood of $17 billion or $200 billion, and we've seen both figures here.

I apologize for not doing a very good explanation of your chart. But the point I'm trying to get at here is, the statistics which show

the population in Poland, for example, and the number who insure and the number of Jewish population within that Polish population provides you with no evidence whatsoever that anything like these figures could have existed.

Senator Bill NELSON. For the clarity of the record, we will insert in the record at this point the chart to which Senator Coleman has referred.

[The information referred to above can be found in the Appendixes to this hearing transcript.]

Senator Bill NELSON. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

There was a comment made by Mr. Rubin on the last panel that I would like to follow up, where he claimed that the privacy rights of insurance companies—at least I think that's what he was saying—meant that some of the records could not be made available. I would like to know how extensive the information was made available to those who negotiated the claims from the insurance companies or governments and how confident we are that we have gained access to all available information in order to know whether we have the widest possible efforts to find claimants.

Mr. EAGLEBURGER. First of all, I'm not sure he was talking about the privacy rights of the companies, but rather the privacy rights of the insured. So that's the first question I have.

Certainly, in terms of our ability, for example in ICHEIC, to provide some of the information, a good bit of the information, from the claimants, was that when we went out to them with a proposal telling them they could file and they came back with a file, they were asked and they always signed off saying that these rights were private rights, we were not to be able to release them.

Senator CARDIN. I respect an individual's right to privacy. I'm talking about the companies', your access to the company's archives.

Mr. EAGLEBURGER. I just want to say, the fact of the matter is, with regard to the companies, we had as close to complete access as I can possibly explain to you. There may have been some places where it wasn't total, but I never saw any of them.

In Alliance, the case of Allianz, or any of the other insurance companies, I will say it took some time and it took some work. But we got what we needed.

Let me add to that that in addition to being able to go into the files with the companies, we had the audits which also—audits which also looked into the companies' files to see whether we had gotten everything that we needed.

Senator CARDIN. When the lists were released by, I think you said, the German Government of 400,000 or a total of about 519,000——

Mr. EAGLEBURGER. That was the total for us, yes.

Senator CARDIN [continuing]. Was there verification by the commission as to how accurate that list was, based upon your access to their records?

Mr. EAGLEBURGER. We did—what commission are you talking about?

Senator CARDIN. I assume—the names were released, you said, by the German Government, or who released——

Mr. EAGLEBURGER. No, no.

Mr. DUBBIN. Who released them?

Mr. EAGLEBURGER. Our 519,000——

Mr. DUBBIN. Who released the—there was something about Germany released 400,000.

Mr. EAGLEBURGER. Well, I don't know what the Germans did. I do know we released 519,000 names, which is what we're talking about.

Mr. DUBBIN. ICHEIC released that——

Mr. EAGLEBURGER. ICHEIC released them, put them on the Web site, yes.

Ambassador EIZENSTAT. Of that, Senator, of those 519,000 about 300,000 were German names. That came significantly from the German census.

Mr. DUBBIN. But that didn't come from the records. That didn't come from insurance company records.

Ambassador EIZENSTAT. It came from both. They were matched up with the records. But they also—Germany, unlike other countries, had a very good census and, unfortunately, had required Jews to register and register their property. So that was cross-checked against company records.

Senator CARDIN. And you're satisfied that you had access to the company records that were currently available?

Mr. EAGLEBURGER. You're talking about him?

Mr. DUBBIN. Mr. Ambassador.

Mr. EAGLEBURGER. I am satisfied absolutely that we had access to all of that, and we had double-checking of it and we had audits. I am convinced that we got everything we wanted, everything we needed.

Mr. DUBBIN. I need to speak to this, Senator.

Senator CARDIN. Certainly.

Mr. DUBBIN. Names were published, the companies published some names. Some names were found in archives by a researcher, because indeed there are property declarations where or the Jewish people had to state their assets. So some of the policies were found in the asset records documenting the names of some of the policyholders. So some of the names that were published on the Web site came from the companies, 360,000 from the Germans.

Some of the names came from the archival research that was done independently. Now, the archival report makes it clear that it did not by any stretch of the imagination examine all of the relevant records which either are available or could be available if the State Department put more pressure on. So the archival research was incomplete. The names publication, as I said, was incomplete because Generali did not even publish the names of its subsidiary policyholders. Generali published a batch of names. Over 7,000 Generali policy names came from the archival research that had not been produced by Generali. So obviously they didn't publish all of the names of their policyholders.

Now, that's just on the publication of names. Access to records, I do believe Mr. Eagleburger is not entirely correct on that point. ICHEIC did not do research into the company records. It did not.

What ICHEIC did was have auditors and the auditors' job was to check out whether the companies in the process of examining their own records did what they said they were going to do. ICHEIC did not send auditors into the companies to find out what happened.

The reason this is important is, you take Mr. Rubin's case, for example, Generali Moldavia, a clear subsidiary of the Generali company. Now, if you've read anything about that period of time you know how business was done. The agents all represented the same basic companies. So if there was a—so if Generali Moldavia was the property subsidiary of Generali Insurance Company and there was a plaque on the building, what are the chances that there's not a life policy there as well?

But they did not in the ICHEIC process demand that Generali produce any information about Generali subsidiary policies. They did not demand that Generali produce any information about the name of the agent where the records might have been found. They didn't demand that Generali produce anything. Generali did not produce one piece of paper to ICHEIC as part of that one particular process.

Here's something else. You made the statement before that the records——

Mr. EAGLEBURGER. Are we going to be able to get in here?

Mr. DUBBIN. That's fine, but this is important, because I realize the Senator is focusing on a very important question.

You said the records cannot be reconstructed. That's not true. That is not true. The records can be reconstructed, and I'll give you another example. Here's a piece of paper——

Senator CARDIN. Just so I clarify, since I have the time.

Mr. DUBBIN. I'm just saying——

Senator CARDIN. What I was saying, which I was implying, is that with the victims went many of the documentations, and therefore we cannot reconstruct the record.

Mr. DUBBIN. From the victims' standpoint. But insurance is a paper-driven business. The reinsurance records are there. The company records are there. ICHEIC did not look at those records. The reason why they didn't and the reason why the legislation is necessary is because if a company wants to do business in the United States then this Congress has the authority and I believe the duty to force them to produce the information that they have that would allow Mr. Rubin and several thousand others—and I can give you example after example after example where they acknowledge that a policy existed but said it had been paid out before, but didn't produce any proof of that.

Shouldn't a jury decide whether or not that was proper?

Senator CARDIN. My time has run out. Mr. Eagleburger, we'll give you at least—if I could ask the chairman for an additional minute.

Mr. EAGLEBURGER. This cannot go unchallenged. He's writing fiction and doing it beautifully. But the fact of the matter is, and then I'm going to end this thing as far as I'm concerned—the fact of the matter is we had auditors who checked to make sure that the names that we received from the companies or that we got in dealing with the companies were in fact legitimate and that we got everything we were looking for.

This was checked with auditors. We had I don't know how many people going in and looking at these things. There was no intent on our part—and this is one of the things that is driving me nuts in this whole process. There was no intent on our part to cover up anything at all. We did everything we could to try to find, make sure that everything we said was in fact correct. And this "ICHEIC wasn't doing this, wasn't doing that"—nonsense. The fact of the matter is we had 519,000 names we put on a list.

But the important thing is not that. It's not the list. It is rather that anybody could file a claim anyway, whether they were on a list or not on a list. The fact is people were permitted to file a claim. They could make it up, as far as that's concerned.

But the point I'm trying to get at here is that list did not do anything to restrict what people could or could not claim. They could make a claim whether their name was on the list or not.

Mr. ROSENBAUM. Senator.

Senator Bill NELSON. Mr. Eizenstat, did you want to respond?

Ambassador EIZENSTAT. Yes, sir. Thank you.

First, some $10 million was spent on outreach to claimants, making every effort to get the greatest universe of people involved.

Second, as Secretary Eagleburger said, claims were accepted, processed, reviewed, regardless of whether they were on the list of 500,000. So that plus the independent auditors did as good a job as one could have done in a lawsuit, with more rigid rules of discovery.

What's interesting is everyone here is trying to do the right thing for survivors, everyone is. There is no one who can truly speak for those who were killed, including the one lawyer on the panel who did not participate in our negotiations—we had a half dozen of the toughest class action lawyers representing claimants in all of these cases. They would have had to go into court. They would have had to obtain jurisdiction over the companies. They would have had to do their own discovery, whereas ICHEIC did the discovery for the claimants, at ICHEIC's expense, at the companies' expenses.

They would have had to go through procedures that would have been very difficult to prove. And these class action lawyers—unfortunately, Mr. Dubbin did not participate in our process—decided that the settlements that we reached, including the 10 billion deuschmark settlement, again 500 million marks of which were passed through to ICHEIC—provided the best measure of justice for what would have been very, very uncertain claims.

The notion that one now is operating on some kind of a blank slate to which one can go back, as if companies had not participated in this process, had not paid in reliance on this, that an individual court could do a better job than auditors, ICHEIC, going through archives, even paying for companies that no longer exist, is simply not accurate.

Senator Bill NELSON. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Let me just ask a question here from Professor Rosenbaum and Mr. Dubbin. Do you ascribe any bad faith here, any bad actors?

Mr. DUBBIN. No; that's not what I was saying.

Senator MENENDEZ. I didn't think you were. I just wanted to make sure.

Mr. DUBBIN. Sure. I was just trying to address the point that ICHEIC was limited, it was a creature of compromise, it was—the insurance companies had as much say about the policies as the people supposedly representing the victims, and it was limited.

The point isn't that it was bad. The point is it's over, and the point is that survivors who were disserved by it—there were 5,000 people who Generali acknowledged having paid—having had a relationship with previously and then they denied the claim based upon records they wouldn't show anybody.

Senator MENENDEZ. So you don't ascribe bad faith?

Mr. DUBBIN. That's right. I'm just saying that it's over and people, survivors, want their right to go to court today, not for class action suits, for individual suits, where they and a lawyer can decide what to do.

Senator MENENDEZ. I understand. You'll appreciate me trying to move along so I can get all my questions in.

Professor Rosenbaum.

Mr. ROSENBAUM. Thank you, Senator.

Senator MENENDEZ. Are there any bad actors here?

Mr. ROSENBAUM. No; I do not—I do not see evil at this table. But I would say that Mr. Eagleburger's indignation here today is so symptomatic of the problem. He pronounces—earlier he screamed at us: Justice was done. And in the most incredibly——

Senator MENENDEZ. Screamed?

Mr. ROSENBAUM. Well, it was for you. It struck me as a little elevated. It was: "Justice was done." From whose perspective? The chairperson of ICHEIC, the person who presided over ICHEIC, which has been incredibly discredited, which received an enormous amount of media attention for the amount of first class air travel that was undertaken. The first $100 million was spent for administrative expenses.

It just strikes me as so curious, the way he stands here today with his incredible indignation to say everything was done correctly, that justice was done, that "we can't trust their numbers." He says: "Their numbers are fundamentally flawed." Well, the truth is, Senator—let me just say, if I may—the survivors don't trust his numbers, and that should matter. It should matter to you that there is an enormous amount of resentment in the survivor community that there was injustice with ICHEIC and that these numbers—remember, when he talks about audits he keeps forgetting to tell us that the partners to ICHEIC were the companies that were being investigated. So it's very different from a lawsuit——

Senator MENENDEZ. I appreciate that.

Mr. ROSENBAUM [continuing]. When you really discover truth.

Senator MENENDEZ. I appreciate that.

Let me now move to, now that there's no bad actors here, let me move to the question. Wasn't—in fact, as I listened to you, Mr. Secretary, respond and maybe, Ambassador Eizenstat, you can shed a little more light: To some degree you're depending upon the companies giving you information and therefore, while you say you audit them, you audit that which you receive. In the first instance how do we know that the information being given is in its totality accu-

rate? That is to say, that the companies did not in fact be totally forthcoming we would obviously deal with a smaller universe.

Mr. EAGLEBURGER. The answer to that it seems to me is best said: For example, when we went to the companies to look into their records and so forth, we sent—in one of the cases I recall we sent, amongst others, Bobby Brown, who is a person on the commission, but an Israeli. He went and met with, I think it was, Allianz and spent a number of days there going over the files with them.

He is not someone who is easily put off. In fact, he spent a number of days going through things and then going back again. My only point here is this is not that we simply went and they gave us a list of names and that was all there was to it. He went there, he looked into the files, he went through the files with them.

But anyway, the point is that he—and this occurred in every single case. It wasn't that we accepted simply what they gave us. We went back and looked into what they were doing.

Senator MENENDEZ. Did he have in that opportunity and others the opportunity to look at all of their files——

Mr. EAGLEBURGER. Yes.

Senator MENENDEZ [continuing]. Or those files which they brought forth?

Mr. EAGLEBURGER. All I can tell you is, in any case that I can recall—now it's been a while, but certainly in the case you're talking about here, yes, he went through all, he had access to all of the files. I recall I think in his case there were some that he said, it's not necessary for me to look at these.

Senator MENENDEZ. When we say all of the files, we say all of the files that existed during that period of time?

Mr. EAGLEBURGER. I didn't understand the question.

Senator MENENDEZ. When we say "all of the files," so that I understand that we're talking about apples and apples, that all of the files that existed for that given insurance company during that period of time?

Mr. EAGLEBURGER. Yes. And I've been reminded here as well that in the audit stage that we're talking about it looked at the completeness of what the companies were providing to us and the details of what was provided. Again, I'm assured, and this goes back again to my recollections, but I had no indications from any of these auditors—and they were usually members of the commission included in these audits that went with them—I had no indication at any point that they did not get everything they demanded. That's the best I can say.

Ambassador EIZENSTAT. Senator, if I may just—you had asked me also.

Senator MENENDEZ. Yes, and then I'll turn to Professor Rosenbaum.

Ambassador EIZENSTAT. The executive branch did not participate in this part of the process. We served as an observer. We blessed ICHEIC as the exclusive remedy. But we had assurance of the thoroughness, not only because of the items that Mr. Eagleburger mentioned, but because the participants who participated in the ICHEIC process, the State of Israel formally—Bobby Brown was not just an Israeli; he was the official representative of the govern-

ment of Israel. The World Jewish—the Claims Conference, the American Jewish Committee, all of these have blessed this. And ICHEIC was an invention of the insurance commissioners of the United States, who had an interest in seeing that the companies that they regulated, including foreign companies doing business in the United States, were being completely thorough in what they were providing.

So although we didn't participate in those audits, we had comfort in the fact that the various stakeholders in ICHEIC had a deep interest in making sure that the most thorough job was being done and the most thorough job possible, given the fact that we were trying to reconstruct records that were over 60 years old.

Mr. EAGLEBURGER. I should also add, if I may, that the audits were done by professionals, Ernest and Young for example. We hired them to do the audits. It isn't that we went in there with some nonprofessionals. We had professional auditors that were involved in all of this.

Senator MENENDEZ. Well, after some of the auditing that's gone on here in the United States, I sometimes wonder about that.

Mr. DUBBIN. Mr. Senator, let me——

Senator MENENDEZ. Mr. Chairman, with your indulgence, just one or two more questions and then I'll cease.

I know you want to opine on this a moment, but just let me. Just hold on.

Ambassador Eizenstat, one other question. The difference between what has been put out there as to the valuation, understanding that there is no finite valuation because the universe is hard to fully determine. But these figures that come out, $17 billion versus—and then of course some who extrapolate beyond that based upon value over periods of time. But let's say at the low end of those numbers that are out there, $17 billion. Does the amount that was achieved through ICHEIC really reflect the most aggressive nature that could have been achieved in terms of the actual sum of dollars?

Ambassador EIZENSTAT. Well, again, the executive branch did not negotiate these agreements. ICHEIC did. But we had confidence that the plus-up of policies, which was quite similar to what was done in the Swiss settlement where we were involved, which was essentially 10 times the face value with the conversions, and the publication of 500,000 names was the best universe that could be determined was a fair process.

Again, when we talk about how to best do justice, it's our feeling that by doing the process ICHEIC did, by doing the research it did, by doing the outreach it did, by finding claimants, by identifying companies for them that they might not have even known existed, they were doing a job that could not be done by any individual court.

In addition, it was not only, Senator, the actual policyholders of the companies, but ICHEIC went into the archives of a number of the countries, which any court would have great difficulty doing. So I think under the circumstances, I think this was the best that could be done and far better than what could be done under much more restrictive rules of evidence, jurisdictional rules, by a single lawyer.

It's interesting that all the lawyers who have not been called as witnesses, who participated in this process, who were vigorously defending their interests, all settled. It's very important for all the Senators to recognize. Two Federal judges, the same day in your State, Federal judges in New Jersey, dismissed the class action suits brought by very competent lawyers against Ford and other companies for slave labor, on the ground of statute of limitations, on the ground of postwar agreements. And yet we still were able, even with that, to get those companies to contribute half of the 10 billion deuschmarks, a good portion of that which was then transferred to ICHEIC.

So we are dealing with a very imperfect ability of courts, and everything about this was imperfect, but I believe this was the best, most thorough, most comprehensive way of doing it. And to pretend that again we're now operating on a clean slate, as if nothing had happened, as if companies hadn't paid in reliance on the legal peace that they were given—it would be a tragedy to go and undercut the negotiations that we did with Austria, with Germany, and say that those companies should now be subject to lawsuits.

Senator MENENDEZ. I appreciate that.

Mr. ROSENBAUM. Could I address that?

Senator MENENDEZ. Well, I had asked you to withhold, so if you want to now go ahead.

Mr. ROSENBAUM. That was very fine of you. Thank you, Senator, but Mr. Dubbin will also have an opportunity as well?

Senator MENENDEZ. Well, if the chair indulges it.

Mr. ROSENBAUM. OK. Well, I'll let him, and then if you will indulge me, Senator, I'd appreciate it.

Mr. DUBBIN. I want to just remind everyone here what "legal peace" was. It's true the German negotiations originated out of the dismissal of the slave labor lawsuits. Mr. Eagleburger has said in his own book that at the 11th hour the German said: If you don't roll insurance into this, you'll get no money for slave labor.

The Germans demanded that in return that the United States abolish insurance claimants' rights to go to court, and the United States Government does not have the authority to do that and the Germans were told that. So what they agreed to as legal peace was that the United States would file a statement of interest in these cases, not that the suits were abolished, but that it would be in the foreign policy interest of the United States for cases to be dismissed on any available legal ground.

Now, that was the executive agreement, and when Congress reacted to that by sending a letter to the Attorney General the Attorney General reiterated: We are not waiving anybody's right to go to court. There is no abolition of the right to go to court for insurance policies. And the class action lawyers who were part of that, No. 1, when they dismissed their cases it was the individual cases. They did not go through a class action settlement process, which would have required notice to everybody in the class. People would have had the right to opt out. That would have made it real legally binding. But the lawyers involved knew that thousands and thousands would opt out.

So today the Germans have more than they were able to get at the bargaining table back in the year 2000, because the courts have

subsequently said that the involvement of the executive branch making a policy that nonadversarial resolution was U.S. policy preempts the right of States to have laws to let people get their insurance policies. But the court said that Congress has been silent. That's what the courts have said, and Congress's intervention is constitutional and it's as a matter of policy what Congress ought to do.

So let's not be confused about what was actually agreed to at the time. And when Congress also mandated—a lot of these questions would have been resolved. In the Foreign Affairs Authorization Act of 2003, Congress demanded that ICHEIC report to the State Department all these facts about what the companies were doing. ICHEIC refused to do that. ICHEIC refused at the time. That's what the State Department's report said: We could not get this information from ICHEIC. That should tell you everything you want to know.

Mr. ROSENBAUM. Senator——

Mr. EAGLEBURGER. That's not true. That is absolutely false.

Senator Bill NELSON. Would the committee come to order.

Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman.

Just one followup. Ms. Rubin, you're not a lawyer, are you?

Ms. RUBIN. I am.

Senator COLEMAN. You are, OK. Let me ask you the question then, because your testimony has been actually very helpful to me. You mentioned that there were settlements that were based on things that were either, claims that were either purely anecdotal or partially documented, claims that HCPO took care of. How were those—if those claims would have been litigated in the Federal court, how do you think they would have turned out?

Ms. RUBIN. I'm afraid I can't really say. I have no experience or I have no evidence of any of these cases being settled in court, so I don't know. I'm sorry.

Senator COLEMAN. The reason I ask the question—and again, I understand the great passion and the sense of frustration folks have. Perhaps I'll ask Professor Rosenbaum or Mr. Dubbin to respond to a concern, a specific criticism of Mr. Eizenstat of H.R. 1746, and I'll quote: "U.S. courts would not be so friendly a venue. Litigants would be faced with statutes of limitation, jurisdictional arguments, rules of evidence, and burdens of proof. They would be faced with considerable costs, including attorney's fees, which might only be recovered at the end of the process if he or she wins and wins on appeal. Such a course of action would likely raise the hopes of survivors without offering them a real chance at additional recovery. Perhaps most importantly, litigation would take time, time that survivors on the whole do not have."

How do you respond, particularly to this concern, claims that are purely anecdotal, the partially documented, the humanitarian claims? Give me your sense of kind of the sense of justice or resolution that you think folks are going to get with those kind of claims?

Mr. ROSENBAUM. Well, Senator, the presumption that we keep making is that ICHEIC was a success.

Senator COLEMAN. I'm not——

Mr. ROSENBAUM. No; I know that you aren't.

Senator COLEMAN [continuing]. Talking about ICHEIC. I'm asking you to respond to, if you have a partially—Ms. Rubin said you have partially documented or purely anecdotal claims. Can you give me a sense of how you think they can be resolved in a Federal court?

Mr. ROSENBAUM. Senator, my sense is what I said during my opening remarks: Giving people autonomy, empowering them, giving them an opportunity in court to provide testimony is a moral and legal victory. It is true that they would not be subject to the liberal standards of proof that purportedly ICHEIC provided. ICHEIC didn't result in any victory, either.

What we're hoping for here is that—unprotected by ICHEIC's organizational powers—the insurance companies on their own accord, through these lawsuits may come to their senses. They may seek an opportunity to restore their honor and regain their respectability. We understand from a legal perspective what Mr. Eizenstat is saying. From a moral perspective, however, there is great potential in seeking some kind of movement, which has been essentially intractable under ICHEIC because ICHEIC essentially co-opted the entire restitution experience.

I was very moved by Senator Menendez's question to Mr. Eizenstat, because he said, given the claim that there was $17 billion—Senator Menendez's actual question was: Do you think ICHEIC was aggressive enough? I thought that was the appropriate word. I think that what Mr. Eizenstat was again suggesting was: No; we were diplomatic; we weren't aggressive. And I think that that kind of response, that kind of approach, has resulted in great injustice and an enormous amount of resentment. And I don't see how we can do worse from that position by pursuing claims in Federal court.

Ambassador EIZENSTAT. Senator——

Senator COLEMAN. Let me. I want to give you a chance, but, Mr. Dubbin, if you can respond. Then Mr. Eizenstat, I'll give you a chance to respond afterward.

Mr. DUBBIN. The State laws could be amended to allow time for people to bring those suits, which would abolish the statute of limitations defense. That's constitutional. That's done all the time. Congress had legislation pending that would do the same thing.

The privacy issues are I think—even Mr. Eagleburger said he thought it was the privacy of the customers that prevented that information from being disclosed. If you do business in the United States and if you're subject to U.S. jurisdiction, then the court has the right to order you to produce your records.

Again, I'm not saying ICHEIC was bad. It was just incomplete. It wasn't as thorough as it could have been. I'm looking here at documents from Generali where the German tax office said to them: Would you please tell us whether or not Mr. Herman Hyman is a Jew? And Generali said: We confirm that the insured is a Jew.

Now, this is the kind of information that they obviously had, but ICHEIC didn't ask them for the files of the inquiries they received from the German tax office. I mean, that just didn't happen. Now, a lawyer who has a private agreement with the client and he goes in there with his eyes open would have the ability to get discovery from Generali and the other companies. I'm not singling out

Generali. Mr. Feldman, Professor Feldman, has shown that Allianz, Victoria and AXA and the others did the same thing.

Those records are there. They're there. We did not get—the documents can be reconstructed. The reinsurance agreements can be reconstructed. The reinsurers are in London, they're in the United States. The truth can actually be obtained, but it hasn't been. And that's what people would have the opportunity to do.

Like Mr. Wexler said in the House, this bill doesn't require anyone to pay anything. Jack Rubin would have to walk into a lawyer's office and say: This is what I know; will you take my case? And just like in any other private arrangement, like any other citizen would have the right to do against a potentially difficult adversary, he would have to—the lawyer would have to decide whether or not he wanted to be paid by the hour or take the risk or whatever, and he would have the ability to make that decision for himself.

Mr. ROSENBAUM. Senator——

Ambassador EIZENSTAT. Excuse me. May I?

Senator COLEMAN. Mr. Eizenstat, if you can just respond.

Ambassador EIZENSTAT. I'm going to have to take leave of the committee in a minute, I'm sorry.

I want to respond in two ways. First, to suggest that those of us who spent 6 years of our life, 6 years of our life, fighting hand to hand combat to get every nickel we could for survivors, were not aggressive, that those of us who were on the battlefield—and it was a battlefield, Senator—were not aggressive, is inappropriate and unacceptable.

Now, I know—and Larry can't say this. I know the personal sacrifices that were made to his health with the work that he did. I know that for my entire team, my interagency team, this was our second job. We had actual jobs in our departments. We were doing this after hours, so to speak, and we put in unbelievable time and effort. We were unbelievably aggressive.

Second, the reason that I say that we can't start from a clean slate is that in the German case we made a commitment on behalf of the President of the United States, with the full knowledge of the Congress, that there would be legal peace for all German companies, including German insurers, for all Austrian companies, including Austrian insurers, for all French companies, including French insurers, if they paid the amount of money they paid.

It was 10 billion deuschmarks in the German case, close to a billion dollars in the Austrian case, moneys that would never have been obtained in court.

Last point. The United States Supreme Court in the Garimondi case accepted the legal peace concept. It is true, everything that Sam said. We did not cut off claims. We did not believe we had the legal authority to cut off claims. What we did, we said, as Sam said, it was in the foreign policy interests of the United States. And the court accepted that. Attorney General Mukasey, then Judge Mukasey, in a separate case likewise accepted it, because we put the full faith and credit of the United States Government behind these settlements, working aggressively day and night for the victims.

Thank you.

Mr. ROSENBAUM. Senator, might I have a moment to respond?

Senator COLEMAN. I'm going to end my questioning there because I think this could go back and forth. I think everyone has made their point, and this is—I'm going to end my questioning. Otherwise there will be a counterresponse and we could go on. I think all sides have made very clear their feelings. I'm going to leave it at that point.

Mr. Chairman, whatever you want to do here, but I just think this could go back and forth.

Mr. ROSENBAUM. I promise it won't. I'll be done.

Senator Bill NELSON. All right.

Mr. ROSENBAUM. Thank you, Senator.

Senator Bill NELSON. Mr. Rosenbaum, if you will respond quickly.

Mr. ROSENBAUM. Yes; very quickly.

Senator Bill NELSON. We're going to wrap up this hearing.

Mr. ROSENBAUM. Mr. Eizenstat, I'm very sorry if you were personally offended by anything that I said. You know I have a lot of affection and respect for you. But you also know that I don't spend that much time in an ivory tower, and I resent that question, because the point is I'm on the ground with the survivors. I've heard from the survivors. I've heard from more survivors than you will ever know, and they're not happy. They're not happy with what you've done, they're not happy with what ICHEIC has done. That's why I'm here today on my own accord.

When I talk about lack of aggressiveness that Senator Menendez alluded to, what would you call it? A $300 million recovery out of $17 billion. I'm just sorry. If it's $300 million out of $17 billion, if that's the recovery, then it is certainly not an aggressive recovery. It may be the best we could have done under the circumstances, but it's not aggressive.

Finally, I just want to ask the Senators who are still here today, if Stuart Eizenstat were here at the table and there were people from the State of Louisiana and they had been victims of Hurricane Katrina and they were being told because of some foreign policy objective, some agreement that he undertook in order to achieve some kind of other settlement on behalf of other people, that their contract rights for suing global insurance companies for property and casualty insurance for the destruction of their homes had somehow become invalidated, what would we say to that?

Why is it that the Holocaust survivor is deprived contract rights in American courtrooms under policies that they and their heirs, they and their relatives had purchased, but we wouldn't do that with any other policyholder in this country?

Senator Bill NELSON. All right. Gentlemen——

Mr. EAGLEBURGER. May I have——

Senator Bill NELSON. Gentlemen, this commentary's going to stop. We are going to adjourn this hearing, and the record will be kept open for 2 days for Senators.

Ms. Rubin, I want to clarify something for the record before we adjourn. Your operation has been open how long?

Ms. RUBIN. We opened in June 1997.

Senator Bill NELSON. And at present you have how many outstanding claims that you are processing?

Ms. RUBIN. Insurance claims?

Senator Bill NELSON. Yes.

Ms. RUBIN. About a dozen, a dozen non-Austrian, and then a couple of hundred Austrian claims.

Senator Bill NELSON. Where in your testimony do I remember the number six?

Ms. RUBIN. New claims since ICHEIC's closing; we received about a half a dozen new claims.

Senator Bill NELSON. OK. Lady and gentlemen, thank you for your participation in a very spirited discussion. The meeting is adjourned.

[Whereupon, at 5:07 p.m., the hearing was adjourned.]

# APPENDIXES

## APPENDIX I.—RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY MEMBERS OF THE COMMITTEE

### RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO JACK RUBIN

*Question.* In your testimony you referred to the fact that in the Swiss bank settlement, the court is still holding $400 million that hasn't been spent? Do you know why those funds haven't been distributed to survivors?

Answer. Two survivors I know well, Alex Moskovic and David Mermelstein, attended a meeting in January 2006 in the chambers of Judge Korman in Brooklyn, with a few other survivors. One of the topics was why the Judge had not allocated the funds that remained at the time from the Swiss bank settlement, when so many Holocaust survivors have been suffering without desperately needed assistance. Judge Korman acknowledged in that meeting that over $400 million remained unspent from the settlement, but that his priority was to pay bank account claims before using any of the money that remained for poor survivors. I am attaching the minutes of that meeting as prepared by one of the participants as Exhibit 1.

I have seen other reports as well from that time period that indicated that around $400 million from the settlement remained available for distribution but that no funds would be added to the Looted Assets class, i.e. for needy survivors, until all bank account claims were finished.

*Question.* In your testimony, you referred to the Holocaust survivors in need and state that the needs are not being met by Jewish social service organizations. How do you believe additional compensation for insurance policies can help them, when there isn't necessarily a direct link between any one policy and any one survivor in need?

Answer. I have two answers for this question. First, it is obvious to me that with the number of poor survivors in our community and other communities, and with the hundreds of thousands of unpaid policies estimated by Mr. Zabludoff, there are undoubtedly a lot of survivors living in poverty today whose family policies haven't been paid. If the insurers were required to make good, through litigation if necessary, those survivors would be helped.

Of course, compensation for unpaid policies is a moral and legal right of all survivors, whether they are poor or not.

Second, Mr. Zabludoff estimates that over $18 billion in insurance policies have not been paid. (Only $250 million was paid by ICHEIC.). With so many Jewish families having been destroyed in the Holocaust, I am sure that even with the best legislation for allowing survivors to go to court, billions would remain unpaid. These are the policies I say "went up in smoke at Auschwitz."

In my opinion, the insurance companies should not keep this money. That would make them the heirs of the Jews who were murdered in the Holocaust. Congress should not let this happen. Speaking for myself and other survivor leaders such as the leaders of the Holocaust Survivors Foundation USA, we believe those funds should be used to assist poor survivors around the world. The companies stole the money, and all survivors were deprived of their worldly possessions. For the companies to prosper while survivors suffer is unacceptable.

As a member of the Advisory Board of the Jewish Family Services, I am personally aware of the needs that cannot be met in our community. Some of this information is contained on Exhibit 2. My fellow survivors report the same things where they come from, and I have read the studies and articles showing that tens of thou-

sands of survivors in the U.S. alone—about half—are too poor to meet their basic needs.

One of the possibilities I discussed with members of Congress and their staffs was to allow the Government to recover this money from insurers where there are really no living heirs. I understand the Federal Trade Commission has such authority for other kinds of consumer fraud. Why not extend this ability to recoup looted insurance policies from the Holocaust and help survivors in need?

EXHIBIT 1

MEETING ON 1/20/2006 BETWEEN CHIEF JUDGE EDWARD R. KORMAN, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK AND SPECIAL MASTER JUDAH GRIBETZ AND REPRESENTATIVES FROM THE HOLOCAUST SURVIVOR COMMUNITY MR. AND MRS. JEHUDA EVRON, MRS. HANNA HIRSHAUT, MR, ROMAN KENT, MR. DAVID MERMELSTEIN, MR. ALEX MOSKOVIC, MR. JOE SACHS, MRS. ROSIAN ZERNER.

The first item on the agenda was to show that there was an increased need for funds by survivors. There are more applicants with greater need for more intensive care and far too many survivors do not receive appropriate care. A chart was presented to Judge Korman that showed that care for survivors in Dade County was reduced from about 3000 hours to 1200. Judge Korman found the figures unclear since the same money was being distributed to survivors and there was approximately the same number of needy survivors. He, and Master Gribetz, then were asked to squash rumors and release a statement listing all pay outs as well as various fees and administrative costs. In Boca Raton, after the success of Cafe Europa and increased membership in the survivor organizations, applications from needy survivors increased by 50% while the funds received have remained unchanged.

Judge Korman, with assistance from Special Master Gribetz throughout the meeting, gave an update on the 1.2 billion collected from the bank accounts held in Switzerland and said that 335,000 people have been touched by the judgments so far. From the original figure, 800 million are gone, distributed to bank account holders and heirs. That leaves US$425 million. A decision was made to allocate US$60 million to 12,000 "plausible" applicants who would receive US$5,000 per claim. US$365 million would then remain for future allocations and to cover appeals - there have been 174 so far and there is expectation of other settlements subject to review.

Judge Korman mentioned that he felt that the allocation to the "plausible" applicants could be controversial since it was a difficult choice that may not satisfy everyone. For instance, an applicant who had applied for 20 million and receives $5,000 would feel very slighted, and if he had applied in the name of four other additional family members, that $5000 would then be diminished to only $1,000 per person distribution.

Judge Korman went on record to make assurances that distribution of the remaining monies will continue only to survivors, but in most instances it would be supervised through organizations. At the same time he mentioned that 10 million were allocated to projects for Jews and non-Jews like the Victim List project at Yad Vashem, USHMM and other institutions. A suggestion was made by him that a new list of names and other information is available on www.swissbankclaims.com and invited survivors to explore the site.

Roman Kent then listed three points. 1) Asking for greater allocation of the money from Switzerland to the USA 2) Reduction of the time frame for the allocation from 10 years to 7. 3) Clarification of attorney fees - especially, 4 million for attorney Burt Neuborne. I list the reply accordingly:

1) Approximately 70% was allocated to the former Soviet Union because they do not have the "safety net" that the needy in the USA have - such as food stamps, housing and medical assistance, etc—and are often destitute with nowhere to turn. Judge Korman also suggested that survivors go to Jewish philanthropists who give to Jewish and non-Jewish causes but skip survivors and he mentioned Governor Bloomberg as an example.

2) Although this issue was not directly addressed, it was implied that survivors need to have a "cushion" now as well as in the years to come and that 4 of the 10 years are already gone.

3) The Judge could not comment on this since judgment has not yet been rendered and this is a pending case. However, he reminded the attendees that attorney Neuborne never charged for all the negotiations to obtain the 1.2 billion and that if the 4 million would be assigned to him, it would be for administration of the funds from 1999 and for being the lead settlement counsel. In addition, he wanted us to be aware that because attorney Burt Neuborne did the

work pro-bono, Judge Korman was able to negotiate with the other attorneys for reduced fees and that instead of the projected 22 million to lawyers fees he only gave out 6 million.

Before adjourning from the meeting, the survivors asked and were promised communications on any new developments and updates on accounting.

ROSIAN ZERNER.

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RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO SAMUEL J. DUBBIN

*Question.* If legislation granting a federal cause of action is passed by Congress, do you have an estimate of the number of survivors or heirs who would come forward to file lawsuits against insurance companies?

Should past participation by a claimant in ICHEIC or one of the other compensation processes or class action settlements limit the ability of that claimant to participate in a newly created federal cause of action? Would the ability to participate differ among claimants who were:

- Compensated for a policy?
- Given a humanitarian award?
- Denied by ICHEIC?
- Appealed an ICHEIC determination?
- Compensated by earlier restitution processes, but for less than full value?

Do you have an estimate of the number of survivors or heirs who have legitimate claims for restitution and will come forward to take advantage of the cause of action provided by the legislation?

Answer. It is impossible to estimate the number of survivors or heirs who would come forward to file lawsuits if the provisions of HR 1746 that passed the House Foreign Affairs Committee in October 2007 were to become law. However, federal legislation establishing a federal cause of action and/or restoring state law rights of action is justified by the moral imperative to restore the basic rights under American law that have been eviscerated by court decisions concerning the United States-Germany Executive Agreement, and statements by Executive Branch officials relating to ICHEIC (the Garamendi decision and Judge Mukasey's dismissal of the Generali cases 2004) far more broadly than the President agreed, or would have the power to attempt.

*Companies' Past Participation in ICHEIC or Other Forum.*

In my opinion, and the opinion of the survivors I represent, mere participation by a claimant in ICHEIC should not limit the ability of a claimant to have access to U.S. courts to seek recovery of a family insurance policy sold prior to the Holocaust. ICHEIC was always understood to be a voluntary process that was available for survivors and heirs to attempt, but was never supposed to be binding (unless a claimant accepted an offer of payment). Moreover, there is sufficient evidence of severe flaws in ICHEIC's performance, such as denials in violation of ICHEIC rules, denials without explanations, denials without producing existing documents, denials of documented claims, failure of companies to produce policy holder names or of ICHEIC to publish names, delays in the publication of names for long periods of time so as to limit the number of claims that were filed under ICHEIC's deadlines, publication of names without identifying the issuing companies, secret use of a phantom rule that raised claimants' burden beyond published ICHEIC standards, and other shortcomings that survivors believe Congress has an obligation to enact a legislative remedy to overcome the court decisions that have obliterated their rights. The attached examples of Herbert Karliner, Suzie Marshak, Alberto Goetzl, Sello Fisch, David David, and Jack Brauns are a small but representative sample of problems encountered. *See,* also Yisroel Schulman, "Holocaust Era Claims, Mission Not Accomplished," The Jewish Week, May 4, 2007; Stewart Ain "Phantom Rule May Have Limited Holocaust Era Awards to Claimants," The Jewish Week, June 29, 2007. (Composite Exhibit 1).

The above answer would apply equally to the federal cause of action contained in the House Foreign Affairs Committee version of HR 1746 and to state law causes of action against ICHEIC companies that would be restored by enactment of such legislation. Notwithstanding that the Financial Services Committee voted out a significantly diluted version of HR 1746 on June 25, 2008, my answers here will refer

to "original version of HR 1746," i.e. the one that passed out of the Foreign Affairs Committee on October 23, 2007, or simply "HR 1746."

*Status of Claimants Who Had Been Through ICHEIC or Other Processes.*

Under the original version of HR 1746, the right of action would be available to any claimant, notwithstanding their participation in ICHEIC or another process or case, unless that person received money and signed a release.

*Estimate of the number of court claims.*

It is impossible to estimate the number of survivors or heirs who "have legitimate claims for restitution and will come forward to take advantage of" such legislation such as is the original version of HR 1746, as noted above. It is beyond dispute that there are hundreds of thousands of life, annuity, and endowment policies that were sold to Jews before WWII that have not as of this date been paid to any legitimate beneficiary or heir. (This number does not include non-life policies.). How many of these potential claims might result in lawsuits would depend on a number of factors, such as the quality of name publication that would occur as a result of the legislation, the quality of publicity that accompanies any publication of new names or re-publication of the names previously published by ICHEIC, and other factors. For example, though the German insurance industry (GDV) published some 360,000 names via ICHEIC, it did not publish the names of the issuing companies. Unless this loophole is rectified, many legitimate claims against German companies might not be pursued.

Another important element in HR 1746 is the attorneys' fee provision, which mirrors bad faith insurance statutes in many states. These level the playing field between claimants and insurance companies, which have the financial ability to outspend ordinary claimants in the absence of statutes calling for exemplary damages and attorneys' fees for prevailing claimants. See, e.g. Letter from Deborah Senn, former Washington State Insurance Commissioner, to Hon. Barney Frank, February 4, 2008.

It should also be noted that HR 1746 only clarified claimants' rights to bring actions in courts and extend the period of time for filing a case. A survivor or heir with a possible insurance claim would have to convince an attorney that the case was sufficiently strong to file. In other words, the legislation would not open the door to cases except those which attorneys and clients working together believed stood a significant chance of succeeding.

However, the fact that so many families were destroyed in the Holocaust, leaving few if any heirs today, raises two important issues. First, many meritorious suits will not likely be brought. Second, if heirs do not exist today with whom the companies can settle, or who would be able to bring lawsuits under the new law, the companies will be unjustly enriched by billions unless Congress requires them to disgorge their unjust enrichment. As Congressman Robert Wexler and others have said, one of the principles that the status quo has abandoned is the principle that no business or individual should be unjustly enriched as a result of atrocities such as the Holocaust. We ask this Committee to consider action to enforce this principle, both to effect the necessary disgorgement of Holocaust insurance profits, and to send the message to today's collaborators with the atrocities of this era that the policy of the United States is that they will not be welcome to do business in this country unless they disgorge their ill-gotten profits and make full disclosure of their conduct. Perhaps, with the kind of clear moral signal absent from the current paradigm, the United States would set an example for global enterprises and governments who might then be less likely to collaborate with regimes committing or permitting atrocities of the kind now seen in Darfur and elsewhere.

*Question.* At the hearing, Roman Kent expressed his concern that the proposed legislation, H.R. 1746, would "greatly damage critical ongoing negotiations, especially with Germany, involving hundreds of millions of dollars in Holocaust-related compensation which, as you know, is desperately needed now. . . ." How do you respond to this concern?

Answer. The Holocaust survivors I represent reject in principle any linkage between annual negotiations with the Government of Germany over various programs and passage of HR 1746. I reject it as well.

As part of my answer to Question 2, I submit the attached July 31, 2008 Holocaust Survivors Foundation USA, Inc. Response to Argument that HR 1746 Will Interfere With German Government Payments to Survivors, dated July 31, 2008. ("HSF Statement"). (Exhibit 2). To quote the HSF position: "the House Foreign Affairs version of HR 1746 would reinforce the principle that Holocaust survivors, and legal heirs, own the rights to negotiate and make decisions over their own property claims and their families' legacies."

Moreover, as the HSF states, not only is the linkage objectionable in principle, the threat is not substantiated by the record. Mr. Scharioth, the German Ambassador to the United States, has never stated publicly that passage of HR 1746 would threaten the German government's commitment to provide funding for various programs for Holocaust survivors. In fact he reiterates his country's acknowledgement of its moral obligation for the Holocaust and for survivors. Moreover, contrary to Mr. Kent's claim, representatives of the German Embassy in Washington, when asked this question by various sources, have denied that the German government would reduce benefits for poor survivors if legislation such as HR 1746 were to become law.

However, this question does raise an additional important policy issue for the Committee and the Congress, which is that the current framework for funding social services for survivors today is totally inadequate. To quote HSF again, the "failure of Germany and the Claims Conference to produce a minimal basket of social services for survivors predates and is completely unrelated to HR 1746."

Ira Sheskin, the leading American demographer of Jewish communities, found in 2004 that over 40,000 Holocaust survivors in the United States live at or below the official federal poverty level, and another 40,000 have incomes so low they are considered poor. According to the Greater Miami Jewish Federation, citing data from several Jewish demographers filed with the Federal Court in 2004, the problem of survivor poverty is a worldwide phenomenon.

| Country | Survivor Population | Number In or Near Poverty |
|---|---|---|
| United States | 175,000 | 87,500 |
| Israel | 393,000 | 137,300 |
| Former Soviet Union | 146,000 | 126,000 |

SOURCES: Sheskin, Estimates of the Number of Nazi Victims and Their Economic Status, January 2004; Brodsky and Della Pergola, Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel, April 2005; American Joint Distribution Committee, Presentation on the Condition and Needs of Jewish Nazi Victims in the Former Soviet Union, January 2004.

It should also be noted that the principal source of funding for social services for Holocaust survivors is not the German government, but funds obtained by the Claims Conference through its acquisition and sale of properties and businesses formerly owned by Jews in East Germany that were not recovered by individual victims or heirs after WWII. HSF and other survivor groups, including a growing movement in Israel, have consistently raised questions about the efficacy, transparency, and adequacy of this system. A few news articles addressing this problem are attached as Exhibit 3. So, as HSF noted, while the German government does periodically augment existing programs for survivors, including $320 million announced in June 2008, the status quo is not doing an adequate job across the board.

Here is what an analysis of the additional $320 million for programs for Holocaust survivors announced by the Claims Conference in June actually provides. First, $250 million is payable over a ten-year period, so it in reality equals $25 million annually. Most of that sum ($166 million) represents an 8% cost of living increase for various existing programs, payable primarily to residents of Eastern Europe. Another $83 million (over ten years) will provide first-time payments to some 2000 survivors who lived in Western Europe during the Holocaust but who were excluded from prior pension programs.

A total of $70 million of the $320 million, representing a two-year budget for home care funds for survivors, would directly augment social services for poor survivors. That is an average of $35 million per year in new home care funding for the entire world. When measured against the actual needs of Holocaust survivors in the United States and elsewhere, such supplemental funds make only a small dent in the current shortfall in funding for survivors.

In 2004, the U.S. Jewish Federation system estimated that the annual budget that would be needed to provide the unmet needs for basic social services for poor survivors in the Untied States alone, exceeded $70 million per year. With this population now in their 80s and 90s, and with Holocaust-related trauma a cause of significant medical and other problems, a major component of that shortfall is funding for in-home care for survivors.

The average annual cost of in-home care for survivors in an average U.S. city is $9,360. So, assuming for illustrative purposes that all of the "additional" money Germany agreed to provide for home care for the next two years, were spent in the U.S., would serve fewer than 4,000 Holocaust survivors per year on average. With tens of thousands of poor survivors living in the U.S. alone, and with similarly dire needs for home care and other vital social services throughout the world, the aver-

age $35 million two-year home care fund announced this year by the Claims Conference, is not nearly adequate to care for this special population.

The issues of survivor poverty and insurance are related but not in the way suggested by Mr. Kent. With so many insurance policies remaining unpaid, there are undoubtedly a very large number of poor survivors whose families' insurance policies remain unpaid that deserve to have their families' property rights honored. But there is no negative relationship between Congress acting to restore survivors' rights of action to recover family insurance policies and the goal of helping poor survivors achieve a dignified standard of living in their final years.

Again, unrelated to restoring survivors' basic right of access to courts to recover family assets looted by corporations doing business in this country, survivors have been looking to Congress for leadership in addressing the overarching problems facing survivors as they age. With the level of looted insurance assets in the range of $18 billion, and the value of other unreturned assets exceeding $160 billion, it is puzzling and tragic that so many survivors today have to face their final years in poverty and misery.

In 1997, the United States Senate unanimously passed a resolution co-sponsored by Senators Moynihan, Graham, Hatch, Dodd, and Biden, calling on Germany to provide adequate material and social service support so that all Holocaust survivors could live in dignity. S.Con. Res. 39, July 15, 1997. The resolution noted that retired SS officers in Germany and elsewhere receive far more generous health care benefits from Germany than Holocaust survivors. It called for, among other goals, that "the German Government should fulfill its responsibilities to victims of the Holocaust and immediately set up a comprehensive medical fund to cover the medical expenses of all Holocaust survivors worldwide."

Unfortunately, neither Congress nor the United States Government followed through on persuading Germany to live up to these aspirations. Germany, despite its significant commitment to Holocaust education and outlawing Holocaust denial and neo-Nazi movements, and despite what it might have genuinely believed years ago to be a significant set of programs for Holocaust victims, has not committed to meeting this rather minimal standard of decency for all living survivors. *See,* correspondence from Holocaust Survivors Foundation USA, Inc. to Chancellor Angela Merkel. (Exhibit 4).

The survivors I represent ask Congress and this Committee to address this problem directly. Inasmuch as the current framework for providing social services to Holocaust survivors, based principally on funding from the Claims Conference's Successor Organization funds derived from East German properties, but also including periodic negotiations with the German government, has allowed tens of thousands of survivors to slip into poverty and live without the dignity of food, medicine, shelter, proper dental care, home care, and other vital needs, this problem should be met head on. It is simply a red herring, and a cynical one at that, for anyone to argue that individuals should have their Constitutional rights to sue unjustly enriched insurance companies eliminated due to the failure of the current restitution establishment and the German government to adequately care for elderly survivors of the Holocaust.

*Question.* In his April 24, 2008 letter, Robert Swift, the lead counsel in the Generali class action litigation, writes:

> I believe the proposed legislation will be detrimental, if not fatal, to the August 25, 2006 Settlement between the Class and Generali. That Settlement has been approved by the Federal Court although processing of the over 40,000 claims has been delayed by an appeal by six (6) claimants.

How do you respond to this statement?

Answer. Mr. Swift's position is completely undermined by Generali's statements to two Congressional committees to continue to process "new claims" notwithstanding ICHEIC's closure and notwithstanding the passage of the deadline for filing new claims in the class settlement.

The survivors who appealed the Generali class settlement did so because it would retroactively make ICHEIC binding on thousands of survivors and heirs whose ICHEIC claims were denied, or who have no knowledge about the existence of possible claims, due to the inadequacy of ICHEIC's names publication. Because ICHEIC was always represented to be voluntary, the retroactive imposition of ICHEIC as being binding on class members who could not possibly benefit from the settlement violates due process and Federal Rule of Civil Procedure 23. The survivors who appealed objected to the releases that would be imposed by the settlement under those circumstances.

Mr. Swift and class counsel argued to the district court and the court of appeals that the releases to be imposed by the settlement were necessary to induce Generali to enter into the agreement and process "new claims" even though ICHEIC had expired. But, in light of Generali's promise to this Committee and the House Financial Services Committee (through former ICHEIC official Diane Koken) to process all new claims in any event, the releases that would be imposed under the settlement are now clearly unnecessary, even if one assumed for the sake of argument that the benefits of the settlement justified the releases imposed. So, the survivors and heirs who have appealed were correct not only because the settlement violated their rights, but because Generali's recent actions have proven that the broad, damaging release of tens of thousands of possible Generali policy holders, which Mr. Swift and others agreed to in the settlement, were not in fact necessary to generate the "benefits" of the settlement, i.e. the reopening of the ICHEIC-Generali claims window for people who failed to apply by the previous ICHEIC deadline.

In addition to the foregoing, my clients believe the settlement was ill-conceived for a number of reasons, mostly arising from ICHEIC's deficiencies. Before agreeing to the settlement, Mr. Swift and other class counsel whose cases were dismissed by Judge Mukasey considered ICHEIC to have been an inadequate forum for survivors and heirs with possible insurance claims against Generali. *See,* Brief of Cornell Plaintiffs in Second Circuit Appeal No. 04-2527 (Brief styled Appeal No. 05-5602; joined by all plaintiffs) at pages 4-15. Mr. Swift and his colleagues described ICHEIC as follows:

> In theory, and as reflected in the Memorandum of Understanding creating ICHEIC, Generali agreed to establish a "just process" that "will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust." In reality, ICHEIC has simply forwarded claims to Generali, which has then denied the vast majority of claims after scrutiny under standards of review that directly violate the ICHEIC agreement. The remainder of claims simply languish. [1]

Mr. Swift and others also cited the exchange between ICHEIC Chairman Eagleburger dismissed the Generali Trust Fund (GTF), the entity responsible for processing Generali ICHEIC claims between 2001-2004, which Mr. Eagleburger dismissed in November 2004 for non-performance. Id., at 13, note 21. After ICHEIC closed in March 2007, the previously secret audits were published for the first time and it was revealed that the Generali Trust Fund had failed its audit in April 2005. Its decisions were never revisited by ICHEIC according to correspondence between ICHEIC officials and the New York Legal Assistance Group (NYLAG).

Moreover, Mr. Swift alleged in his initial complaint, and argued in his Second Circuit Brief, that Generali had collaborated with the Nazi regime in the confiscation of Jewish customers' policies during the Holocaust:

> In the early 1930s, the government of Nazi Germany began systematically to persecute certain groups, including Jews, by confiscating or destroying their assets, deporting them to concentration camps, forcing them into slave labor, and inflicting mass extermination. . . . [2]

Generali facilitated these efforts. It encouraged Europeans who were fearful of Nazi persecution to deposit their assets with and purchase insurance from Generali to safeguard their families' futures. In all this, Generali was little more than a bookie for the Nazi regime. Generali knew that the Nazis were going after the property of its insureds, including insurance policies and their proceeds. And, Generali allowed it. Under Generali's watch, with its knowledge, acquiescence, and participation, the Nazis liquidated and cashed in the insurance policies that Generali had sold to victims of the Holocaust. The proceeds were used to fund the Nazi war machine.

Yet, in justifying the settlement about which the Committee's question applies, Mr. Swift echoed Generali's denials that it ever identified its customers as Jews to the authorities:

> Your Honor, it's not surprising that when Generali was keeping its records, it didn't list in the records whether someone was Jewish or not Jewish. There is no record that Generali or anyone else can go back to to determine whether a policy was issued to a Jewish family or to a non-Jew-

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[1] Cornell Plaintiffs' Brief in In re Assicurazioni Generali, S.p.A., Appeal No. 05-5602 et al, at 13.

[2] Cornell Plaintiffs' Brief in In re Assicurazioni Generali, S.p.A., Appeal No. 05-5602 et al, at 10.

ish family or, for that matter, to people who were likely to be persecuted in the years after the policy was issued.[3]

In their appellate brief, Mr. Swift and the other settling attorneys said "Class counsel could find no basis in the extensive documentation to distinguish a Jewish insured from a non-Jewish insured, and Generali confirmed this."[4]

Documents submitted for the record to this Committee, and a huge volume of historical evidence repudiates Mr. Swift's position. *See,* Statement of Samuel J. Dubbin to Senate Foreign Relations Committee, May 6, 2008, at 12-13, 40-43; see also Gerald Feldman, Allianz and the German Insurance Business, 1933-1945, Cambridge University Press, 2001, at 356 and passim. There is no serious historical question about this point, but Generali and class counsel found it necessary to suggest otherwise to justify the settlement. The reason this is important is that the survivors who have challenged the settlement believe not only that it unfairly extinguishes their opportunity for fair compensation, but that it results in a cover-up of the history of their families' policies, a cover-up that exacerbates the ICHEIC record of non-disclosure of all companies' insurance records, contrary to the open, transparent, claimant-friendly scenario that was promised to survivors in 1998.

In short, not only is the basis for the settlement undermined by Generali's commitment to process new claims regardless of the expiration of other deadlines, the "six" survivors who appealed the class settlement represent thousands of survivors, heirs and beneficiaries of Generali policies whose rights were ignored by Mr. Swift and the other class counsel, and rights that would be unnecessarily and unfairly extinguished by the settlement. They are looking to Congress for more direct relief in the form of legislation such as the House Foreign Affairs version of HR 1746.

*Question.* It has been suggested that a significant portion of the unpaid claims involve insurance companies that did not participate in ICHEIC, primarily Eastern European insurance companies that were nationalized or Eastern European companies whose assets were liquidated.

- Would H.R. 1746 enable survivors and their heirs to sue these companies and go after those unpaid assets?
- Assuming a value for unpaid policies of $18 billion, what percentage of that $18 billion could be recovered under the legislative language you drafted for introduction in the House?

According to one estimate, at least $13 billion of that $18 billion expert estimate would not be recoverable under H.R. 1746. Do you agree or disagree with that estimate?

Answer. This question raises a number of important issues that reveal greater complexity about the nature of the enterprises engaged in insurance business, and the nature of the relevant transactions and relationships, than the question itself implies.

*Nationalized Assets In Eastern Europe*

Insurance was in the 1930s and 1940s and remains a highly globalized business. The role of reinsurance reinforces the cross-national and inter-company nature of the "typical" insurance transactions engaged in by German, Swiss, Italian, and other insurers and reinsurers that sold policies to Jews prior to WWII and should be responsible for the losses unquestionable suffered by survivors, heirs, and beneficiaries of these policies. For example, a 1998 study by economist Sidney Zabludoff found that

The German and Swiss markets were highly interwoven . . . . The normally tight Nazi foreign exchange controls were minimal, even during the war, on reinsurance payments—which allow insurance companies to spread their risks. The large German reinsurance companies had subsidiaries in Switzerland such as Union Reinsurance Company and the Universale Insurance Company, both of Zurich. Under the leadership of Munich Reinsurance Company, a cartel was formed in 1941 that included companies from Switzerland and Italy as well as Germany.

*German Assets in Switzerland—End of World War II,* published by the World Jewish Congress, 1998, at 25. In addition, Mr. Zabludoff found that "shadow agreements" existed in all reinsurance contracts in case of war, which allowed Swiss companies to front for Munich Re in countries with which Germany was at war.

The assumption that post-war nationalizations in Eastern Europe would limit the effectiveness of the disclosure and litigation remedies as against many current glob-

[3] Transcript of January 31, 2007, Fairness Hearing, at 68.
[4] Plaintiffs' Brief in Appeal No. 07-1380 at 14.

al companies called for in the original HR 1746 is incorrect for several reasons. First, for example, there is evidence that Generali moved assets out of Eastern Europe including premium income received from customers in Czechoslovakia, Hungary, Poland, and Yugoslavia to safe havens such as Trieste, South America, and the United States. In addition, Generali has recovered some or all of the real property that was nationalized after WWII, and has received compensation from Italy that was derived from agreements and treaties involving Eastern European countries that nationalized property belonging to Italian citizens and companies.

The fact that this information is extant as concerns Generali certainly suggests that it would be ill-advised to make any assumptions about the status of other companies' conduct or assets wherever they operated, including Eastern Europe. Therefore, the use of the term "whose assets were liquidated" may represent only a narrow group of companies, and there is strong evidence to suggest it does not apply to the global insurers who did business in Eastern Europe and elsewhere during WWII and who exist today, or whose portfolios were acquired by extant companies.

Moreover, the law does not support the proposition that nationalization of insurance companies relieves the companies of their obligations to policyholders. See, e.g. *Pan Am Life Ins. Co.* v. *Blanco,* 362 F.2d 167, 170 (5th Cir. 1966) (nationalization of Cuban assets by Government of Cuba did not excuse insurance company from its obligation to pay insured under life insurance policy whose proceeds were payable to the insured in the United States: "It is difficult to see how the seizure of the assets of the insuring obligors would of itself change the rights of the insured obliges to be paid at the places and in the currency stipulated.").

In addition, in Generali's case, it has stated on its website that at the meeting of the shareholders in 1946, the company "approved the 1944 accounts." This is a remarkable admission and undermines the assumptions underlying Question No. 4, at least as it pertains to Generali. Generali apparently dealt with Holocaust victims' policies in 1946, prior to any socialist or communist confiscations. It is strange for Generali, or any company that behaved similarly, to now argue that they should be treated as victims of Communism, but that Holocaust survivors and heirs of Holocaust victims (such as Generali's customers whose accounts were "approved" by the shareholders in 1946), should have their rights dishonored because of the passage of time, the loss of records, Communism, or other myths propagated to justify paying only a fraction of the policies and policy values of its Jewish customers.

*Amount of Unpaid Insurance Policies Covered By HR 1746*

The predicate underlying the House Foreign Affairs Committee version of HR 1746 is that it would extend jurisdiction over insurance companies and their subsidiaries and affiliates doing business in the United States, to the broadest extent permitted by the U.S. Constitution. While today's global economy reinforces the complexity and international nature of the relationships involved, there are undoubtedly a number of policies within the $18 billion estimate that were sold by companies that no longer exist, or that would not be subject to U.S. jurisdiction. Even if "only" $5 billion of the $18 billion outstanding would be subject to possible recovery under HR 1746, that sum is twenty (20) times greater than the amount paid to claimants through ICHEIC in recognition of insurance policies. More important is the standpoint of victimized individuals, whose constitutional rights would be restored.

*Question.* Have you identified any insurance companies that issued Holocaust era insurance, did not participate in ICHEIC, and do business in the U.S., and therefore could be subject to suit?

If so, which insurance companies?

Answer. As noted in my answer to Question No. 4, the insurance and reinsurance industries are so interrelated and globalized, and were in the 1930s and 1940s, that it is overly simplistic to analyze companies' business activity in terms of national borders and discrete corporate entities. Their historical relationships are described in numerous sources, including for example, reports of the Allied Military Command: "Axis Penetration of European Insurance," Board of Economic Warfare, June 15, 1943; "A Study of German Insurance Companies, Combines, and Associations," Decartelization Branch, Foreign Economic Administration; April 30, 1947; "Private Insurance in Italy; Recommendations and Guide," Office of Economic Warfare, Reoccupation Division, November 1943; Independent Commission of Experts Switzerland, Second World War (ICE), Report of the Swiss Committee of Eminent Persons, 2002 (Bergier Report), at 458-456; Zabludoff, previously cited, and others. Whether their current affiliations and activities would render them subject to suit under HR 1746 is a question that would have to be addressed by courts on a case by case basis.

There are some companies that would seem to be subject to U.S. jurisdiction who did not participate in ICHEIC, such as Swiss Reinsurance, Swiss Life, and Basler Leben, to name a few. The reports of state regulators who enacted laws such as California, Florida, and New York in 1998-1999 would have a list of companies that understood themselves to be subject to the legislative jurisdiction of those states under the 1998-1999 statutes such as section 626.9543, Florida Statutes. See, e.g. Florida Department of Insurance Holocaust Victims Insurance Act Report to the Legislature, July 1, 2002. I have not personally surveyed all of these reports.

But in general, the question of which companies would be subject to suit under HR 1746 would require a court to review the company's and its affiliates' activities in the state, or in the United States, and apply a jurisdictional analysis to each case.

*Question.* Your testimony references one expert's estimate that sets unpaid value of Jewish Holocaust-era policies as high as $300 billion. What is the basis for that valuation estimate?

Answer. The basis for that valuation is an estimate by Joseph Belth, Professor Emeritus of Insurance at the Kelley School of Business at Indiana University, and publisher of the insurance consumer newsletter The Insurance Forum, which he outlines in a letter dated January 24, 2008, to Mr. Baird Webel of the Congressional Research Service.

*Question.* My understanding is that the appeal of Judge Mukasey's decision dismissing the consolidated lawsuits on the basis of the Supreme Court's Garamendi decision finally is scheduled for argument in June, after a long delay. If the Second Circuit rules that the case against Generali was wrongly dismissed because there was no executive agreement between the U.S. and Italy, allowing that suit to proceed, would that affect the need for new legislation?

Would a decision by the Second Circuit that Generali is not entitled to legal peace open the way for suits to be brought under state laws, such as Florida's law on Holocaust era insurance restitution?

Answer. The Second Circuit held oral argument in the appeal of Judge Mukasey's decision on June 10, 2008. Even if the Second Circuit reverses Judge Mukasey's decision, it would not necessarily obviate the need for legislation. First, the possibility that Generali might seek Supreme Court review and delay the claims of the named parties in the Mukasey appeals presents a strong argument for Congress to settle the issue of whether state claims are preempted. Moreover, even if the Mukasey decision is reversed, enactment of HR 1746 would also settle any possible statute of limitations issues that might be raised by Generali on remand of the cases now on appeal, or of claims brought by those who opted out of the class settlement. Though we would regard such defenses as lacking in merit, survivors and heirs, after all these decades of being manhandled by Generali, deserve a clear statement by Congress as to their rights.

*Question.* In his testimony, Ambassador Eizenstat suggests that ICHEIC paid claims under legal standards far more lenient than those that would be applied by a court should your legislation creating a federal cause of action be enacted? Do you agree with this statement and, if so, how will the heightened evidentiary and jurisdictional standards applicable in a court affect the ability of survivors and their heirs to prevail in litigation?

Answer. There are two basic answers to this question. First, with respect to the assertion that ICHEIC claimants were the beneficiaries of "lenient" procedures, there is a substantial amount of evidence that despite its published rules, which did purport to create a system in which the burden of proof shifted to the companies if there was any documentation to support the existence of policy, and in spite of the repeated references to "relaxed standards of proof" by ICHEIC defenders, in practice ICHEIC claimants did not enjoy the benefit of "legal standards far more lenient that those that would be applied by a court . . . ."

As I noted in my formal statement, whatever "relaxed standards of proof" was supposed to mean, ICHEIC rules were found to be ignored by companies 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."

These and other practices that worked to the disadvantage of claimants have been reported in several news articles and in testimony and documentary submissions to this and other Congressional committees, and detailed at some length in the Second Circuit amicus curiae briefs of the New York Legal Assistance Group and former New York Superintendent of Insurance Albert Lewis in opposition to the Generali class settlement. *See,* also Yisroel Schulman, "Holocaust Era Claims, Mission Not Accomplished," The Jewish Week, May 4, 2007; Stewart Ain "'Phantom Rule' May Have Limited Holocaust Era Awards to Claimants," The Jewish Week, June 29, 2007.

Second, while many opponents of HR 1746 continue to refer to the generalized rubric of "relaxed standards of proof," or "lenient standards," that was a concept oft-repeated in testimony and publications but never clearly defined. The published ICHEIC retrospectives authored by ICHEIC participants do not cite examples of claims paid based on "relaxed standards" hence it would be difficult based on public information to prove IHEIC companies in fact applied standards more lenient than a court would use. The most that can be said of "relaxed standards" in practice is that some claimants who at the outset of the process were not able to name the issuing company, or who did not have original documents in their possession, nonetheless were able to recover a payment for their policies. This is a far different meaning than the one ascribed by ICHEIC at the time it was created, or the meaning implied by Question 8.

If the practical meaning of "relaxed" standards under ICHEIC is that some policyholders who did not know what company issued a family policy were able to find that out, such a impact is identical to the benefits that would have resulted from the publication requirements of HR 1746, and the publication requirements of the California, Florida, New York, and other State laws that are not enforced today because they have been held to be preempted under Garamendi. Had enforcement of those laws (which passed in 1998 and 1999) not been stymied, Holocaust survivors and heirs would have received the information to allow them to lodge claims with unknown companies long before the spring of 2003, when the overwhelming majority of the names published by ICHEIC were finally published. So, the fact that some ICHEIC claimants learned of their family policies through ICHEIC and received an offer they were willing to accept hardly justifies the denial of that opportunity to the tens of thousands of other possible claimants not satisfied by ICHEIC, or worse, the denial of access to courts that has emerged from judicial decisions after Garamendi.

Further, when one considers the evidence required to succeed in making a claim, ICHEIC's numerous failures to honor the published principles of "relaxed standards" renders it an inferior tribunal to court litigation who, unlike ICHEIC claimants, would be entitled to have court-supervised discovery of the insurers' and reinsurers' records. Moreover, ICHEIC's decision to invert the whole notion of "relaxed standards of proof" in allowing Generali to deny thousands of documented claims based on "negative evidence," i.e. were able to deny claims for which policies could be proven but which Generali claimed had been paid, lapsed, or surrendered, without providing documentation of such transactions, is a far more difficult burden of proof than claimants would have to deal with in most states, where once a policy is established, the burden is on the insurance company to prove that the policy was paid or lapsed, or any other defenses. See, e.g., *Pan American Bank* v. *Glinski,* 584 So.2d 52 (Fla. 1st DCA 1991); *Viuker* v. *Allstate Ins. Co.,* 70 A.D.2d 295, 420 N.Y.S.2d 926 (N.Y. App. 1979); *Sanchez* v. *Maryland Cas. Co.,* 67 A.D.2d 681, 412 N.Y.S.2d 173 (N.Y. App. 1979).

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RESPONSE TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO THANE ROSENBAUM

*Question.* If the present-day value of Holocaust-era policies is at least five to ten times higher than the amount paid through the ICHEIC process, what additional measures, other than litigation, could be taken to compel European insurers and/or governments to pay closer to the total value of unpaid policies?

Answer. I think we are well past the point where anything other than litigation would help Holocaust survivors obtain the justice they deserve. Indeed, that's the main thrust of this legislation: the stark reality that ICHEIC,. the Claims Conference, diplomatic negotiations, and class action lawsuits have simply failed to restore the looted property of survivors, and worse, have so alienated them from the

restitution process that they have been left demoralized and disempowered to speak for themselves.

The plain truth is that government negotiators, ICHEIC, Jewish institutions; class action lawyers, and the Claims Conference have exhausted whatever resources they were able to mobilize on behalf of survivors. And while they have purported to act in the interests of survivors, the result has not been especially favorable. Therefore, given the advanced age and declining health of survivors, it is time for other measures, such as . this legislation, to be implemented. Even if these individual lawsuits do not succeed, at least will have the advantage of empowering the survivors to exercise their own control in vindicating their rights during the last phase of their life.

Passage of legislation restoring Holocaust survivors' and heirs' rights of access to courts such as HR 1746 as passed by the House Foreign Affairs Committee is an essential first step to redeeming the unpaid policies due to victims and their families. This is because it is not just "litigation," but the threat of litigation, which would facilitate payments by insurers to those to whom funds are still owed.

One of the obvious shortcomings of ICHEIC was that the companies believed they were immune from court actions and so in addition to controlling the process by virtue of their sheer numbers and the structure calling for "consensus," the insurers (especially after *American Insurance Association* v. *Garamendi*) were able to deny claims without the fear of being held liable for bad faith or punitive damages.

In addition, I believe there is a moral perspective that should motivate companies voluntarily to come forward to satisfy their debts to victims of the Holocaust, and any legal heirs or beneficiaries who are owed funds. My op-ed in the New York Sun published on May 5, 2008, proposed as much, given the modern precedents in truth and reconciliation commissions and the like arising from more recent atrocities such as Rwanda.

Despite what the benefits I believe would accrue from such acceptance of corporate responsibility, I still believe that victims of the Holocaust should not have to depend for justice, and an accounting of what happened to their families' assets, on the voluntary good will of global insurance corporations. A law such as HR 1746, in its original form, must be part of a society's acknowledgement that it is the victims' who possess the right to determine when and how "restitution" has been finally achieved.

*Question.* In your written testimony, you stated that ICHEIC required death certificates from claimants. Is this based on information you have from claimants, official ICHEIC documents, statements from ICHEIC officials, or Some other source?

Answer. My written statement is a metaphor describing the ridiculous and patronizing treatment survivors received under ICHEIC, which mirrored the original treatment Holocaust victims and their families received from insurance companies when they sought to collect on policies after WWII.

For example, I have seen evidence that companies participating in that process required claimants to supply information that they could not possibly have supplied, such as the birth dates of relatives who perished in the Holocaust when the claimant - if a survivor - would have only been a teenager at the most. I have seen examples of claims where a company acknowledged that it sold a policy to a claimants' father or other relative, only to deny the claim because the company claimed the policy lapsed or was paid - but refused to supply evidence of such terminating event to the claimant. I have seen examples where companies refused to supply available records to the claimants unless the claimant filed an appeal, even though ICHEIC rules required the companies to supply all available information in response to a claim. Such a practice obviously suppressed the utilization of appeals and reduced claims paid.

The foregoing, and other practices such as the "phantom rule" cited by former New York Insurance Superintendent and ICHEIC arbitrator Albert Lewis which placed a greater burden on claimants than the published rules, undermine all of the rhetoric about "relaxed standards of proof" on which survivors based their initial trust for the process, and about which ICHEIC's defenders so ostentatiously but unjustifiably in my view represent to the Congress and others was employed. For respectable individuals and institutions to mock Holocaust survivors in this way in the years 2000-2008 is no less disgraceful than the insurers' original handling of these claims when they asked for death certificates and original documents that everyone knew survivors or the victim's children could not have had.

*Question.* In his testimony, Ambassador Eizenstat refers to the substantial legal hurdles that would face survivors and their heirs if they were to go into court to pursue claims under a federal cause of action. These hurdles might substantially delay or prevent altogether the ability of survivors to obtain compensation. Do you

agree, and if so, are you concerned that a federal cause of action would give rise to false hopes and further disappointment for survivors?

Answer. Respectfully, I think we are asking the wrong question here. The issue is not one of false hopes and further disappointments. The issue is one of empowerment and dignity.

It should not matter whether the survivors ultimately prevail in asserting their own individual legal claims. The victory arises in the empowerment of those who have for too long been patronized and infantilized. We should not be confused by utilitarian concerns, the kind of zero sum thinking that unless the survivors can overcome these perceived legal hurdles there is no point giving them back their rights. The rights are theirs. Why they were taken away in the first instance is a separate question and one that historians, hopefully, will one day evaluate and judge accordingly. But the rights must be returned, regardless of the potential outcomes of these individual lawsuits. It is time for those who have deprived Holocaust survivors of their day in court to be magnanimous and gracious rather than political and legalistic.

Moreover, I not believe that the ICHEIC process was itself free of legal hurdles. The purported flexible legal and evidentiary standards that were supposed to be applied to insurance claims ultimately were as Byzantine and obstacle laden (not to mention degrading and dismissive) as anything that could possible be found in a court of law.

But even if one were to assume that ICHEIC was more flexible and liberal than the courts would be, I believe as a matter of principle that our justice system cannot deny Holocaust survivors, and heirs of Holocaust victims, the ability to access federal or state courts to pursue claims against insurance companies that sold their families policies. It is inconceivable to me that any public official would suggest that Holocaust survivors should not have the autonomy in the United States of America to decide for himself or herself whether to accept the highly compromised ICHEIC system or to have a judge and jury, using traditional rules of evidence and due process standards, decide their rights.

As Congressman Robert Wexler said, the original HR 1746 does not require insurers to pay anyone, it would have only allowed a survivor to find a lawyer willing to take the case based on the evidence available using customary laws. In most states, these laws frown upon insurance companies who use their superior economic might to deny bargained- and paid-for insurance policies, with treble damages and attorneys fees for prevailing consumers. Then again, HR 1746 does not obligate any lawyers to take cases they do not want to take. So this will be left to individual decisions. Holocaust survivors are full-grown adults and are capable of deciding for themselves whether to subject themselves to the legal process, and should have no fewer rights than other. Americans in this respect.

This is a perfect example of what I meant when I referred to the "infantilization" of survivors by the status quo and the defenders of the ICHEIC process. I submit that it is the responsibility of Congress to legislate that victims of the Holocaust, having been denied their humanity by Hitler, and been denied their property and insurance assets by Allianz, Generali, and others, will not be denied their basic legal rights by the U.S. Government.

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RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO ROMAN KENT

*Question.* How do you respond to Mr. Rubin's statement at the hearing that no one asked survivors what they wanted and they never agreed to ICHEIC or any other compensation process as their exclusive means of obtaining compensation for Holocaust era insurance policies?

Answer. ICHEIC was established with substantial input from Holocaust survivors. Both before and during the time in which ICHEIC was formed, insurance regulators and survivor representatives made numerous efforts to include Holocaust survivors—to try to understand the circumstances surrounding the pre-war insurance policies survivors had purchased, to solicit their suggestions and other comments, as well as to explain proposed developments in the insurance claims process.

In this regard, it also is relevant to take into account the context in which ICHEIC arose. For over a half century following World War II, survivors faced difficult, if not impossible, obstacles to collect on their unpaid Holocaust era insurance policies. Insurance companies were not eager to pay or give fair hearing to such claims, legal obstacles in courts proved insurmountable, and many of the insurance companies at issue no longer existed after the war. Not only was there no effective

mechanism for survivors to obtain payment for their pre-war insurance claims during this period, there was no serious, concerted effort to establish any sort of process sensitive to the circumstances survivors faced regarding their unpaid insurance policies. ICHEIC, in spite of its eventual difficulties, provided survivors—and proved to be—a much more effective forum than the courts or appeals to individual insurance companies (if they still existed) to convert the unpaid policies into the compensation they were owed.

ICHEIC was founded, basically, by four groups: the National Association of Insurance Commissioners (NAIC); insurance regulators from Europe (who ultimately did not participate in the ICHEIC process); a number of the largest insurance companies in Europe before World War II; and Jewish groups.

There were three entities that comprised the Jewish groups—the Claims Conference, the World Jewish Restitution Organization (WJRO) and the State of Israel. Moshe Sanbar, the representative from the Claims Conference, is a survivor who was the Chairman of the Board of Directors of the Center of Organizations of Holocaust Survivors, the umbrella organization for forty survivor groups in Israel. Mr. Sanbar reported to the leaders of these survivor groups about developments related to the formation of ICHEIC, as well as solicited suggestions and comments from them. The survivor leaders, in turn, reported to and heard from their constituencies. I represented the WJRO. I am a Holocaust survivor and serve as Chairman of the Board of the American Gathering of Jewish Holocaust Survivors, the umbrella organization for survivor groups and landsmanshaften in North America. I reported about developments and issues related to ICHEIC during leadership meetings of the American Gathering. For example, during the time when the German insurance companies, including Allianz, collectively negotiated with ICHEIC—ultimately leading to a $350 million fund which was contributed to pay for unpaid Holocaust era insurance policies issued by German companies—I was involved in extensive discussions with the survivor leadership in the American Gathering. These discussions with survivor representatives, which included explanations of ICHEIC and the solicitation of survivors' views, were considered in the formation of ICHEIC and, for that matter, in the establishment of the German Foundation Remembrance, Responsibility and the Future. The third Jewish group involved was the State of Israel, which was represented by Bobby Brown, a child of Holocaust survivors.

There were others involved in the ICHEIC negotiations who also reached out to survivors, to tell them what was going on and to seek their input in the process. Representatives of NAIC periodically provided reports about ICHEIC to insurance regulators from the various states. The regulators took it upon themselves to contact and apprise their survivor constituencies of these developments. Indeed, by the fall of 1997, NAIC had voted to establish a working group to deal with Holocaust era insurance issues. The working group, made up of representatives from 26 states and the District of Columbia, held informational hearings in 1997-1998 in a number of cities with significant survivor populations, including Chicago, Los Angeles, Miami, New York, Philadelphia, Seattle, Skokie, Illinois, and Washington, D.C. *See,* ICHEIC legacy document, entitled "Finding Claimants and Paying Them: The Creation and Workings of the International Commission on Holocaust Era Insurance Claims" (www.icheic.org), page 16. During the hearings, survivors presented their insurance-related recollections and, along with regulators and insurers sought to "arrive at proposals for further action." *See,* "Finding Claimants and Paying Them," page 16.

An additional point is relevant here. The representatives from the Claims Conference, WJRO and State of Israel—consisting of two Holocaust survivors and a child of survivors—would not always agree with the views expressed by the representatives of the insurance companies about the positions that ICHEIC should take. If, ultimately, representatives of the survivors, insurance regulators and insurance companies could not arrive at an agreement on particular issues, the process placed responsibility for resolving such disputes with the Chairman of ICHEIC. Moreover, even after the Chairman made his decisions, the survivors involved in the negotiations, who had advocated their positions as vigorously as possible, might still intensely disagree with the result. Nonetheless, they accepted the decisions for the sake of the larger goal of establishing a claims mechanism for unpaid Holocaust era insurance policies which was a substantial improvement over what had existed for decades following World War II.

*Question.* Can you describe what negotiations presently are ongoing between the Claims Conference and the German Government regarding compensation and restitution?

Answer. As a result of negotiations with the German Government this summer, the Claims Conference obtained an additional, estimated total of $320 million for

programs assisting Holocaust survivors over the next decade. The funding consists of a combination of homecare funding for Jewish victims of Nazi persecution, increased pension payments to survivors, the inclusion of additional survivors in the pension and one-time payment programs, as well as the establishment of a new one-time payment program.

A. HOMECARE FOR SURVIVORS

During the most recent round of negotiations this summer, the Claims Conference obtained additional funding for in-house services for Jewish victims of Nazi persecution worldwide, which is the most urgently needed and most effective form of assistance. The German Government agreed to provide a total amount of approximately $70 million (?49 million) for such homecare services for 2008 and 2009, which can be immediately distributed for survivors in need.

This amount is more than double the funds obtained in previous negotiations, as the Claims Conference had obtained approximately $30 million (?21 million) for 2006 and 2007. The Claims Conference will allocate the funds to agencies which help needy Jewish victims of Nazism around the world.

However, there is no agreement in place for German Government funding of these critical homecare projects after 2009. Funding for 2010 and beyond will require further negotiations.

B. DIRECT PAYMENTS TO SURVIVORS

*Increase in Article 2 Fund and CEEF Pension Payments*

The Claims Conference negotiated an increase of 8% in monthly payments to 65,800 Holocaust survivors worldwide from the Article 2 Fund and the Central and Eastern European Fund (CEEF). This means that an extra, estimated $166 million will be paid by these programs over the next decade. Payment under the Article 2 Fund will increase to approximately $430 (€300) per month; and payment under CEEF will increase to approximately $320 (€224) monthly to survivors in EU countries and approximately $260 (€182) monthly to survivors in non-EU countries.

*New Category for Article 2 Fund: Western European Survivors*

The negotiations also resulted in Germany liberalizing criteria so that certain Holocaust survivors from Western Europe who were in concentration camps or ghettos, or who lost a family member and received payment(s) from a German government source, may now—for the first time—be eligible for Article 2 Fund payments. This compensation will benefit an additional, approximately 2,000 Holocaust survivors and will result in payments in the amount of $83 million during the next 10 years.

*New Category for Hardship Fund: Leningrad*

The negotiations will result in one-time Hardship Fund Program payments—of approximately $3,760 (€2,635)—being made for certain Jewish victims of the Nazi siege of Leningrad, so long as other requirements of the Hardship Fund are satisfied. This means that payments will be issued to several thousand Jewish victims of Nazism from the former Soviet Union now living in the West. It is the first time that the persecution of Jews who lived through the 900-day siege of Leningrad has been recognized by Germany.

*New Program Offering One-Time Payments: Budapest Ghetto*

Further, the negotiations succeeded in establishing one-time payments, of approximately $2,800 (€1,962), for every Holocaust survivor residing in Eastern Europe who was in the Budapest Ghetto during World War II and was alive on June 4, 2008. It is estimated such payments will be made to approximately 6,000 survivors. In addition to the compensation, these payments are an important acknowledgement of the suffering of these Hungarian Jews who, previously, had not been eligible for payment

C. OTHER ACTIVITIES AND OPEN ISSUES

During the negotiations, the Claims Conference pressed the German Government for modifications in the processing of cases submitted by Holocaust survivors for a social security pension as a result of work performed during their incarceration in a ghetto. The Claims Conference also urged a speedy and liberal implementation of the recently established program providing for one-time payments for ghetto labor. It is estimated that 50,000 survivors worldwide will be affected and may receive, cumulatively, up to $150 million under this program.

Moreover, there remain a number of open issues, raised and previously advocated by the Claims Conference, which will be the subject of future negotiations. Among these open issues are the following: increasing the payments made through the Article 2 and Hardship Funds; lowering the time period required for Budapest Ghetto survivors to be eligible for pensions; raising the stipulated income level below which survivors are eligible for pensions; making survivors who were in open ghettos eligible for payments; obtaining payments for child survivors; and increasing homecare funding.

*Question.* What is the Claims Conference doing today to assist needy survivors and are the resources available sufficient to meet the needs?

Answer. As they age, Nazi victims suffer from physical and emotional distress at higher rates than the elderly population as a whole. Prolonged malnutrition under the Nazis has affected the health of survivors in later years of life, there are particularly high rates of mental illness among Jewish victims of Nazism, and many are alone as a result of having lost their entire family during the Shoah. Put simply, the health needs of aging survivors around the world have become increasingly urgent.

The Claims Conference, committed to easing the situation of survivors, has been the primary organization which has identified and addressed the unique social needs of victims of Nazi persecution. Once the Claims Conference commenced receiving funds from Jewish property in the former East Germany, through its Successor Organization, it established programs throughout the world to assist Nazi victims. [1]

The Claims Conference funds vital services which are provided to Nazi victims in more than 40 countries. In the United States alone, over 50 programs, exclusively for Nazi victims, are now operational. While more complete details about these services are available in the annual report of the Claims Conference, which is attached, as well as at http://ww.claimscon.org/allocations, some of the assistance provided by Claims Conference funding includes the following: homecare—including assistance with activities of daily living, such as washing, dressing, cooking, laundry, housekeeping and shopping; hunger relief, in the form of food packages and hot meals; meals on wheels; medical assistance, such as doctors' visits, medical equipment and medicine; emergency cash grants to help meet expenses, such as rent, utilities and eyeglasses; winter relief (especially in the former Soviet Union)— including coal, wood or gas, clothes, coats and blankets, and grants for electricity; home nursing; counseling services; and numerous other services and social programs which ease and enhance the lives of elderly, Nazi victims.[2]

For programs in 2008, the Claims Conference has made allocations that will total $170 million, primarily for agencies and institutions around the world which provide services to survivors in need. These allocations are primarily from Successor Organization funds, but also other sources of Holocaust-related compensation and restitution, such as ICHEIC, the Swiss Banks Settlement, German government funds negotiated by the Claims Conference, the 2005 "Hungarian Gold Train" settlement, and Austrian funds negotiated by the Claims Conference.

At its annual meeting in 2008, the Claims Conference authorized to increase annual funding from the Successor Organization to $135 million for the next five to seven years. The allocations are made primarily to social welfare agencies and institutions aiding Jewish victims of Nazism in need in over 40 countries and are used for vital services.

For 2009, the total allocations which will be administered by the Claims Conference, using funds from the Successor Organization and from these other sources will amount to $193 million.

Further, with Claims Conference encouragement, local philanthropic fundraising has made additional resources available to support programs assisting Nazi victims.

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[1] The Claims Conference already has allocated a total of approximately $1 billion to organizations addressing the social service needs of Holocaust survivors and engaging in education, research and documentation of the Shoah. This is in addition to compensation payments—to over 500,000 survivors in 75 countries—totaling more than $60 billion as a result of the work of the Claims Conference. The institutional allocations of the Claims Conference are made from the proceeds of the sales of unclaimed, formerly Jewish owned property in the former East Germany, as well as from humanitarian funds established for the benefit of Holocaust survivors by various governments and businesses.

[2] The Claims Conference believes that the involvement of the local survivor community is essential to the success of the institutional allocations program. Thus, the Claims Conference requires that each recipient agency set up a local Holocaust Survivor Advisory Committee. These survivor committees help to provide outreach and oversight for the programs, as well as help to determine local needs and identify survivors in need of assistance.

While we believe that the Claims Conference has met many of the most serious needs of Holocaust survivors worldwide, these needs are continuing ones. To satisfy them, success in the ongoing negotiations with the German Government regarding one-time payments, pensions and funding for social welfare programs for survivors remains critical.

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RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO LAWRENCE EAGLEBURGER

*Question.* What are the appropriate criteria for measuring ICHEIC performance?

Answer. ICHEIC 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. In addition to the over $306 million payments made by ICHEIC companies or related entities, ICHEIC distributed nearly $200 million more for humanitarian purposes.

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 to resolve remaining unpaid life insurance policies within their respective jurisdictions, addresses a preponderance of the pre-war insurance market.

The criteria you list below are neither relevant nor useful tools of measurement.

For example, you ask about the measuring of the percentage of names a given company published. Such a measurement would bear no relationship to ICHEIC performance. To measure percentages, you would need to know the total number of policies for each company, by name. Many companies do not have/retain names of policyholders. Victoria, a major German company, had only policy numbers, not names, on record. If the claimant could provide a policy number, then they could search based on that information, but they could not search files by names.

Moreover, ICHEIC's list publication of potential policyholder names was not based solely on records held by companies, but on independent ICHEIC research. Take asset declarations, for example. Many of the 'policies' listed were from asset declarations. In many instances the declarations did not include a company name but rather stated "insurance policy, worth x."

Similarly, measuring the relative value of policies paid to the total outstanding begs the question of the impossibility of measuring the universe of total outstanding policies. First, we cannot determine what the Holocaust victim share of the market was, and second, we know that some portion of Holocaust policies were previously paid in the postwar period by companies and others through previous compensation programs. For more on assessing the nature, size, and scope of the market, please see my description below of the work of the Pomeroy-Ferras task force.

*Question.* Are you aware of the statement of the Washington State Insurance Commissioner in 2004 that the publication of the largest number of names near the end of the ICHEIC claims filing period seriously reduced the number of survivors and heirs who applied to ICHEIC for payments?

- How would you respond to that concern?
- Why did it take so long to publish the list?
- Did the insurance companies oppose publication of the lists?

Answer. First, from the outset, 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. 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.

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.

As a result of ICHEIC's 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. 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. Even with ICHEIC's ongoing messaging that finding one's name on a list was not predicate to filing a claim, we extended the last deadline by some months to allow for additional outreach, after the final tranche of names was added to the list, to make our best efforts to reach the broadest audiences to encourage filing. [1]

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 ICHEIC's efforts to match claim form information with relevant policy information discovered through archival research or in company records. The end result was that member companies were ultimately able to match 16,243 unnamed claims against these records.

The 2004 assertions of the Washington State representative are without merit, as I stated at the time that the charge was first made.

For more detail on our effort with respect to lists, the time it took to develop them, the research efforts that went into them, or the like, I would recommend that you review my written submission to your committee in preparation for the hearing, which contains extensive discussion on this very topic.

*Question.* ICHEIC's claims-based approach resulted in the payment of close to $400 million to individual claimants and to a "humanitarian fund" for Holocaust survivors and their heirs. Estimates of the present-day total value of insurance policies owned by Jews during the Holocaust range from $3 billion to $17 billion and higher. Whichever valuation one applies, why did the ICHEIC process recover far less than the total value of Holocaust-era policies sold to Jews? Why did the U.S. government back a claims-based approach rather than seek a global settlement to recover closer to the estimated total value of unpaid Holocaust-era policies?

Answer. I do not accept either of the estimates you advance as the present-day total value of insurance policies owned by Jews during the Holocaust. I have no idea about the basis nor the expertise from which you are drawing these numbers. I can tell you that I know of no reputable expert who would put estimates at a figure even approaching the $3 billion on the table. Instead, let me explain, again, why those who have long advised ICHEIC note that it is not possible to determine with any precision the total value of Holocaust-era policies sold to Jews. I would note as well that the figures you cite here do not appear to take into consideration compensation provided for such policies in the immediate postwar period.

Please recall, as we have explained previously, that the Commission was created as a means of addressing the gaps and shortfalls of postwar compensation programs of the 1950s and 1960s. It was intended to provide an opportunity for thousands of Holocaust survivors and their heirs to submit claims for the first time.

In the fall of 1999, the Commission sought macro-level guidance on the overall volume and estimated value of potential claims. For this effort, I 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 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 probably 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.

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

[1] 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.

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 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.

The various national commissions working to assess their own situations have confirmed the reliability of the Pomeroy-Ferras work. The total overall settlement reached by the Commission with all its entities, approximately $550 million, was premised on the Pomeroy-Ferras work, and has met 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.

With respect to your query about why the U.S. government backed a claims-based approach rather than seek a global settlement process. Two comments: first, you should direct that question to U.S. government actors, and second, ICHEIC was a private enterprise and was not subject to instructions from the U.S. government or any other government. Finally, I do not accept that the estimates with respect to the total value of unpaid Holocaust-era policies are accurate or reliable.

*Question.* One of the concerns that have been raised regarding H.R. 1746 is that the disclosure of the names of all Holocaust-era policyholders would violate European privacy laws. What are the specific concerns and how would the privacy law applicable to a given company's disclosure be violated if all the names of policyholders were disclosed. If privacy laws did not prevent the publication of a list of potential Jewish policyholders that ICHEIC published, why would it prevent the publication of a broader list?

Answer. In 1999, ICHEIC initiated the most extensive project ever conducted to investigate and record information on Holocaust-era insurance policies from archives and other sources from around the world. In addition, the Commission was largely successful in acquiring lists of policyholders from participating insurance companies, which have been matched against Yad Vashem's database of Holocaust victims using the broadest possible criteria, as well as from governmental organizations in a number of countries. These combined efforts have yielded substantial information regarding hundreds of thousands of insurance policies in effect prior to and during World War II. Arranged through ICHEIC, with publication on Yad Vashem's website (www1.yadvashem.org/pheip/) and still referenced on the ICHEIC website, (http://www.icheic.org), this information remains publicly available.

It is important to sound a cautionary note on policyholder names: Although ICHEIC has published this extensive list of Holocaust-era insurance policies, not all of them remain unpaid. Let me state that another way: just because a name appears on the ICHEIC website, it does not necessarily follow that the heir or beneficiary is entitled to payment. Many of these policies have been compensated previously through restitution programs or by the companies directly.

As we have explained, ICHEIC's claim filing process was purposefully not dependent on an individual finding his or her name on a list. Anyone who believed they might have any possible connection to a Holocaust-era insurance policy was encouraged to file a claim, and the information they provided was matched against all ICHEIC companies' databases and ICHEIC's research database.

The list that ICHEIC was able to publish, and that remains publicly available on a website now maintained by Yad Vashem, was possible because ICHEIC worked with the companies to ensure that the processes involved fell within exceptions to otherwise extremely restrictive European data protection laws. We needed to ensure not only that there was a direct and limited nexus between the names we sought and the public interest at hand—but also that we had sufficient safeguards in place to ensure that we were providing adequate levels of data protection so that unintended information beyond the scope of the exception would not be provided. And most important, through our various matching and "sound-ex" processes we were doing our utmost to cull out only the names of likely Holocaust victims.

HR 1746 takes the opposite approach in all respects, and thus likely would run head first into a host of European data protection legal challenges. It demands all policyholder names over a period of years, with no methodology suggested for culling out the names of those who were likely Holocaust victims (in fact, most sound methodologies likely would result in a list largely duplicative of the already existing publicly available ICHEIC list); it provides no means for safeguarding how, where, when, or by what means this otherwise restricted information would be provided.

Moreover, its definitions of geographic scope and nature of policies at issue are so broad that the universe of data it potentially is demanding is overwhelming in nature, making compliance on a purely practical level virtually impossible.

*Question.* In his written testimony, Roman Kent emphasized that "the companies which participated in [ICHEIC] did not represent the entire, not even the majority of the Holocaust-era European insurance market." What percentage of the Holocaust-era insurance market did the ICHEIC process account for? For that part of the market not covered by ICHEIC, how much was covered by eastern European companies that were nationalized and have no traceable successors? How much was covered by companies or successor companies still in existence today?

Answer. I believe this is a mischaracterization of Mr. Kent's comments, and the work of ICHEIC. First, I would direct you to the appendix submitted by Ms. Anna Rubin with her written testimony in May. She has an excellent pie chart with that material that shows that in 1936, ICHEIC companies represented approximately 21 percent of the European insurance market. The German insurance association (a direct partner with ICHEIC in its work) represented another 33 percent of the market. So together, ICHEIC and its most immediate partner entity represented a clear majority of the Holocaust-era European insurance market. In addition, that pie-chart shows that other ICHEIC partner entities—such as Sjoa, GSF, or Buysee—make up an additional 26.5 percent of the market, bringing us to well over 80 percent of the market.

Additionally, in reflecting on the Eastern European market, although outside the direct remit of ICHEIC companies, one must consider ICHEIC's extraordinary humanitarian claims payment program for liquidated, nationalized, or no known successor companies. Under this program, ICHEIC evaluated according to ICHEIC standards and guidelines, and paid from humanitarian funds, many Eastern European claims with some form of documentation but no company in existence to hold accountable. Moreover, one must also consider the work of companies outside of ICHEIC or any of the other national associations, such as Prudential plc, which established an independent reparations effort to identify and compensate claimants from a Polish company it had acquired prior to World War II.

*Question.* In her written testimony, Ms. Rubin indicates that as of January 2008, Austria's General Settlement Fund (GSF) had issued decisions on 83 out of 364 claims submitted to the Fund by New York State Holocaust Claims Processing Office (HCPO). The claims were submitted to the GSF before a November 2003 filing deadline. Why has it taken the Fund close to five years to rule on less than half of the claims submitted by HCPO? What assurances if any has the Austrian government given to indicate that the remaining claims will be processed in a timely manner?

Answer. This question is best submitted to Ms. Rubin at the New York Holocaust Claims Processing Office, since it is her office that has had all contact with the GSF since ICHEIC ceased operating activities more than a year ago. I will say, however, that my experiences with the Austrian GSF during the life of ICHEIC leave me with a conviction that one should expect to be deeply disappointed with the ability and willingness of that institution and the Government of Austria to follow through on its commitments and responsibilities in these areas.

*Question.* Please describe ICHEIC's research efforts. How did ICHEIC use the data that was gathered?

- What percentage of the relevant names were supplied to ICHEIC?
- What percentage of each company's names of policy holders were published on the ICHEIC website?
- Critics of ICHEIC maintain that obvious sources of information were ignored and the companies had free reign to decide what information to produce and what information to withhold. How do you respond?
- Did the research look comprehensively at the Jewish property declarations scattered throughout the state archives throughout Germany?

Answer. ICHEIC launched its archival research project in 1999, commissioning experts to investigate and record information from public archives and repositories containing Holocaust-era records, in Central and Eastern Europe, Israel and the United States. Through its researchers, the Commission gained access to Holocaust-era record groups previously closed to examination—an achievement that was the result of perseverance and unprecedented international cooperation, all with the very worthy objective of assisting Holocaust survivors, their families and heirs in getting compensation for valid unpaid insurance policies. From the outset, this

project was intended to complement the ICHEIC claims process; both the research results and the subsequent mechanisms ICHEIC developed to maximize use of the information can be considered a major success.

These efforts led to the creation of a database that provided a critical tool used by companies and ICHEIC to further enhance information provided by claimants and thus chances of identifying policies on submitted claims.

ICHEIC's research spanned 15 countries and included over 80 archives. Researchers reviewed three types of records. The first, representing the bulk of the material reviewed, consisted of Nazi-era asset registration and confiscation records. Files pertaining to the post-war registration of losses made up the second category. The third category was comprised of insurance company records located in public and regulatory archives.

While German archival records impose some access constraints, this was not an obstacle for ICHEIC research. Under German data protection laws documents are always available to the individuals or their heirs or representatives who are the subject of the documentation—e.g. postwar compensation, even while records containing personal information are not accessible to the general public until 50 years after the date of the documents. Moreover, since asset declarations predate the war, they are actually fully accessible. In addition, in February 2002 the German Parliament passed an amendment to the Archives Law, allowing still broader access to personal records of victims of Nazi persecution.

ICHEIC conducted research in German archives and repositories first in 2000, and again from late 2002 through April 2003.[2] Through this research many asset declaration files were reviewed and a considerable number of polices were identified. Overall research in German archives contributed information on 41,540 insurance policies belonging to 27,886 policyholders.

ICHEIC's thorough audit processes, detailed in response to the question below, ensured full and consistent compliance by all companies.

*Question.* What was the nature of ICHEIC's audit processes?

- How were they developed?
- What did they accomplish?
- Did ICHEIC have access to and review the documentation underlying insurance company claim determinations?
- Were claimants provided with the underlying documentation?

Answer. ICHEIC required all entities directly involved in claims processing and decision making to be audited by an internationally recognized accounting firm or, in the case of the German companies, their government regulator accompanied by ICHEIC observers. While audits varied in type, depending on the entities audited, audit requirements were defined in such as way as to confirm that all procedures were structured and decisions rendered appropriately. Parameters were defined and agreed to by all participants at the outset as part of the Audit Mandate Support Group's early work, and all subsequent agreements with participating companies and partner entities reflect the importance accorded to the performance standards and appropriate measures.

By using outside auditors who reported back to a specific committee, ICHEIC was able to secure access to previously inaccessible records; the reports back to the committee resulted in thorough reviews of the auditors' findings by a representative group of ICHEIC stakeholders. As a result, the early audits helped to reduce the historical suspicions and increased participants' trust in some of their fellow stakeholders. Stage 1 audits were carried out in the first instance by audit firms appointed by the insurers. These firms submitted a Compliance Report, with an attached copy of the Management Report, relating to each company or group. ICHEIC then appointed a second audit firm to carry out a Peer Review audit of each Compliance audit. The Peer Review auditors also carried out their own limited additional testing of each insurer's records. All of the audit firms involved in both Compliance and Peer Review audits had extensive international experience and reputation.

All reports-Management, Compliance and Peer Review-were submitted in final draft form to the Audit Mandate Support Group (AMSG) empowered to oversee the audit process. This committee included representatives of all stakeholders (regulators, Jewish organizations, and companies). The group met to discuss and consider the auditors' findings at formal debrief meetings, where the insurers and audit firms presented their reports for discussion and review by the AMSG. Any addi-

[2] As part of ICHEIC's agreement with the German foundation "Remembrance, Responsibility and Future.'

tional work requested by the AMSG was carried out by the companies and/or audit firms prior to the finalization of their reports.

A subsequent Stage 2 audit was conducted to ensure that all entities responsible for the various aspects of claims processing had performed appropriately. Similarly, ICHEIC's own operations were independently audited to ensure ICHEIC standards were met in the humanitarian claims processes as well.

Stage 2 audits were carried out by firms appointed directly by ICHEIC. Stage 2 examined member companies' handling of claims using the systems and procedures covered in Stage 1. In keeping with the procedures established during the Stage 1 audits, and building on the subcommittee members' expertise, the AMSG reviewed the peer review auditors' findings at debrief meetings, where all members had ample opportunity to discuss the reports and request clarification and/or additional follow-up work.

For each insurer, audits related either to the entire company or group, or to individual subsidiaries or sub-groups. In totality, 15 entities were subject to Stage 1 audits and 12 entities subject to Stage 2 audits. Fewer entities were subject to Stage 2 because (1) Chairman Eagleburger agreed that a sub-set of Belgian companies would not require a Stage 2 audit as their claims processing functions had been taken on by the Buysse Commission, a government commission that confirmed claims handling standards were appropriate; and (2) some company groupings changed between Stages 1 and 2 as a result of mergers and acquisitions over the course of ICHEIC's lifetime.

Finally, each individual company decision was reviewed and verified by an ICHEIC claims team staff person, to ensure that it was made according to ICHEIC rules and guidelines. Where and as the staff had questions with respect to compliance, lack of underlying documentation or the like, staff went back to the company until the query was resolved. ICHEIC staff verified each company decision based on review of the same information from the company received by the claimant.

*Question.* How were the ICHEIC lists developed, and what role did the lists play in the ICHEIC process?

- Are the lists still available?
- Where are they available?
- Would it be beneficial to make the lists more widely available and publicize them again?

Answer. Please see responses above. As already noted, the list remains public and widely available, as ICHEIC arranged long ago for it to remain so and posted on Yad Vashem's website at www1.yadvashem.org/pheip/.

*Question.* How do you respond to assertions made at the hearing that the Holocaust-era insurance market with respect to likely victims might be valued at $17 billion?

Answer. Please see earlier response about lack of reliability of the far lower estimates of Holocaust-era insurance market. Given the lack of reliability of those estimates, it goes without saying that the $17 billion figure should carry no weight whatsoever, and has never had any justification, to the best of my knowledge.

*Question.* There is an ongoing feeling on the part of some survivors and their heirs that the insurance companies have not been entirely forthcoming with the information in their files that would illuminate the extent of Jewish policyholders or the extent of their cooperation with the Nazi regime. This feeling is further heightened by the inaccessibility of the ICHEIC records that have been turned over to the Holocaust period for many years. In response to these concerns, it has been suggested that if the companies and the countries that signed executive agreements were more forthcoming with information and made additional disclosure, such actions would provide reassurance to critics and allay concerns that information has been hidden.

- How do you respond?
- Can you identify steps that could be taken now by companies to make additional disclosures?
- Why are the ICHEIC records at the U.S. Holocaust Memorial Museum off limits for such a long period of time—unavailable to researchers and others who might find the records valuable?

Answer. First, my response with respect to audits should address the extent to which insurance companies within our process have identified and made available any and all information relevant to holocaust victims, survivors, and their heirs, and the extent of their cooperation with the Nazi regime. This criteria was embedded within our audits, conducted by established internationally recognized third party

auditing firms. The results were then affirmed by the Commission's Audit Mandate Support Group, which included representatives of the survivors' organizations and the regulators.

Next, there is evidently confusion with respect to ICHEIC records that were provided to the U.S. Holocaust Memorial Museum and are publicly available there, and personal files of individuals who filed claims with ICHEIC, which were archived at the Museum. The terms of the agreement between ICHEIC and the museum were proposed and explained generally at ICHEIC's concluding meeting on March 20, 2007, and are available on the ICHEIC website. Under this agreement, the museum maintains and hosts the ICHEIC web site (www.icheic.org); it maintains ICHEIC key documents and research database in its library and makes them available to visitors to the library. These documents include key policy decision memoranda as well as meeting minutes produced over the lifetime of the organization, as well as the research information that ICHEIC culled from its work in archives across Europe.

With respect to individual claimants' files, applications and appeals, the museum maintains these in its archives. Given that these documents contain personal and sensitive information, this material must be archived for a period of fifty years. In reaching this agreement, ICHEIC sought legal guidance from privacy law experts, who reviewed the releases that individuals signed when they filed with ICHEIC and recommended that based on the strong commitments made by ICHEIC regarding data confidentiality and use of data only for the limited purpose of investigation/claims processing, combined with relevant data protection laws, ICHEIC would need to obtain specific consent from claimants prior to sharing of any claimant data with a third party. Given ICHEIC's 90,000+ claimants, the costs in March 2007 of obtaining such specific consent were estimated in the millions, and the more prudent outcome was deemed to be archiving for the fifty-year period (recommended given range of ages of individuals filing.) The legal analysis provided in summary form is as follows:

ICHEIC explicitly indicated that the information would not be used for any purpose other than claims purposes. Specifically, individuals were informed through a fair collection notice posted at the Web site that "[n]o information will be given/sold to any private organization." Further, in the Declaration of Consent, which is the key document that individuals were required to sign in providing their claim information, ICHEIC promised that data would be "used only for these investigations and otherwise remain confidential." In addition, ICHEIC represented in its FAQ regarding the Declaration that other than giving claimant information to insurance companies and relevant organizations, including archives, "we will not send your claim form to any other person or organization without your permission," which "is a requirement of European data protection laws." [3]

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RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BILL NELSON TO ANNA RUBIN

*Question.* 1. Estimates on overall unpaid valuation of insurance claims range from approximately $3 billion to $18 billion or $300 billion.

- How do you account for the disparities in valuation?
- Are there valid reasons to prefer one figure over another?
- Are there standard statutory or common law methods applied to value claims that are many years old?

Answer. Calculating the present-day value of historic financial instruments is a complex undertaking under the best of circumstances, as the final sum depends on a variety of factors, such as the base sum (e.g. nominal value of insurance policies versus premium income), and the methods used to calculate a present-day value (e.g. consumer-price index; thirty-year Treasury bond yields). The valuation of pre-World War II European financial instruments such as insurance policies, bank accounts, and stocks, is additionally complicated by the economic upheavals of the Great Depression and the post-World War II period, which resulted in hyperinflation and currency devaluations.

[3] As used in the FAQs, the term "archive" refers only to an organization that would store the claimant data on behalf of ICHEIC and not any organization that would use the data for its own purposes. The reference to "archives" in the Declaration of Consent refers only to organizations from which ICHEIC obtained additional information to supplement claims data.

Since 1997 the HCPO has been working on matters of restitution and has seen first-hand the difficulties of trying to assign an overall present-day value to the European insurance market. Given the ravages of war and the passage of time it is difficult, if not impossible, to assess how many Holocaust-era insurance policies remain unpaid: the records of many companies' branch offices were either destroyed during the war or confiscated by Soviet troops. Moreover, as companies did not distinguish policyholders by religion, sexual orientation, or political affiliation when issuing insurance policies, particularly in the pre-Holocaust period when most of the insurance policies in question were issued, it is hard to determine which policies were owned by individuals subjected to Nazi persecution. Finally, even where records are available, it is not always possible to know how many policies lapsed because of non-payment of premiums during the straitened financial circumstances faced by many people during the Depression years, or were otherwise reduced (by loans, or by the conversion into premium-free policies from the original insured sums).

The HCPO is unable to opine on the methods used by others to obtain the proposed estimates on the valuation of unpaid insurance claims ($3, $18, or $300 billion) and therefore cannot evaluate the accuracy of these figures. However, using the direct premium income of insurance companies in 1936, a representative prewar year, the HCPO can provide both information about the market as a whole and a context for viewing restitution efforts to date. (*See,* Appendix 1: HCPO Analysis of the 1936 European Life Insurance Market).

It should also be noted that the valuation of prewar claims for financial instruments has been a matter of negotiation between numerous parties and the method chosen has varied by country and claims process. For example, claims for insurance polices issued in Germany are valued in accordance with the German Federal Law for the Compensation of the Victims of National Socialist Persecution (Bundesentschaedigungsgesetz or BEG).

Alternatively, the Claims Resolution Tribunal (CRT) applies a valuation method in compliance with the settlement agreement in the Holocaust Victims Assets class action litigation. In re Holocaust Victim Assets Litig., 105 F. Supp. 2d 139 (E.D.N.Y. 2000). Claims submitted to the US Foreign Claims Settlement Commission of the Department of Justice were valued using still another method. And this just names a few possibilities.

Simply put, we believe there is no one way to calculate the present-day value of Holocaust era assets; however, all valuation methods employed by claims processes and organizations strive to produce the current value of a given asset and when necessary apply presumptions (e.g., average values when the actual value is unknown) to obtain the most advantageous offers for claimants.

*Question.* In his written testimony, Roman Kent emphasized that "the companies which participated in [ICHEIC] did not represent the entire, not even the majority of the Holocaust-era European insurance market."

- What percentage of the Holocaust-era insurance market did the ICHEIC process account for?
- For that part of the market not covered by ICHEIC, how much was covered by eastern European companies that were nationalized and have no traceable successors?
- How much was covered by companies or successor companies still in existence today?

Answer. The HCPO's research suggests that over 85% of the companies doing business in Europe in 1936 were covered by the ICHEIC process. For a more detailed breakdown, please refer to Appendix 2: HCPO Analysis of ICHEIC Member Companies' and Partner Entities' Coverage of the Relevant Insurance Market.

The market covered by the ICHEIC process includes Eastern European companies that were nationalized or liquidated after World War II and have no present-day successors. ICHEIC's humanitarian claims process (the 8A2 process) covered claims for policies issued by such companies, which comprised approximately 3% of the 1936 market.

A small number of companies (0.5%) present in the 1936 market which are still in existence or have successors still in existence today did not participate in the ICHEIC process. For example, Prudential plc (based in the United Kingdom) covers policies written during the relevant period by its Polish subsidiary Przerzornosc, and has established its own claims process.

*Question.* My understanding is that the prewar insurance market is an area that the HCPO continues to research and analyze. Can you please provide any additional

information you might have developed on the prewar insurance market during the course of your research?

- Can you explain the content and significance for this Committee of the pie chart and table showing the 1936 Insurance Market for Nazi Occupied Continental Europe and Switzerland?

Answer. The HCPO's research used historical data to generate information on market share and on the relative sizes of different domestic markets rather than to assign a current value to the historical market. Determining present-day values for financial instruments is a subjective exercise that is heavily dependent on the method chosen for valuation. Market share, however, does not depend on the choice of method used to calculate present-day values, as it measures percentages, rather than absolute figures. Analyzing market share provides a tool to determine the comprehensiveness of restitution efforts both past and present, while studying the size of the market as a whole provides a perspective on the number of potential unpaid Holocaust-era policies, i.e. the smaller the market, the fewer policies overall, and therefore, the fewer policies that potentially remain to be paid today.

To take one example, Poland, the most populous country in Eastern Europe other than the USSR, had one of the smallest markets, both in terms of market share and per capita insurance. In 1936, the total Polish life insurance market was comprised of 257,685 policies covering a population of 32 million. It is, therefore, unlikely that there are hundreds of thousands of still-unpaid Polish life insurance policies.

To provide a snapshot of the total pre-war European insurance market, the HCPO compiled statistics on direct premium income (the industry standard used to measure market share) in 1936. The resulting chart illustrates that the domestic German market was by far the largest in continental Europe, comprising nearly 50% of the whole. In contrast, the domestic markets in other Central and Eastern European countries, even in Czechoslovakia, the most industrialized of those states, were significantly smaller, both in absolute terms and relative to population. To provide a further contrast, the US, with a population less than half the size of the continental European population, had an insurance market four times as large. Please refer to Appendix 1: HCPO Analysis of the 1936 European Life Insurance Market for additional information.

*Question.* In your testimony you provided copies of correspondence between you and the National Association of Insurance Commissioners (NAIC) regarding the ongoing role of the New York Holocaust Claims Processing Office in assisting survivors and their heirs with filing claims that the ICHEIC companies have agreed to accept and consider under relaxed standards now and forever. Since the hearing have there been further developments with respect to the office undertaking this role?

- Does the office have the authority and resources necessary to perform this role of facilitator and clearinghouse?
- If a claimant wasn't satisfied with the results your office achieved, would that claimant be able to pursue the claim in State court?
- Will there be a cost to the federal Treasury to this arrangement?
- Is congressional action required or desirable in order for the agreement to take effect?

Answer. The HCPO was created by Executive Order in 1997 to assist individuals of all backgrounds obtain a measure of just resolution for the theft of property during the reign of the Nazi regime. Since inception, the HCPO has functioned as a liaison between Holocaust victims and their heirs and companies, banks, claims organizations and other entities to aid with the submission and management of claims. As such the HCPO has the authority to continue to function as a facilitator and monitor of Holocaust-era asset claims.

Discussions and negotiations are currently underway between the HCPO, the Banking and Insurance Departments of the State of New York and the NAIC to explore mechanisms to ensure that insurance claims submitted to former ICHEIC member companies as well as members of the German Insurance Association are being handled in accordance with ICHEIC's relaxed standards of proof and to publicly report our findings.

At present the HCPO is jointly funded by the Banking and Insurance Departments of New York State. Under the proposed working arrangement between with NAIC and the HCPO, the NAIC will provide additional financial support for the HCPO's monitoring and reporting efforts with respect to insurance claims. This will address any needs for additional resources and funding. (The HCPO currently maintains a staff of eight professionals who utilize their unique skills to advocate on be-

half of claimants. Additional staffing needs are unknown at this time.) The federal Treasury would incur no costs for an agreement between the HCPO and the NAIC to move forward. Neither is congressional action required and in fact may complicate the approval process.

Filing a claim with the HCPO does not preclude a claimant from simultaneously or subsequently pursuing alternative means of redress, including legal.

*Question.* Of the Holocaust-era insurance claims your office has already handled, do you know how many claimants were not satisfied with the results your office achieved? Do you know of any unsatisfied HCPO claimants who later brought action in court?

Answer. The HCPO has assisted thousands of Holocaust victims and their heirs obtain resolution of their claims by: demonstrating that the assets sought had been previously compensated via a postwar restitution or compensation proceeding; showing that the claim has otherwise been handled appropriately (i.e., in accordance with the original owners' wishes); or obtaining a decision from a company or claims agency.

Any discontent voiced by HCPO claimants has usually been directed toward the agency assessing and deciding claims and not toward the HCPO, which acts as a voice for Holocaust victims and their heirs. Claimants know that the HCPO zealously advocates on their behalf and does everything within its power to assist and obtain the most advantageous result possible.

While several HCPO claimants have been involved in lawsuits related to Holocaust-era asset losses, we can neither speak to the claimants' motivation for participating in litigation nor as to when the suits were filed, i.e. before or after submitting a claim to the HCPO. Claimants seem to have been satisfied with the support and assistance provided by HCPO staff. (*See,* Appendix 3: Letters from HCPO Claimants.)

*Question.* Your testimony indicates that all ICHEIC participants have agreed to participate in an ongoing monitoring process like that proposed by the NAIC. Do you know of any insurers doing business in the New York (or elsewhere in the U.S.) that are not ICHEIC participants, but are potentially liable for Holocaust era insurance claims?

Answer. As stated in my testimony, at ICHEIC's final meeting in March 2007, all ICHEIC member companies as well as members of the German Insurance Association, through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims sent directly to them in accordance with ICHEIC's relaxed standards of proof.

It has been the HCPO's experience that all companies potentially liable for Holocaust-era asset claims are at least willing to consider such claims. The HCPO is unaware of any insurance companies doing business in the United States that are unwilling to review possible claims for Holocaust-era policies.

*Question.* Do you have any case studies (samples from the HCPO claimant population) that include examples of anecdotal claims settled, demonstrate the relaxed standards of proof, and HCPO archival research?

Answer. Please refer to Appendix 4: HCPO Case Studies, Group 1 where we have described 5 cases. [The case studies submitted with this response have been maintained in the committee's permanent files.]

*Question.* Can you please provide some examples of both anecdotal and documented cases that the HCPO has assisted to resolve either directly, through the ICHEIC process, or one of the other organizations currently handling insurance claims?

- Can you please include a description of the valuation used to calculate offers extended to claimants?

Answer. Please refer to Appendix 5: HCPO Case Studies, Group 2 where we have described 5 cases. [The case studies submitted with this response have been maintained in the committee's permanent files.]

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RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR DAVID VITTER TO HON. LAWRENCE EAGLEBURGER

*Question.* Many of the insurance companies located in Central and Eastern European countries were nationalized, went bankrupt, or have, for other reasons, ceased to exist. Despite the fact that these companies issued thousands of insurance poli-

cies during the Holocaust-era, neither the governments which took over these companies nor their successor governments have taken the steps necessary to implement a restitution process to repay survivors for their insurance claims.

As former Secretary of State and Chairman of ICHEIC and former Special Representative to the President and Secretary of State on Holocaust-Era Issues, both of you have extensive experience in bringing together governments and companies to work toward a fair and appropriate process through which reparations could be made to survivors. Given your respective backgrounds, as we look toward the future and the next steps in the process, would you:

- First highlight some of the difficulties in working with the Central and Eastern European governments, if you had the opportunity to do so while in your former positions, and then;
- If litigation is not the best way to secure reparations from less than forthcoming countries in Central and Eastern Europe, what would you recommend as possible avenues toward bringing some of these governments to the table and convincing them to develop and implement into law a fair and effective reparations process?

Answer. First, I would remind that through ICHEIC we sought to address on the immediate level the needs of claimants, by setting up the humanitarian claims payment effort. Through this program, we used ICHEIC evaluation standards (and humanitarian funds from ICHEIC companies and the German Foundation and German insurance association) to pay claims on liquidated, nationalized, or no known successor companies on which we had identified documents of one form or another. A great number of these claims were necessarily for Eastern European companies, given the history of that region. Should those governments have provided some of the approximately $31 million in compensation that ICHEIC companies and the German Foundation/insurance association provided in their stead? Yes. Are there routes to go after it retroactively? ICHEIC designated the Claims Conference to try to do so, and to put whatever funds it succeeded in gaining toward broader humanitarian purposes for Holocaust survivors and their heirs.

Why are so many of these companies from this part of Europe? In the newly Communist states of Eastern and Central Europe (Poland, Czechoslovakia, Romania, Hungary, Bulgaria) nationalization of private enterprises, including insurance companies, began almost simultaneously with liberation by the Red Army. As a result, insurance companies lost control of their assets and claimants were largely precluded from making claims on pre-war policies. The speed and mechanics of nationalization varied by location, but the effect for claimants was the same.

After Joseph Stalin's death in 1953, some East European governments concluded agreements with the United States and other Western countries to compensate for losses suffered by former nationals now living in the West. These agreements provided for lump sum payments by the governments of these countries to the Western government in question; the former property-owners then applied to their own governments for redress. Although some Jewish insurance policy holders received payments through these plans, the lump sums provided by the East European governments were often not large enough to compensate adequately for the property lost.

Certainly, the only viable route toward achieving the result we all desire is through negotiation at this point. Eastern Europe went through a period of nationalization and liquidation post-World War II not as a matter of choice for many of these governments or peoples. Litigation here is not a promising route as I see it—there is no company to sue because one no longer exists. Given conditions at the time, and for these countries, it makes it a greater challenge for us to argue this as a matter of black and white. So this is why I see a negotiated outcome as the only one available.

*Question.* If litigation is not the best way to secure additional reparations for those who did not receive sufficient compensation or who were denied a claim through the ICHEIC process, what would you recommend?

Answer. As ICHEIC member companies and members of the German Insurance Association have agreed to continue to review claims for Holocaust-era insurance policies, under ICHEIC's relaxed standards of proof, individuals who believe they have a claim for an unpaid insurance policy should submit a claim to the appropriate company for review and assessment.

*Question.* Although ICHEIC has closed, some European insurers have said that they will continue to accept and honor legitimate claims. This implies to me that there are still survivors and families that have outstanding claims.

- In your opinion, why do you think these individuals were served earlier through the ICHEIC process?

Answer. I assume you meant to inquire about why these individuals who would apply now were not served through the ICHEIC process.

First though, I would note that European insurers said they would continue to accept and honor legitimate claims as part of their commitment to the ICHEIC process at ICHEIC's concluding meeting in March 2007, a commitment they reaffirmed in writing for former ICHEIC Vice Chairman Diane Koken before her February testimony to the House Financial Services Committee. All ICHEIC members believed that through our process we had captured the vast bulk of outstanding claims, given our extensive global outreach efforts and the several years our process had been open. That said, companies decided in the end to leave their doors open to additional possible claimants to come to them directly, after ICHEIC closed.

The additional claimants who have filed since might be those individuals who for one reason or another was out of reach of all previous communications and so failed to timely file. We also have situations, particularly with elderly claimants, because the ICHEIC process went on for several years, because some of the ICHEIC companies have been involved in litigation, and now, with this new legislation as well, where individuals who already have filed and been processed through ICHEIC may file a duplicate claim, not realizing that in fact they are likely to get the same answers they have received at an earlier time.

*Question.* If some people did not receive notice of the ICHEIC process, why do you believe that happened?

Answer. I cannot answer hypotheticals. I can only describe, again, the comprehensive nature of ICHEIC's outreach. From its inception, ICHEIC devoted great effort and significant resources to identifying as many potential claimants as possible and having them file a claim, even when these potential claimants lacked detailed information regarding their family's insurance coverage.

To do this effectively, ICHEIC sought to define the target audience. The challenge was that potential claimants could be found in all parts of the world. Working closely with the same experts who had conducted outreach for the Swiss Bank Settlement's Claims Resolution Tribunal, ICHEIC made extensive use of free and paid media. These outreach initiatives included a call center and grassroots efforts through global Jewish communal and survivor organizations and representatives of other victim groups (e.g. the Jehovah's Witnesses and the Roma and Sinti communities in Central Europe).

ICHEIC distributed packets to survivor communities and Jewish organizations that included press releases, posters, and guidance on how to request a claim form (through the 24-hour ICHEIC call center), and how best to complete the claim form. In addition to working with grassroots organizations, ICHEIC supported the U.S. insurance regulators' efforts to reach out to claimants and assisted claimants in filling out ICHEIC claim forms and understanding how their claim or claims would be handled.

To supplement its work with survivor and Jewish groups and the regulatory community, ICHEIC launched a global press and media campaign to publicize the process. ICHEIC ran ads in major and parochial media markets and capitalized on as much free media as outside institutions were willing to provide. It did this not only at the launch, but also when announcing the last deadline extension, alerting potential claimants via all means available including a live webcast with Chairman Eagleburger.

Thanks to the success of its outreach, ICHEIC received more than 100,000 claim forms from more than 30 countries in more than 20 languages in the five years that it accepted claims.

*Question.* What could be done in the future to help make certain that people do receive notice of a restitution process?

Answer. I would not add to ICHEIC's extensive efforts. We did everything we could have done.

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# APPENDIX II.—ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

## PREPARED STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM LOUISIANA

First, I would like to take a moment to thank the chairman and Senator Coleman for their work on this important issue. While I am normally ranking member on this subcommittee, given Senator Coleman's long time involvement and great work on this important issue, it is appropriate that he take the lead with Senator Nelson for this hearing.

I am particularly interested in what the experienced and knowledgeable witnesses that are testifying today may have to suggest to us as we look at ways to ensure that all Holocaust survivors and their families are provided fair compensation and a measure of justice for the atrocities visited upon so many innocents during the Holocaust era in the post-ICHEIC period.

There has been a great deal of work done by many dedicated people to get us to the point where we find ourselves today. Holocaust reparations, including compensation for unlawfully seized insurance policies, has transcended politics and national boundaries, bringing together governments, private companies, lawyers, and the organizations representing survivors of the Holocaust, and the families of those who no longer had a voice to speak out against the horrors committed against them. Their tireless work has helped restore millions in stolen and lost insurance funds to thousands of claimants.

But past successes do not necessarily imply that all of the work is finished. Each effort to obtain compensation for survivors and their families—actions taken by Western European governments in the immediate aftermath of the war; renewed efforts after the fall of communism in Eastern Europe; the ICHEIC process—has resulted in new information, new names, new leads, even as any outstanding claims are settled. And, while the ICHEIC process has been very helpful, we cannot allow ourselves to become complacent. We must be certain that everyone is given a voice and that as many claims as possible are settled.

As with all difficult issues, there are many views and opinions and proposals on how best to move forward. Working through archived policy records, particularly in light of destroyed and incomplete records and policies surrendered at the demand of the Nazis or cashed in as a last desperate measure, is a complicated matter that demands deliberate, careful consideration. We must be careful of unintended consequences, and we must ensure that any action taken here in Washington does not inadvertently limit progress or shut some individuals out of the reparations process at the expense of others.

And finally, through all of this, it is most important that we not lose sight of the reason we are here today—the survivors of the Holocaust, the victims, and their families. This is not a discussion just about numbers, cash values, or meeting some legal standard of proof of ownership. This is about ensuring that justice is served. The survivors of the Holocaust must not only receive fair compensation for seized insurance claims, but it is also our responsibility to make certain that they are treated with the dignity, respect, and sensitivity that they deserve. Just as it is our duty to ensure that the restitution process preserves and honors the memory of those who are no longer with us.

**Material Submitted by Organizations and Individuals in Support of HR 1746**

LETTER FROM MEMBERS OF THE FLORIDA CONGRESSIONAL DELEGATION TO ATTORNEY GENERAL JANET RENO

CONGRESS OF THE UNITED STATES,
*Washington, DC, October 25, 2000.*

Hon. JANET RENO,
*U.S. Attorney General,*
*Department of Justice, Washington, DC.*

DEAR MADAME ATTORNEY GENERAL: We understand that the Department of Justice has filed a brief in the Ninth Circuit Court of Appeals arguing that the California Holocaust Victims Recovery Act (HVIRA) would interfere with the Federal Government's role in dealing with outstanding insurance policies held by European insurance companies doing business in the United States. We are concerned about the serious implications this action has for the interests of Holocaust survivors and their heirs under Florida's Holocaust Victims Insurance Act. We believe that congressional action will be required to ensure meaningful recovery of insurance policies for Holocaust victims and heirs if the Courts agree with the Department's position. Therefore, we are seeking your views on our legislative proposals to protect and advance Holocaust victims' insurance claims.

We are concerned about the Department's position for several reasons. First, the U.S. Holocaust Asset Commission Act of 1998, Public Law 105–186, 112 Stat. 611 (1998), calls for the Commission to "take note of the work of the National Association of Insurance Commissioners (NAIC) with regard to Holocaust-era insurance issues, and to report on precisely the kinds of information the California legislation asked to be reported by the insurers. If the Justice Department is correct that the states cannot elicit the information we have sought through the NAIC, then the United States has effectively lost all leverage in its efforts to account for one of the largest categories of theft from Holocaust victims.

We are also concerned because, under present circumstances, various international efforts have not effectively advanced holocaust survivors' claims to unpaid insurance policies. Recent reports from NAIC members concerning the International Commission for Holocaust Era Insurance Claims (ICHEIC) reveal a very disturbing situation. Companies that are members of ICHEIC have approved fewer than 10% of the "strongest" claims submitted by State Insurance Commissioners under the "Fast Track" process. Instead of applying "relaxed" standards of proof as called for in the founding Memorandum of Understanding (MOU) that established the commission, the companies (who, we are surprised to learn, make the initial decision themselves), are in fact, applying very stringent standards.

Under the "regular track," the ICHEIC has received approximately 47,000 claims. As of August 31, only 10,700 of these had been distributed to the companies. The companies have made a total of 38 offers under the regular track program so far, and have rejected over 500 of these claims. Companies have paid out between $2 million and $3 million in claims so far, a minuscule fraction of the billions owed. This figure is low even in comparison to the amount of money the companies and the ICHEIC have spent on staff, travel, and the like.

The ICHEIC has also apparently failed to deliver so far on basic elements of a valid process. After 20 months and the expenditure of untold millions of dollars in administrative expenses, there is no appellate process in place and no information on how the ICHEIC auditing process is being used to insure a thorough and neutral review of the sweeping denials. Furthermore, the U.S.-German Executive Agreement establishing the German Foundation Fund has further endangered the viability of these claims by calling for the dismissal of class action insurance lawsuits before credible auditing and appeals processes are in effect.

If States are limited in enforcing their own legislative acts requiring insurers doing business in their states to disclose information about Holocaust-era policies, and providing various avenues of relief for claimants in their courts, then tens of thousands of American Holocaust survivors and their heirs will not be able to obtain meaningful information about family policies, much less recover the funds improperly withheld by these companies for so many decades.

ICHEIC does its work in secret so the public and even Congress are not aware of the status of its activities. We have also been very disturbed to learn that even the State Insurance commissioners who serve on the ICHEIC believe they do not participate in important ICHEIC decisions. We are concerned that the Justice Department is enabling a nontransparent process controlled by insurance conglomerates with huge exposure and influence to become the de facto substitute for effec-

tive state regulation of insurance claims, in the tradition of the McCarran-Ferguson Act.

Perhaps of greatest concern is that the disclosures of policyholder information, which was to be the central mission of the ICHEIC, and which the California and other state laws are designed to facilitate, has not occurred in a significant way. After nearly 2 years, an unacceptably small number of insurance policyholder names have been disclosed to facilitate the filing of claims. Yet the Department of Justice says, and we must face the possibility that the Courts may agree that States cannot require companies with business links in their states to disclose such crucial information which Holocaust victims and their heirs have virtually no other means to obtain.

Consequently, we are planning to move ahead with legislation to ensure that insurers are held accountable, and that survivors and heirs are compensated for policies sold to individuals who became victims of the Holocaust. Enclosed are early versions of two bills many of us sponsored or supported, the Holocaust Victims Insurance Act (H.R. 126), and the Justice for Holocaust Survivor Act (H.R. 271), for which we would like your comments in light of current developments.

Sincerely,

Signed by the following Members of Congress: Peter Deutsch, Ileana Ros-Lehtinen, Robert Wexler, Lincoln Diaz-Balart, Carrie Meek, Mark Foley, Alcee Hastings, Clay Shaw.

STATEMENT SUBMITTED BY SIDNEY ZABLUDOFF

Thank you for allowing me to present this written testimony on Holocaust era insurance restitution after the International Commission of Holocaust Era Insurance Claims (ICHEIC). 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 of the stolen property and other assets has been returned through 2007.[1]

In case of life insurance held by Holocaust victims the results are similar. Up to the start of ICHEIC in 1998 some 20 percent of the minimum fair value of policies was paid. During ICHEIC's 10 year effort only 3 percent was added. Shown below are the percentages of outstanding amount paid during the ICHEIC years by participating insurance companies and countries:

| | |
|---|---|
| Allianz | 1 |
| AXA | 2 |
| Generali | 6 |
| Winterthur | 1 |
| Zurich | 3 |
| Austria | 3 |
| Germany | 5 |

Two bold actions could be taken to help rectify this sizable and unconscionable shortfall. They are passing HR 1746 and ensuring that the remaining unpaid stolen assets are used to assist needy Holocaust survivors.

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 $18 billion in 2007 values. It is conservative because it uses the 30 year U.S. Government bond yield to move from the pre-Holocaust dollar value to the 2007 value, whereas insurance company portfolios earn a much higher yield because they contain stocks, corporate bond, and real estate. It also should be noted that my estimates of pre-Holocaust policy values 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 minimum 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, less than a quarter of the minimum fair value of outstanding policies was paid during the post-war and ICHEIC years.

A welcomed first step toward increasing that percentage has been proposed. That is all ICHEIC companies and the German insurance association (GDV) presumably have agreed to accept further claims using the ICHEIC valuation undertaken by a NY State office. But as discussed on page 4 there remain many questions about the

[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 of JCPA.org. On the home page and JCPA projects click on "Jewish Political Studies" and look for the date and title of the article.

effectiveness and fairness of ICHEIC rules, valuation calculations, and its claims process. Given these shortfalls, why shouldn't claimants who have not signed a release when they settled their claims be able to take their cases to court? this is not a class action suit in which all claimants are paid a specified amount. Even in these cases, individuals are allowed to choose whether they join the class action suit or take separate actions. Most lawyers will not take cases in which the claimant lacks evidence. Even for those tat do so, the judge would dismiss the case as frivolous. The bottom line is why shouldn't claimants trying to recover Holocaust era insurance policies have the same judicial rights as most others. That's what HR 1746 provides.

*A number of key issues also remain:*

- Germany insisted upon a method to determine a policy's current value that 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 European country was paying, it would have paid ICHEIC claimants about $500 million rather than the $74 million it actually paid.

  Calculating the current value of Holocaust era policies in dollars is necessary since the dollar (along with Swiss franc) is the only major currency that did not undergo substantial turmoil in the post World War II years. Indeed, the Foreign Claims Commission of the United States provides a strong precedent to convert foreign currencies into dollars at the time of confiscation. As such, it excludes currency changes that occurred 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 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 2.4 Reichsmarks for 1 United States Dollar . . ."[2]
- The east European valuation rate set by ICHEIC amounts to only about one-third of the conservative realistic current value. This rate reflects the companies' argument 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 reimbursed 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 amount to $2 billion in 2007 prices.

[2] Foreign Claims Settlement Commission of the United States: Report to Congress for the period ending June 30, 1961; page 168.

- 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 $172 million (2007 prices) still owed by non-ICHEIC French companies to Jewish life insurance policyholders were paid by the Commission.
- In all, for Belgium, France, Holland and Switzerland there is a lack of information of how much was paid in life insurance claims between 1945 and 1997 and during the ICHEIC years.
- Generali states 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.
- 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 cast 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 reason 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 8 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 amount 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 date indicate their number will diminish sharply during the next 10 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 10 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 and extraordinary event such as the Holocaust.

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[3] *In re* Assicurazioni Generali S.p.A. Holocaust Ins. Litigation, 228 F. Supp. 2d 348, 356-57 (S.D.N.Y. 2002).

STATEMENT SUBMITTED BY THE ORGANIZATION OF FORCED LABORERS UNDER THE NAZI OCCUPATION, *Tel-Aviv, Israel*

Our organization unites and represents Holocaust survivors, children and grandchildren of survivors living in Israel. Wee have learned from our American peers and relatives about the initiative undertaken by the U.S. Congress to provide the help, which is desperately needed by our community 60 years after the end of WWII.

The members of the U.S. Senate Foreign Relations Subcommittee on Democracy and Human Rights will take up shortly the issue of insurance policies that were sold to our families prior to WWII but which remain unpaid. Today, over $17 billion remains in the hands of global insurance companies who never paid our parents, grandparents, aunts, and uncles for policies they purchased in good faith at the time of terror in Europe.

We are signing this petition because we believe that the U.S. Congress will rectify this injustice. Although we are not American citizens, we understand that the U.S.A. has always been the leading force to rely upon for the implementation of justice through all the years from the victory over the Nazis in WWII until today. It is our belief that the esteemed Senators and Representatives of the U.S. Congress will continue this course and support the case of the Holocaust survivors in time of need.

HR 1746 would require insures who sold policies to European Jews before WWII that do business in the U.S. to open their records to survivors and heirs. It would also ensure that Holocaust survivors and heirs have the access to the United States courts to vindicate their insurance claims if the companies refuse to settle. The Holocaust survivor leaders who have testified in Congress have made a compelling case for this law.

The time has come for us, the survivors and the next generations, to be heard.

We know there is much discussion about ICHEIC in Congress. To us, this is irrelevant. ICHEIC helped some but was a bitter disappointment for thousands here in Israel. There is much sadness and even anger here among survivors because of the way the ICHEIC treated so many of us. We were in most cases blocked from information, given broken promises, and few of us had confidence we received the truth. We believe Congress should focus on the insurance companies and on the survivors and legal heirs.

We respectfully request that the United States Congress side with us, the victims, and our families. We, and our children and grandchildren, as legal heirs, are entitled to a full accounting and compensation for the companies' financial crimes. No one who profited from the Holocaust should be allowed to be the heirs of our loved ones.

Time is very much against us. Far too much time has elapsed already. Too many survivors have already passed away in frustration and anger.

Please support the survivors and second generation in of search for justice. Please ask the Senate leadership to pass a counterpart to HR 1746 so that this law will be obeyed by the insurance companies who are reluctant to part with the victims' monies. We are counting on you.

DAVID GRINSTEIN,
Chairman.
SHOCHET MOSHE,
Member.
MORDECHAI HARELI,
Member.
HANNA HARELI,
Member.
ZIGMOND BRILL,
Member.
MATHER DAGAN,
Member.

STATEMENT SUBMITTED BY GENERATIONS OF THE SHOAH INTERNATIONAL (GSI)

PETITION: HOLOCAUST ERA INSURANCE CLAIMS

Please support Holocaust survivors and their descendants search for justice.

Soon members of the U.S. Senate Foreign Relations Subcommittee on Democracy and Human Rights will take up the issue of insurance policies that were sold to our families prior to WWII but which remain unpaid. Today, over $17 million remains in the hands of global insurance companies who never paid our parents, grandparents, aunts, and uncles for policies purchased in good faith at a time of terror in Europe.

HR 1746 would require insurers who sold policies to European Jews before WWII that do business in the U.S. to open their records to Holocaust survivors and heirs and ensure access to United States courts should settlements not be achieved. The Holocaust survivor leaders who have testified in Congress have made a compelling case for this law.

The International Commission for Holocaust Era Insurance Claims, or ICHEIC, was created by the insurance industry in 1998 to sidetrack legislation similar to HR 1746. When ICHEIC closed its doors in March of 2007, it had paid less than three percent (3%) of more than $17 billion owed to Holocaust victims' families. this result cannot be acceptable.

The time has come for the survivors and the next generations to be heard. We ask only for a full accounting of what was stolen from loved ones and are signing this petition because we believe it is now up to Congress to rectify this injustice. We implore you, our elected Senator and Representatives, to support survivors in their time of need.

We ask that Congress require the companies to disclose their records to survivors and/or their legal heirs, and to disgorge their ill-gotten profits. Those who profited from the Holocaust should not be allowed to be the heirs of murdered loved ones.

Time is very much against us; far too much time has elapsed already. Too many survivors have passed away while awaiting resolution.

Please support survivors and their descendants in the search for justice. Please ask the Senate leadership to introduce and pass a counterpart to HR 1746 so we can make this the law of the land with no further delays. We are counting on you.

[This petition was signed by 72 individuals from the New Jersey/New York area. The original signature pages have been retained in the committee's permanent files.]

STATEMENT SUBMITTED ON BEHALF OF THE DAVID FAMILY, MILWAUKEE, WI

FLANNER, STACK, FAHL & BAGLEY, LLP,
Attorneys and Counselors at Law,
*Brookfield, WI.*

*May 1, 2008.*

Hon. RUSSELL FEINGOLD,
506 Hart Senate Office Building,
*Washington, DC 20510-4904.*

DEAR SENATOR FEINGOLD: I represent the Estate of David David whose family includes Holocaust survivors. Mr. David's widow and children are your constituents. Mr. David passed away in 2004. His great uncle, Aron Sanel Schapira, was his maternal grandmother's brother. Mr. Schapira lived in what at the time was Poland but is now a part of the Ukraine Republic. Mr. Schapira ran a business and so had purchased insurance to protect both his business and his family. The insurance was purchased from the Italian insurance company Assicurazioni Generali S.p.A. ("Generali"). Mr. David's children are the only known surviving members of this family. Many of the others perished in the Holocaust.

In the mid 1990s, when the area where he grew up became safe for travel by Jews, Mr. David travelled to the area of his birth and the place where Mr. Schapira had lived. Through a person he knew in that area, Mr. David learned that his great uncle kept several valuables stored in the walls of the house where he had lived. Storage in this fashion was common at that time and place. The house was still standing and occupied when Mr. David visited and so, Mr. David asked his acquaintance to retrieve his great uncle's items. The items retrieved included a life insurance policy that Mr. Schapira had purchased in 1920. The terms of the policy provide for the payment of benefits to the bearer of the policy and Mr. David and his family are in possession if it.

Mr. David knows that his great uncle was alive at the outbreak of World War II.

Efforts by Mr. David to file a claim for benefits proved futile even though every effort was made to collect what was due after the catastrophe suffered by his family. His contacts with Generali proved futile.

Mr. David then filed a claim with the International Commission for Holocaust Era Insurance Claims (ICHEIC) on March 20, 2001. Notwithstanding ICHEIC's rules to respond within ninety (90) days, ICHEIC response was dated December 22, 2006 offering him $1,000.00. Generali also responded to him by letter dated May 25, 2005 and denied the claim because it claimed the policy left its portfolio prior to 1936.

Mr. David then decided to pursue his rights in court but the courts have said that non-official executive branch statement of interest revoked his access to U.S. Courts. As one who was personally touched by the Holocaust, he was mystified and hurt to witness how the American justice system came to such a confusing and illogical result. It is a sad day for American justice for Mr. David to have passed away during this fight of his for simple justice. We believe the District Court is wrong and are pursuing the claim of the David family in the Second Circuit Court of Appeals.

There is now legislation pending in Congress that will remove all doubt and require that insurers who sold policies to Jews before WWII open their records and be accountable in U.S. Courts for failing to honor the policies of Holocaust victims. This is no small problem. Over 800,000 life insurance policies of European Jews were in force at the beginning of WWII with an unpaid value today of $17 billion. In fact after nine years ICHEIC has only succeeded in paying a tiny fraction of the total. It paid fewer than 15,000 policies, and less than 3% of the value ($260 million). However well-intended the process, it failed.

Next week the Senate Subcommittee on International Operations and Organizations, Democracy and Human Rights of the Senate Foreign Relations Committee will hold a hearing on the Holocaust insurance situation. I am writing to ask that you take an active role in assisting Holocaust survivors recover what the courts have inexplicably denied them - the basic right to sue an insurance company doing business in this country that failed to honor an insurance policy it indisputably sold to the victims of the Holocaust. Although Mr. David does not know when Aron Schapira died or the circumstances of his death, he does know that he was alive at the outbreak of World War II. This is when Mr. David left his home and began his journey to America.

I also am asking that you sponsor and seek immediate passage of Senate legislation mirroring HR 1746, the Holocaust Insurance Accountability Act of 2007, introduced by Congresswoman Ileana Ros-Lehtinen and Congressman Robert Wexler. There are several dozen co-sponsors in the House, and it passed the House Foreign

Affairs Committee on unanimous consent at the behest of the late Chairman Tom Lantos.

The bill would allow survivors and heirs to bring an action in the U.S. Courts against insurers who fail to honor a policy issued before the Holocaust. The courts so far have held that Executive Branch statements supporting ICHEIC preclude U.S. citizens such as Mr. David from being able to sue an insurance company that took advantage of the Holocaust to keep money paid by Mr. David's family member in good faith prior to WWII. This is shocking enough, but the courts have also sited the fact that so far Congress has been silent on the question. So this is Congress's chance to define Holocaust survivors' rights to make claims in court against the insurers in question. We cannot believe that our elected representatives would accept such a denial of rights to a class of citizens—any citizens but certainly not Holocaust survivors - who only want the companies to pay what they owe.

HR 1746 will also require insurers doing business in the U.S. who sold policies in pre-war Europe to publish its policyholders' names from that period. Unfortunately, ICHEIC's publication of names was voluntary, and woefully incomplete. As an example the name of Aron Sanel Shapira does not appear on any list of policy holders supplied by Generali. Only the name "A Schapira" appears notwithstanding that Generali has this man's full name. Less than 20% of the names of policy owners from Eastern Europe were published. Full disclosure, under a legal requirement, is a must so all families can learn about their families' rights.

How can Congress stand by silently in the face of this result when we hear so much rhetoric about learning the lessons of the Holocaust? Why should the corporations who profited from that great crime, who do business in the U.S. today, be allowed to retain this unjust enrichment? It is time for all institutions including Congress to hold the insurers accountable for their profiteering in the Holocaust.

The David family and I look forward to working with you and your office on this issue.

Sincerely,

THOMAS R. FAHL.

**Material Submitted by Organizations and Individuals in Opposition to HR 1746**

STATEMENT SUBMITTED BY THE ANTI-DEFAMATION LEAGUE, B'NAI B'RITH, AND OTHERS

*May 2, 2008.*

Hon. BILL NELSON, *Chairman,*
Committee on Foreign Relations,
Subcommittee on International Operations and
Organizations, Democracy and Human Rights,
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The undersigned organizations have been active in efforts to secure a measure of justice for survivors of the Holocaust and appreciate the ongoing work of the United States Congress to highlight and defend the interests of Holocaust survivors.

In advance of the May 6th Subcommittee on International Operations hearing on Holocaust-era insurance restitution, we write to express the opinion that House Resolution 1746, the Holocaust Insurance Claims Accountability Act, would not be helpful to these efforts. Passage of H.R. 1746 would also undermine the credibility of the broader effort by the U.S. Government and others to resolve these problems.

The process established by the International Commission on Holocaust Era Insurance Claims (ICHEIC) identified and paid over $300 million in insurance claims to tens of thousands of claimants and recovered additional funds for home care and other social services benefits for survivors worldwide.

In addition to all the claims that have already been recognized and paid, the companies which participated in ICHEIC have made it clear that they will continue to process Holocaust-era claims received after the close of ICHEIC and they are currently doing so.

Passage of the legislation would jeopardize critical ongoing negotiations that are of tremendous importance to thousands of needy Holocaust survivors in the U.S. and around the world.

We welcome the commitment that Congress has demonstrated to this issue and we will be glad to work with the Congress on constructive ways to continue to help survivors and their families.

Sincerely,

ANTI-DEFAMATION LEAGUE,
B'NAI B'RITH INTERNATIONAL
CONFERENCE ON JEWISH MATERIAL
CLAIMS AGAINST GERMANY,
RELIGIOUS ACTION CENTER OF REFORM
JUDAISM,
WORLD JEWISH CONGRESS.

STATEMENT SUBMITTED BY RABBI ANDREW BAKER OF THE AMERICAN JEWISH COMMITTEE, DEPARTMENT OF INTERNATIONAL JEWISH AFFAIRS

RABBI ANDREW BAKER, *Director,*
American Jewish Committee, Department
of International Jewish Affairs,
*Washington, DC.*

*May 1, 2008.*

Hon. BILL NELSON,
*U.S. Senate, Washington, DC.*

DEAR SENATOR NELSON: 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 thing 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 pre-war 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 Issue 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,
*Director.*

STATEMENT SUBMITTED BY RABBI ABBA COHEN OF AGUDATH ISRAEL OF AMERICA

RABBI ABBA COHEN, *Director and Counsel,*
AGUDATH ISRAEL OF AMERICA,
*Washington, DC.*

*May 2, 2008.*

Hon. BILL NELSON, *Chairman,*
Subcommittee on International Operations,
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN NELSON: We write on behalf of Agudath Israel of America to express our views on H.R. 1746, the "Holocaust Insurance Accountability Act of 2007." The Subcommittee on International Operations is expected to take up the measure early next week.

Founded 86 years ago, Agudath Israel is the national Orthodox Jewish organization affiliated with Agudath Israel World Organization (AIWO). Among our activities—both here and on the international scene—is to protect the rights of those who survived the Nazi horror and to promote efforts to obtain a measure of justice on their behalf. AIWO has been an active member of the Conference of Jewish Material Claims Against Germany and the World Jewish Restitution Organization, umbrella organizations that for decades have been in the forefront of advocacy for Holocaust survivors.

Agudath Israel takes note of the steps already taken to address the matter of unpaid Holocaust era insurance policies. We are concerned that, while some claimants may benefit from the proposed legislation, many others will be hurt. The original agreements yielded commitments—including by the U.S. Government—that subsequent, related lawsuits against the participating countries and companies would be discouraged. H.R. 1746, in effect, would reopen these previous agreements, putting at risk substantial funding which is critical for survivors in need around the world.

We applaud Congress for its well-intentioned efforts. However, those efforts might be more productively channeled to areas which to date have not been adequately addressed—particularly regarding property restitution in Central and Eastern Europe—rather than risk undermining agreements that have benefited so many.

Thank you for considering our views.

Sincerely yours,

RABBI ABBA COHEN.

STATEMENT SUBMITTED BY ROBERT A. SWIFT, ATTORNEY, KOHN, SWIFT & GRAF, P.C.

KOHN, SWIFT & GRAF, P.C.,
Philadelphia, PA.

*April 24, 2008.*

Hon. BILL NELSON, *Chairman,*
Subcommittee on International Operations,
*U.S. Senate, Washington, DC.*

Hon. BARNEY FRANK, *Chairman,*
Committee on Financial Services,
*U.S. House of Representatives, Washington, DC.*

DEAR SENATOR NELSON AND CONGRESSMAN FRANK: In connection with the upcoming May 6, 2008 hearing in the Senate on Holocaust Insurance Claims, I would like to offer my opinions regarding the efficacy of legislation. But for a previously scheduled business trip to Asia from May 2 through May 15, I would be willing to state my views at the hearing.

Let me mention my background that qualifies me to state the views herein. I was a lead litigator of Holocaust claims beginning in 1996, and a principal negotiator of settlements with the Swiss banks, Germany and Austria, as well as several other settlements. I am a lead counsel in the *Assicurazioni Generali S.p.A. Holocaust Insurance Litigation,* MDL No. 1374 (SDNY) in which a global class of Holocaust claimants has settled with Generali. I have been practicing law for 35 years and am regarded by my peers as a significant contributor to the development of modern human rights jurisprudence. Last month I argued the first human rights case to be heard by the Supreme Court.

I believe the proposed legislation will be detrimental, if not fatal, to the August 25, 2006 Settlement between the Class and Generali. That Settlement has been approved by the Federal Court although processing of the over 40,000 claims has been delayed by an appeal by six (6) claimants. On a daily basis I receive letters and e-mails from claimants anxious to have their claims processed, including many elderly claimants. Attached is an e-mail from a Maryland claimant who mentioned that the prompt processing of his claim was critical to him since he may be unable to pay the mortgage on his farm. *See,* attached.

The proposed legislation will vitiate the closure which is the *quid pro quo* for the compensation promised to the Class under the Settlement. To receive compensation, a victim of Nazi persecution (or heir) must be matched with an unpaid Holocaust era insurance policy that was in force after was started. The Class is defined as:

> All persons worldwide who (1) were (i) Holocaust Victims as defined, *infra,* and (ii) during the Class Period were (a) named in or were parties to any Insurance Policies as defined *infra,* including, but not limited to, the insured, beneficiaries and owners under such Insurance Policies, or (b) persons who succeeded to their right by operation of law or otherwise, including but not limited to heirs, distributees, legatees, and the like, or (2) persons claiming by, through, or in the right of any one or more of the foregoing persons (including but not limited to heirs, distributees, legatees, and the like), whether or not such claimants in this clause (2) are Holocaust victims; provided however, that "Generali Settlement Class" and "Releasors" shall not include persons (i) who have timely elected to be excluded from the "Generali Settlement Class," or (ii) who for any reason previously released any one or more of the Generali Group from liability in respect to the claims being compromised (whether such previous release was provided in connection with receiving compensation in respect of an Insurance Policy or for any other reason). The Class Period is January 1, 1920 through December 31, 1945. A "Holocaust Victim" means any person who was persecuted by the Nazis (or their allies or by persons acting in concert with them or pursuant to their direction) at any time on account of religion, sexual orientation, racial background, or political views, including but not limited Jews, Romani, homosexuals, and Jehovah's Witnesses.

The Settlement with Generali allows anyone coming within the broad definition of a class member to file a claim even if a prior claim submitted to ICHEIC was rejected. Worldwide notice was given to the Class, and the response was resoundingly supportive of the Settlement. The claims will be processed by Generali under U.S. Court supervision using databases created by Generali from the totality of its archival records. I have personally inspected Generali's archival records, its databases and the office where claims will be processed. Generali's personnel have con-

siderable experience in matching Holocaust Era policies gained from processing claims for ICHEIC.

In consideration for the compensation, Generali expects, and is entitled to receive, a release from the entire Class for Holocaust Insurance Claims. In this respect, the Settlement is no different from other class actions. However, the proposed legislation would eliminate a release for anyone not receiving compensation even though the claim was reviewed and no matching policy or other reason for nonpayment found. A reason for nonpayment would include that the policy was paid, was cancelled, or was not in force at the time war broke out. Generali retains a right to rescind the Settlement if the terms of the Settlement are materially altered. One could understand Generali exercising this right if the legislation forces it to litigate meritless claims for a decade or longer. the impact of rescission would be devastating for the international Class of over 40,000 who pinned their hopes on a prompt claims review process. Most lack the ability to litigate in the United States, the evidence to satisfy a court, or the fortitude to endure a decade or more of litigation.

The very elimination of releases for persons not receiving compensation from Generali is a central issue on appeal. Not surprisingly, the proponents of the legislation are also among the appellants. Congress should not intervene to resolve an issue which is pending in a federal appeals court. A decision on that issue is expected very soon since the Second Circuit Court of Appeals granted expedited status to the appeal, and briefing and oral argument are complete.

On a broader level, I do not believe that legislation to require foreign insurance carriers to disclose archival information and to create a federal cause of action is necessary or appropriate at this time. During the Clinton Administration, the Executive Branch played a major role in fostering settlements of Holocaust era claims with Swiss Banks, Germany and Austria which resulted in $7.5 billion being distributed to over 2 million persons. Insurance claims were prominent among them. ICHEIC, whatever its flaws, played a role in establishing standards for payment of Holocaust era insurance claims and a practical process for reviewing claims. Under its authority hundreds of millions of dollars was distributed to claimants from settlements reached with Germany and Austria. The European community will be offended by Congress revisiting Holocaust era insurance claims and creating a new remedy with a new statute of limitations regulating European insurance carriers. It expected that the settlement concluded would bring closure and the end of litigation against European companies.

Should you need me to elaborate on the opinions expressed herein I would be happy to do so.

Respectfully yours,

ROBERT A. SWIFT.

Enc:

Page 1 of 1

**Robert A. Swift**

**From:** [redacted]
**Sent:** Wednesday, April 23, 2008 12:07 PM
**To:** Robert A. Swift
**Cc:** [redacted]
**Subject:** please follow up re: pending claim with Generali

Dear Mr. Swift:

Please follow up with Generali re: a Hoocaust Claim I submitted on December 20, 2007.

My name is Charles H. Roth, date of birth: February 5, 1958, [redacted]
USA. Phone number: [redacted]. The claims would be under Karl, Charles, Henry or Helen Roth.

Please confirm receipt of claim and if available, amount(s) forthcoming and approximately when to be received.
We are in a dire situation currently and are in great danger of losing our home of 24 years.

Please advise as soon as possible and thank you very much for your cooperation in advance.

Sincerely,

Charles H. Roth

E-mail from Holocaust Insurance Claimant (addresses removed prior to publication).

STATEMENT SUBMITTED BY WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.

WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.
Attorneys & Counsellors at Law,
*Cincinnati, OH.*

*May 1, 2008.*

Hon. BILL NELSON, *Chairman,*
Subcommittee on International Operations,
*U.S. Senate, Washington, DC.*

DEAR SENATOR NELSON: I am writing to express my serious reservation with H.R. 1746, the Holocaust Insurance Claims Accountability Act, which is presently pending before the Senate Subcommittee on International Operation and Organization, Democracy and Human Rights.

Since 1998, I and my law firm, Waite, Schneider, Bayless & Chesley, have worked with and represented (*pro bono*) the organized Jewish world—the Conference on Jewish Material Claims Against Germany, the World Jewish Congress and the World Jewish Restitution Organization—with respect to their unceasing efforts to obtain a measure of justice for Jewish victims of Nazi persecution. It has been our honor to represent those organizations, and to work with and on behalf of Holocaust survivors worldwide, in the *In re: Holocaust Victims' Assets (Swiss Banks) Litigation,* in the *In re: German and Austrian Banks Holocaust Litigation,* in *Rosner v. United States* (Hungarian Gold Train Litigation), in conjunction with the DM 10 billion German Economic Foundation Initiative—"Remembrance, Responsibility and the Future," and in conjunction with the Austrian Funds—"Reconciliation, Peace and Cooperation" and the General Settlement Fund. We have additionally served as a advisor to our clients with respect to the International Commission on Holocaust Era Insurance Claims (ICHEIC).

Having carefully considered H.R. 1746, it is my considered opinion that the proposed legislation would not only jeopardize the many agreements that we worked so very hard to achieve, but would also impair ongoing and future negotiations for funding for Holocaust survivors around the world. The legislation is extremely problematic for several reasons.

First, and perhaps most importantly, H.R. 1746 will generate unrealistic expectations among survivors that will not be met. In short, the expectation of survivors will be that creation of a legal "cause of action" will guarantee a payment—a payment that will not be forthcoming, at least not without protracted and expensive litigation, rife with incomprehensible legal obstacles, and certainly not within their lifetimes. In short, while tens of thousands of survivors' expectations of a meaningful benefit will be raised, only a handful, if any, would actually benefit.

Second, the legislation will undermine certain undertakings in previous agreements, particularly regarding the "legal peace" afforded those countries and companies participating in the process. The legislation would have the effect of reopening previous agreements, which will seriously jeopardize ongoing negotiations with Germany, among others, thereby putting at risk hundreds of millions of dollars in crucial funding that is required *now* for the neediest Holocaust survivors in their waning years.

Third, the legislation will interfere with the continued processing of claims by ICHEIC, under which participating companies have already acknowledged their willingness to continue to process claims that they continue to receive.

Finally, the legislation is overbroad in calling for the publication of all policies, paid and unpaid, without any system to determine if the policyholders are Holocaust victims. Such publication will likely produce lists of many millions of policies, including those belonging to non-Jewish policyholders in Europe during the relevant period. Needless to say, this too will create unrealistic expectations, in addition to yielding little new information beyond that which has already been developed and published by ICHEIC regarding Jewish policyholders who were victims of Nazi persecution.

In light to the foregoing, I strongly urge you and your Committee to give serious consideration to and weigh the many adverse consequences of H.R. 1746.

Very truly yours,

STANLEY M. CHESLEY,
*Waite, Schneider, Bayless & Chesley Co., L.P.A.*

## APPENDIX III.—MATERIAL SUBMITTED BY ANNA B. RUBIN, DIRECTOR, HOLOCAUST CLAIMS PROCESSING OFFICE, NEW YORK STATE BANKING DEPARTMENT

**Section 1.—New York State Banking Department HPCO Annual Report**

# NEW YORK STATE BANKING DEPARTMENT HOLOCAUST CLAIMS PROCESSING REPORT

**As Required by Section 37-a of the Banking Law**

Report to the Governor and the Legislature

January 15, 2008

Richard H. Neiman
Superintendent of Banks
New York State Banking Department

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**1. Background**

For 10 years the State of New York has played an integral role in helping individuals of all backgrounds obtain a measure of just resolution for the theft of property during the reign of the Nazi regime. Banks, insurance companies, and private and public art collectors are now more willing to consider claims from Holocaust victims and/or their heirs whose property was looted, but the processes for filing such claims can be difficult to navigate. The Holocaust Claims Processing Office (HCPO) of the New York State Banking Department was created on June 25, 1997 to provide institutional assistance to individuals seeking to recover assets lost due to Nazi persecution during the Holocaust era. The mission of the HCPO is threefold:

1. recover assets deposited in banks;
2. recover proceeds of unpaid insurance policies issued by European insurers;
3. recover art lost, looted, or sold under duress.

Individual claims are assigned to members of the HCPO's highly trained staff who work with claimants to collect the most detailed and accurate information possible. Using unique investigative skills, research expertise, and their command of foreign languages, staff members corroborate information provided by claimants with research in archives, libraries and other resources. The documentation which the HCPO secures on behalf of claimants has proven instrumental in substantiating their claims.

The HCPO then submits claim information to the appropriate companies, authorities, museums or organizations with the request that a complete and thorough search be made for the specified asset(s). To ensure rigorous review of these inquiries, the HCPO maintains regular contact with entities to which it submits claims. Staff members regularly update claimants on the status of their claims. Claimants may contact the HCPO with questions at any time, knowing that they have a committed advocate who will be responsive to their concerns. Because the HCPO is highly respected for its service and sensitivity to the issues, claimants and other agencies often refer individuals to the HCPO for assistance with claims they filed independently.

Once an agency has completed its review of a claim and reaches a determination, the HCPO reviews the decision to ensure that it adheres to that agency's published processing guidelines. Since claimants may lose track of all the claims they have submitted and since each agency has unique and often complex guidelines, the HCPO helps claimants to understand these guidelines in order to interpret decisions.

In the event that a claimant wishes to appeal a decision, the HCPO guides claimants through this procedure as well and performs additional research when

possible. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various release and waiver forms and by following up with the claims agency to confirm payment.

The HCPO has worked directly with almost all restitution and compensation processes in existence today. (*See* Appendix Figure 1). Indeed it is fair to say that, at one point or another since 1997, nearly all roads to restitution and compensation have converged at the HCPO. The experience of the HCPO has been that the knowledge and expertise of its staff has alleviated burdens and costs often incurred when individuals pursue claims on their own. Successes are a direct result of the importance attached to and attention paid by the HCPO to individualized analysis.

**2. Overview of Operations and Accomplishments**

From its inception through December 2007, the HCPO has responded to more than 13,000 inquiries and received claims from 4,775 individuals from 45 states and 38 countries. (*See* Appendix Figures 2 and 3). The HCPO has successfully closed the cases of 877 individuals in which either an offer was accepted, or the assets claimed had been previously compensated via a post-war restitution or compensation proceeding, or otherwise handled appropriately (i.e. in accordance with the original accountholders' wishes); the claims of 3,898 individuals remain open. The combined total of offers extended to HCPO claimants for bank, insurance, and other asset losses amounts to $114,659,898. (*See* Appendix Figure 4).

The HCPO anticipates that claims will require monitoring through the end of 2008 and beyond given that: the government of Israel recently established a claims processing entity for accounts published in 2005; the US House of Representatives Financial Services Committee will be holding a hearing during the first quarter of 2008 to review the proposed Holocaust Insurance Accountability Act 2007 (HR 1746); on January 7, 2008 a Fairness Hearing was held to consider final approval of a proposed class action settlement in the case of *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation* and the longstanding appeal in that case still requires resolution; the German Ministry of Culture announced the creation of a new office entitled the Institute for Museum Research that will help museums, libraries, and archives identify items that were taken from the rightful owners during the Nazi period. Ultimately, therefore, the time required for submitting and processing claims is determined by circumstances beyond the HCPO's control.

**3. Overview of Bank Claims**

Of the claims filed with the HCPO to date, 2,338 individuals (from 42 states and 35 countries) submitted claims for assets deposited in banks referencing 3,387 individual account-holders. The HCPO has closed the claims of 457 individuals;

1,881 individuals currently have open bank claims which have been submitted into a number of parallel claims processes outlined below. To date, offers extended to HCPO claimants seeking the return of bank assets total $79,535,072. (*See* Appendix Figure 5).

***3.1 Claims Resolution Tribunal, Switzerland***[1]

On February 5, 2001, a claims process was established to provide Nazi victims or their heirs with an opportunity to make claims to assets deposited in Swiss banks in the period before and during World War II. The Claims Resolution Process provided the first opportunity for Nazi victims and their heirs to have their claims to assets deposited in Swiss banks adjudicated by an impartial body, the Claims Resolution Tribunal (CRT). The claims process was triggered by the publication of a list of 21,000 names of account owners, who were probably or possibly victims of Nazi persecution. The deadline for submitting claims related to the 2001 list expired December 31, 2001.

On January 13, 2005, the CRT published a second list of approximately 2,700 names of account owners and 400 names of power of attorney holders. The 2005 list contained previously unpublished names that were: identified by the Independent Committee of Eminent Persons auditors, who conducted a three-year investigation of Swiss banks, as possibly belonging to Holocaust victims; registered with or identified by Swiss authorities and the subject of post-war international agreements between Switzerland, Poland and Hungary; and names located by the CRT's own archival research. The deadline for submitting claims related to the 2005 list expired July 13, 2005.

On February 17, 2006, Chief Judge Edward Korman of the U.S. District Court of Eastern New York, who presided over the Holocaust Victims Assets class action litigation which resulted in the $1.25 billion Swiss bank Settlement Agreement and the creation of the CRT, approved the release of Plausible Undocumented Awards (PUA) to Deposited Assets Class claims. Recognizing the destruction of documents by the Swiss banks, the restricted access to the remaining records, and the ravages of war left many claimants without documentary evidence to prove the existence and ownership of a Swiss bank account, eligible claimants receive a one-time payment of $5,000.

As of the July 13, 2005 filing deadline, 1,810 HCPO claimants submitted claims to the CRT for resolution. To date, the CRT has offered 2,804 settlements on published accounts and 10,514 claimants have been approved to receive PUAs. Of the awards based on documentary evidence, 202 are to 175 HCPO claimants for a total of CHF 37,434,116 ($28,231,475) and 808 HCPO claimants have received PUAs for a total of $4,040,000; the combined total of all CRT awards to HCPO

[1] http://www.crt-ii.org

claimants to date is $32,643,375. The HCPO continues to assist the CRT with technical and historical research.

In addition to claims-related work, the HCPO also provides support to the Superintendent of Banks in his role as a member of the Special Advisory Committee to the CRT. Involvement in such projects depends on the questions before the Advisory Committee, which are unpredictable in both substance and nature. The HCPO has provided extensive assistance to the CRT and the Special Masters on a number of projects, including: coordinating and supervising the Initial Questionnaire Review Pilot Project, an effort that involved half the HCPO staff in a coordinating and supervisory function in addition to 26 bank examiner trainees; participating in the tests of the Total Accounts Database (TAD); assisting with the Swiss Banks' New York Agencies accounts frozen under the Trading with the Enemy Act in 1941; and locating heirs of Swiss bank account owners.

### *3.2 The German Foundation and the International Organization for Migration, Germany*[2]

On August 12, 2000, the German Foundation Act came into force, creating a German Foundation entitled "Remembrance, Responsibility and Future" to provide financial compensation to former slave and forced laborers and certain other victims of Nazi injustice. Pursuant to the German Foundation Act, a number of partner organizations were appointed to process claims. The International Organization for Migration (IOM) based in Geneva, Switzerland was designated to be the sole partner organization to process claims for property losses suffered as a result of direct participation of German companies. Total funds for the German Foundation amounted to DM10 billion and were made available in equal parts by the German Government and German companies.

The HCPO submitted 462 bank claims (predominantly Central and Eastern European) on behalf of 208 claimants to the IOM for settlement under the German Foundation Agreement. The IOM requested additional information from 183 claimants; negative decisions were issued in 332 cases and 112 appeals were filed. 132 claims received positive decisions with an aggregate award amount of €2,355,201 ($2,900,304[3]); in most cases, awards include compensation for non–bank assets. Awards were subject to a pro rata reduction, given that the funds available for property claims were not sufficient for all successful claims. Moreover, the HCPO has provided considerable technical assistance to the IOM with regard to historical research into pre-war and war-time Czech banks.

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[2] http://www.compensation-for-forced-labour.org

[3] The US Dollar amount is calculated based on the exchange rate at the time each award was received.

***3.3 Austrian General Settlement Fund and the National Fund for Victims of National Socialism, Austria[4]***

The National Fund, established by the Austrian parliament in 1995 to make amends to persons persecuted by the Nazis in Austria[5], oversees all compensation programs sponsored by the state of Austria, including the General Settlement Fund (GSF), a large-scale compensation process under which claims for a wide variety of assets are considered (e.g. bank accounts, liquidated businesses, real and movable property, etc.). The GSF was created pursuant to the Washington Agreement of January 17, 2001[6] and $210 million was allocated to the Fund, $25 million of which was earmarked for insurance policies.

As of the filing deadline of November 28, 2003, 364 HCPO claimants submitted applications to the GSF for adjudication. The HCPO continues to monitor these claims and conduct additional research. To date, 179 HCPO claimants have received decisions from the GSF, totaling $41,446,743 for bank related and other assets.

After the last pending class action lawsuit in the US was dismissed, the Austrian Federal Government announced on December 13, 2005 that "legal peace" had been obtained and the GSF was granted access to the $210 million promised under the Washington Agreement. Between the signing of the agreement in 2001 and the declaration of "legal peace" in 2005 the GSF was neither able to make use of the funds to pay claims nor was the GSF able to invest the money into an interest bearing account until such time that payments could be issued.

The declaration of "legal peace" paved the way for advance payments, equal to 10% of claims-based awards and 15% of equity-based awards, for eligible claimants who have already received decisions from the GSF. To date, 134 HCPO claimants are scheduled to receive advance payments. Awards are subject to a pro rata reduction, given that the funds available are not sufficient for all successful claims. At this time the GSF predicts that claimants will ultimately receive an additional 0-3% of claims-based awards and an additional 0-3% of equity-based awards.

The HCPO also continues to assist claimants with applications, processed by the National Fund, for confiscated apartment and small business leases and household property and personal valuables and effects. The current aggregate total amount

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[4] http://www.en.nationalfonds.org

[5] All Austrian survivors of Nazi persecution are awarded a symbolic payment of €5,087.

[6] The Governments of the Republic of Austria and the United States of America, Austrian companies, The Conference on Jewish Material Claims (including the Central Committee of Jews from Austria in Israel and the American Council for Equal Compensation of Nazi victims from Austria), The Austrian Jewish Community, entered into a joint Holocaust restitution settlement agreement.

secured for HCPO claimants stands at more than $1,169,000 initial payments and € 161,000 ($ 198,5297) top-up payments.

***3.4 Austrian Bank Settlement, Austria***

The Austrian Bank Holocaust Litigation Settlement was the result of a class action settlement that provided compensation to Holocaust victims and their heirs who suffered a loss due to the actions of the participating banks. In January 2000, the court approved the Austrian Bank Holocaust Litigation Settlement Agreement. In accordance with the Settlement Agreement, Austrian Banks paid a total of $40 million for the benefit of the members of the Settlement Class. In March 2000, Individual Claims Officers began reviewing the approximately 58,000 claims submitted by claimants, relying heavily on documentation provided by the claimants.

The HCPO monitored 240 claims submitted by 107 individuals citing bank accounts at Creditanstalt and/or a predecessor to Bank Austria that were submitted to the claims settlement process coordinated by Schlam, Stone and Dolan, a N.Y. law firm. The settlement process was marked by particular inefficiencies and lacked transparency. The HCPO received requests for additional information from the processors, but also requests for copies of previously submitted information and documentation.

Payments from the settlement were activated in the second quarter of 2003 and claimants reported 82 offers ranging in size from $1,000 to $182,250 (and one appeal) for a total of $1,672,812. The Department estimates the actual amount to be higher; however, meaningful estimates were impossible without more accurate information from the claims processors, who cited privacy concerns as a reason not to disclose award amounts. An agreement between the Austrian General Settlement Fund and Schalm, Stone and Dolan to share award information, to prevent duplicate payments and allow for top-ups, has enabled the HCPO to gain a clearer understanding of offers extended to claimants through this settlement. It is anticipated that additional information relating to these awards will become available as the GSF issues decisions.

***3.5 Commission for the Compensation of Victims of Spoliation, France[8]***

The French Commission for the Compensation of Victims of Spoliation (CIVS) was created by French parliamentary decree in 1999 in order to make reparations for spoliation of financial or material property that resulted from anti-Semitic legislation enforced during the occupation by either German authorities or the Vichy Government.

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[7] Currency exchange rate as of September 30, 2004, as this is when the second payment of 1,000 Euro was announced.

[8] http://www.civs.gouv.fr

The HCPO continues to review claims referencing losses that occurred in France to determine for which, if any, of the two parallel claims processes (documented bank accounts and/or material losses) they might qualify. CIVS no longer accepts undocumented claims for bank accounts. Deadlines for submission have been extended a number of times and are open-ended for documented bank claims and material losses. To date, the HCPO has submitted 128 claims that will need to be monitored through the life of the process and is aware of decisions to 40 claimants seeking the return of bank accounts in France resulting in $178,037 in payments; as well as payments to 54 claimants to compensate for non-bank assets looted in France amounting to €1,246,031 ($1,835,216[9] ) and $15,000, for a combined total of $1,850,216.

Moreover, the HCPO has assisted claimants whose parents were deported from France and who were orphaned as a result with their applications to the French government's compensation program for the orphaned children of deportees. Total payments secured to date amount to €1,920,857 ($2,829,134[10]).

***3.6 Enemy Property Claims Assessment Panel, London[11]***

In March 1999, the British Government set up a payment scheme so that victims of Nazi persecution could apply for compensation for the seizure of assets in the United Kingdom during the Second World War under the 1939 Trading with the Enemy legislation. The Enemy Property Claims Assessment Panel (EPCAP) was established, under the auspices of the Department of Trade and Industry (DTI), to evaluate such claims. The period for the submission of claims officially ended on September 30, 1999; however, more claims than expected were received and the final deadline was extended to August 31, 2004. Claims submitted to EPCAP after August 31, 2004, were considered on an *ad hoc* basis. The EPCAP Secretariat decided to stop referring new claims to the Panel as of May 1, 2006 and all claims received after that time were rejected on that basis. In September 2006, the HCPO was informed by DTI, that new cases will continue to be referred to EPCAP on an *ad hoc* basis.

The HCPO continues to work closely with EPCAP in London to settle 29 claims filed by HCPO claimants for assets seized by the British government. To date, 24 have been completed, resulting in 10 denials and 14 offers for a total of £125,011 ($249,68612).

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[9] Currency exchange rate as of December 31, 2007.
[10] Currency exchange rate as of December 31, 2007.
[11] http://www.enemyproperty.gov.uk
[12] Currency exchange rate as of December 31, 2007. The process of ascertaining the exchange rate at the time each award was received is currently underway.

***3.7 Shoah Foundation for Individual Bank Claims and the Shoah Foundation for individual Securities Claims, The Netherlands***

Two foundations, the Stichting Individuele Bankaanspraken Sjoa (SIB Sjoa or Shoah Foundation for Individual Bank Claims) and the Stichting Individuele Effectenaanspraken Sjoa (SIE Sjoa or Shoah Foundation for individual Securities Claims), were established as a result of an agreement between the Central Jewish Council (CJO), the Foundation Israel Platform and the Dutch banks who agreed to investigate the nature and amount of any outstanding credit balances of Jewish persecution victims remaining at Dutch banks.

The Dutch Banks (NVB) and the CJO commissioned PricewaterhouseCoopers to investigate the amount of any financial assets still outstanding, including unclaimed financial credit balances of persecution victims at banks in the Netherlands. The investigation yielded a list of 3,322 account holders whose credit balances were identified and could be claimed via the SIB Sjoa. The deadline for submitting a claim through the SIB Sjoa was December 31, 2002.

The SIE Sjoa compensated for: the shortfalls in the 1953 restoration of securities rights; the commissions received by the Puttkammer during the Second World War; and reimbursed for the changes to Jewish safe deposit box holders for breaking open their safe deposit boxes during the Second World War. The deadline for filing claims to the SIE Sjoa varied depending on the type of compensation being sought. The deadline for submitting claims to compensate for the shortfalls in the 1953 restoration of securities rights as well as the compensation for the commissions received by Puttkammer was December 31, 2002. The application to reimburse the charges assessed for breaking open safe deposit boxes had to be submitted by June 30, 2003. As the SIE Sjoa published a second list of safe deposit holders, an application related to this list could have been submitted to the Foundation until November 1, 2003.

The HCPO submitted 12 claims to the SIE Sjoa and/or the SIB Sjoa and is aware of only one award for a safe deposit box.

***3.8 The Jewish Community Indemnification Commission, Belgium[13]***

The Belgian Jewish Community Indemnification Commission (Buysse Commission) considers claims for assets originally belonging to the Belgian Jewish community, which were plundered, surrendered, or abandoned during the Second World War. The HCPO monitors 48 claims for accounts and securities held in Belgium. The Buysse Commission has reported receiving claims from more than 6,000 individuals. The Commission started processing claims towards the end of 2003,

[13] http://www.combuysse.fgov.be

giving priority to the oldest claimants. To date, 40 HCPO claimants have received a total of €345,148 ($444,116[14]).

On December 17, 2007 the Commission held its final meeting and issued decisions on all remaining claims. The Commission will now focus on ensuring that all applicants have received their decisions and payments.

Funds from the Buysse Commission that have not yet been distributed are used to fund the compensation program "Solidarity with the Jewish Victims of the Second World War in Belgium – Solidarity 3000" (Solidarity 3000) run by the Fondation du Judaïsme de Belgique. Claimants who had not submitted claims to the Buysse Commission prior to the September 9, 2003 deadline and/or who received less than €3000 for lost or stolen assets from the Buysse Commission, could be considered for payment from Solidarity 3000. The deadline for submitting a claim to Solidarity 3000 was June 30, 2006. To date 9 of the 17 HCPO claimants who filed Solidarity 3000 claims have received €19,826 ($26,734[15]).

***3.9 The Company for Locating and Retrieving Assets of People Who were Killed in the Holocaust, Ltd., Israel[16]***

The Company for Location and Restitution of Holocaust Victims Assets Ltd. (the Company) was established in the summer of 2006 in accordance with The Assets of Holocaust Victims Law (Restitution to Heirs and Endowment for the Purposes of Assistance and Commemoration (Assets Law) passed by the 16th Knesset in December 2005. The Assets Law was proposed and ratified following the work of a Parliamentary Inquiry Committee which investigated all aspects related to dormant bank accounts held in Israeli banks and other assets whose owners are presumed to have perished during the Holocaust.

The Company's primary purpose is to return the assets of Holocaust victims, or their fair value, to their original owners or heirs. To meet this goal the Company was empowered to locate and coordinate all Holocaust victim assets located in Israel and to undertake steps to locate the legal heirs to these assets. Finally, the Company was granted the authority to make use of all assets for which an heir is not found by a date set by the Assets Law.

In July 2007, the Company launched its website and published approximately 3,500 additional names and assets (the Parliamentary Inquiry Committee had previously identified nearly as many during their investigation) for a total of approximately 7,000 records of names and assets believed to have been owned by

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[14] The US Dollar amount is calculated based on the exchange rate at the time each award was received.

[15] The US Dollar amount is calculated based on the exchange rate at the time each award was received.

[16] http://www.hashava.org.il/eng

Holocaust victims. The launch of the website also marked the commencement of the restitution process to return these assets to the original owners or their heirs.

The HCPO has begun a comprehensive review of all files to determine which, if any, of the individuals who filed a claim with our office are eligible to submit an application to this process. Applications will be accepted by the Company until July 2008, claims submitted after this date will be addressed under a separate process. To date the HCPO has identified nearly a dozen assets that match information provided by several HCPO claimants, claims for the return of these assets are pending.

**4. Claims Conference's Goodwill Fund, Germany[17]**

Under the Goodwill Fund established by the Claims Conference Successor Organization, owners and/or heirs of unclaimed properties in the former German Democratic Republic (East Germany) have been able to apply for payments. The program was established for claimants unable to meet the December 31, 1992 deadline established by the Bundesamt zur Regelung offener Vermögensfragen[18]. In 2003, the Claims Conference posted on its website a list of original owners of such properties which have been awarded to the Claims Conference by the German Restitution Authority, or that are awaiting adjudication. Claims had to be filed by March 31, 2004. The HCPO is assisting 31 claimants with such claims; to date, eight HCPO claimants have received a total of €845,952 ($1,062,772[19]).

**5. Overview of Insurance Claims**

Of the claims filed with the HCPO to date, 2,290 individuals (from 41 states and 24 countries) submitted insurance claims referencing 3,378 individual policy-holders. The HCPO has closed the insurance claims of 400 individuals; 1,890 individuals currently have open insurance claims which are under review for imminent closure in light of the International Commission on Holocaust Era Insurance Claims dissolution. Claims for unpaid insurance policies have been submitted into a number of parallel claims processes described below. To date, offers extended to HCPO claimants seeking the proceeds of insurance policies total $27,988,441. (*See* Appendix Figure 6).

***5.1 International Commission on Holocaust Era Insurance Claims[20]***

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established with offices in London and in Washington D.C. in October 1998 by the

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[17] http://www.claimscon.org/?url=goodwill_main

[18] http://www.badv.bund.de

[19] The US Dollar amount is calculated based on the exchange rate at the time each award was received.

[20] http://www.icheic.org

National Association of Insurance Commissioners in cooperation with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. ICHEIC was charged with establishing a just process that would expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust. With the launch of ICHEIC's claims process in February 2000, the HCPO stopped taking new insurance claims, referring claimants to ICHEIC instead.

The HCPO submitted claims of 2,113 individuals to ICHEIC before the December 31, 2003 filing deadline. Offers extended to HCPO claimants through the ICHEIC processes amount to $22,058,716. In addition, ICHEIC issued humanitarian awards to claimants who filed claims that had only anecdotal information, did not name a specific insurance company, and for which no additional documentation could be found; 1,565 HCPO claimants received such awards, for a total of $1,745,000[21].

After transferring insurance claims to ICHEIC's London Office, the HCPO took on more of a monitoring role; however, monitoring thousands of claims through a complex process is a labor-intensive task. The HCPO worked very closely with the ICHEIC staff, participating in working groups providing critical assistance in this process and ensuring that claimants' concerns were adequately addressed.

In addition, the HCPO Director represented the US regulators on ICHEIC's Executive Monitoring Committee. In this capacity, the HCPO Director, at the request of the ICHEIC Chairman, participated in a review of ICHEIC's decision verification system, as well as the member companies' claims matching work. This review resulted in a number of recommendations for improvements, which were implemented by ICHEIC.

At ICHEIC's request, the HCPO assisted with reviewing claims eligible for payments from the humanitarian fund in connection with claims for insurance policies issued by European insurance companies that were either nationalized or liquidated after the Second World War and for which there are no present day successors. In order to facilitate this process, the HCPO invited a team of ICHEIC staffers to work side-by-side with HCPO staff in New York. After the review of approximately 8,000 claims and several payment tranches, the on-site ICHEIC team completed its task in June 2006 and has since disbanded.

On March 20, 2007 ICHEIC held its final meeting in Washington, DC at which time ICHEIC Commissioners adopted a resolution to dissolve ICHEIC on March 30, 2007. Subsequently, the NAIC International Holocaust Commission Task Force held its final conference call on March 26, 2007 and has also disbanded. During its seven years of operation, a total of $306.24 million was offered or awarded to

[21] Claimants and secondary claimants were eligible to receive the $1,000 payment; hence the total amount of 8a1 offers exceeds the $1,000 per claimant ratio.

48,000 claimants as a result of the ICHEIC process.

As of December 2006, all timely filed claims received a final decision through the ICHEIC process and all appeals were settled by March 29, 2007. The HCPO has completed a full-scale review of all HCPO insurance claims to ensure that claims submitted through the ICHEIC process received decisions and that these decisions have been properly recorded in the HCPO's database. Since completion of this review the HCPO has begun identifying and preparing insurance claims for closure.

***5.2 Austrian General Settlement Fund, Austria***

The GSF Law of 2001 created the legal basis for dealing with the financial claims of Holocaust victims. The Austrian Insurance Association and its member companies passed a unanimous resolution in April 2001 to contribute $25 million to the GSF. The GSF has assumed the task of processing the insurance claims of Holocaust victims and their heirs. As of the filing deadline of November 28, 2003, 364 HCPO claimants submitted applications to the GSF for adjudication. The HCPO continues to monitor these claims and conduct additional research. To date, 83 HCPO claimants have received decisions for unpaid insurance proceeds from the GSF totaling $3,579,494.

***5.3 Assicurazioni Generali S.p.A. Policy Information Center, Italy*** [22]

Three class action suits were brought against Generali[23] alleging that: (a) Generali withheld the value and/or proceeds of insurance policies sold to the Holocaust era victims prior to and during the Holocaust era; and (b) after the Holocaust, Generali refused to pay on the policies, did not disclose the nature and scope of its unpaid policies, and refused to identify or disgorge the value or proceeds of such policies.

After more than nine years of litigations, the lawsuits were dismissed with prejudice by the Court on October 14, 2004, principally on the ground that the claims asserted in the class actions were preempted by a Federal Executive Branch policy favoring voluntary resolution of Holocaust era claims through ICHEIC, rather than through litigation. Plaintiffs appealed the Court's decision to the United States Court of Appeals for the Second Circuit. While that appeal was pending, Plaintiffs entered into the Settlement Agreement on August 25, 2006. The Settlement Agreement was finalized and approved by the court on February 27, 2007[24].

The deadline for submitting a claim was March 31, 2007; however, claims based

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[22] http://www.nazierainsurancesettlement.com

[23] *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, No 1374 filed in the United States District Court for the Southern District of New York

[24] The Court conducted a hearing on January 31, 2007 to consider the fairness of the Settlement to all class members. After oral arguments, the hearing was continued until February 27, 2007 to permit the parties to amend the Settlement in light of the potential opening of the Bad Arolsen Archive in Germany. Subsequently, the parties agreed to amend the Settlement Agreement to create an extended deadline for claims based on documents obtained from the Archive.

on documents obtained from the Bad Arolsen Archive may be submitted no later than 6 months after the opening of the archive but no later than June 30, 2008. If the archive is not opened by May 1, 2008, the deadline for submission is 60 days after the opening, but no later than August 31, 2008.

In early October a three-judge panel of the U.S. Court of Appeals for the Second Circuit in New York said that Generali had failed to adequately notify its policyholders of the settlement and thus denied them an opportunity to object to the terms. The court ordered Generali to individually mail notices of the settlement to "all class members whose names are known" by the insurers within 60 days and scheduled a new hearing on the fairness of the settlement for early January 2008.

To date, the HCPO has submitted 42 claims on behalf of 19 claimants to the Generali Policy Information Center for resolution.

***5.4 The Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust***

At present there is no deadline for submitting a claim to the GTF and once the deadline has lapsed for filing claims with the PIC, we suspect that many claimants will turn to the GTF to address their claims. Approximately half a dozen HCPO claimants have claims filed outside of the ICHEIC process still pending with the GTF. To date, HCPO claimants who submitted claims to the GTF for settlement have received offers totaling $18,969.

***5.5 Holocaust Foundation for Individual Insurance Claims, The Netherlands***

The Sjoa Foundation was established on November 9, 1999 to assess claims for insurance policies taken out with companies that are members of the Verbond van Verzekeraars (Dutch Association of Insurers) and where the insured was a victim of Nazi persecution. As a result of an investigation of the insurance companies' archives, a list of nearly 3,400 unpaid life insurance polices was published. Claims can be filed with the Foundation until December 31, 2009. To date HCPO claimants who submitted claims to the Sjoa Foundation for settlement have received offers totaling $20,863.

***5.6 Claims Filed Directly with Insurance Companies***

Prior to the establishment of ICHEIC, the HCPO submitted claims for unpaid life insurance policies directly to the issuing insurance company or its present day successor[25]. To date HCPO claimants who submitted claims directly to companies for settlement have received offers totaling $565,399.

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[25] Companies include: Assicurazioni Generali S.p.A., Prudential UK, Winterthur Leben, Migdal Insurance and Financial Holdings Ltd., Wiener Städtische, GAN Assurances Vie SA, Uniqa, Basler Leben, Signal Iduna, Gerling Lebensversicherung AG, Karlsruher Lebensversicherung AG, and DONAU Versicherung AG.

At ICHEIC's final meeting in March 2007, all ICHEIC member companies as well as over 70 companies in the German Insurance Association, through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims sent directly to them in accordance with ICHEIC's rules and guidelines. Since ICHEIC's closedown at the end of March 2007, the HCPO has once again resumed dealing with insurance companies directly to resolve outstanding claims. As of March 2007 the HCPO has submitted one claim directly to an insurance company for review.

***5.7 Holocaust Insurance Accountability Act of 2007 (HR 1746)***

On March 28, 2007, Representative Ileana Ros-Lehtinen of Florida introduced a bill to the US House of Representatives entitled the Holocaust Insurance Accountability Act of 2007. The bill was immediately referred to the House Committee on Financial Services, and to the Committees on Foreign Affairs and Oversight and Government Reform, for consideration as to such provisions that fall within the purview of the committee concerned.

The legislation requires insurance companies doing business in the United States to publicly disclose all Holocaust-era insurance policies through the Holocaust Insurance Registry, to be established under the bill, and allows Holocaust victims and their descendents to bring action in US courts to settle unresolved insurance claims.

On October 3, 2007 the House Committee on Foreign Affairs, Subcommittee on Europe chaired by Rep. Robert Wexler held a hearing entitled *America's Role in Addressing Outstanding Holocaust Issues* which primarily focused on this pending legislation. The Committee on Financial Services is scheduled to hold a hearing to discuss the Holocaust Insurance Accountability Act of 2007 during the first quarter of 2008. Former Vice-Chair of ICHEIC, Diane Koken, has been invited to present testimony at this hearing.

**6. Overview of Art Claims**

The HCPO has accepted 147 art claims (from 19 states and nine countries) referencing thousands of items, approximately 8,000 of these in sufficient detail to permit additional research. The office has closed the claims of 20 individuals, 127 individuals currently have open art claims. To date, the HCPO has assisted in securing the return of 18 works of art.

***6.1 Recovered Works of Art***

In 2007 the HCPO facilitated the recovery of four works of art: the *Portrait of Jan van Eversdyck* by Nicolas Neufchâtel and *Landscape with travelers on a track near a walled town with a castle and church, village beyond* by Jan de Vos I to the Estate of Dr. Max Stern; *Wooded Landscape with Herd Near a Pond* by J.S. van

Ruysdael to the heirs of Markus Meyer (Max) Rothstein; and *Drawing of Architecture or Interior of a Church* attributed to the school of Pieter Neeffs the Elder to the heirs of Dr. Arthur Feldmann. (*See* Appendix Figures 7-10).

On December 27, 2007, Chief Judge Mary M. Lisi of United States District Court for Rhode Island ordered26 Maria-Luise Bissonnette to turn over *Mädchen aus den Sabiner Bergen* by Franz Xaver Winterhalter to representatives of the Estate of Dr. Max Stern, stating that Dr. Stern's "relinquishment of his property" was clearly "anything but voluntary." To the best of our knowledge, this is the first case regarding a forced sale in the US to be decided on the merits and declare that a forced sale (or sale under duress) due to Nazi persecution is akin to theft.

An increased willingness on the part of museums, archives, auction houses, and others to confront the issues surrounding Holocaust-era looted art coupled with the proliferation of online resources and greater accessibility to previously restricted materials has enabled the HCPO to locate and pursue the restitution of dozens of missing artworks. In light of these developments, the Office anticipates more settlements in the coming months.

***6.2 Other Activities in the Area of Art Restitution***

The HCPO participated in an exhibition focusing on the restitution of looted art presented by the Ben Uri Gallery: The London Jewish Museum of Art, which ran from September 16, 2007 to December 24, 2007. In September 2007, the Ben Uri Gallery launched the world tour of *Auktion 392: Reclaiming of the Galerie Stern Düsseldorf*[27]. As an accompanying exhibition the Ben Uri Gallery invited the HCPO as well as several other major agencies involved with Holocaust-era art restitution to present a poster describing their history and function. (*See* Appendix Figure 8).

From October 24 to 26 2007, the Documentation Centre of Property Transfers of Culture Assets of WWII Victims[28] hosted the Third International Conference on Confiscated Works of Art entitled *Restitution of Confiscated Works of Art: A Wish or A Reality?* in Liberec, Czech Republic. The Director of the HCPO attended the conference and presented a paper[29] to the attendees, which included colleagues and peers from all key organizations working on matters of Holocaust restitution. The presentation illustrated the Office's methodology for handling claims from the HCPO's unique vantage point of being the only government agency in the United States, if not the world, to offer Holocaust survivors and their heirs assistance with a variety of multinational restitution processes. (*See* Appendix Figure 11).

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[26] Vineberg v. Bissonnette, 2007 U.S. Dist. LEXIS 94509 (D.R.I. 2007)
[27] http://www.auktion392.com
[28] http://www.centrum.usd.cas.cz
[29] The Holocaust Claims Processing Office: A Decade of Unearthing the Missing Pieces

**7. Other Activities**

On September 6, 2007, the New York State Banking Department and The American Jewish Joint Distribution Committee (JDC) issued a joint press release to announce the transfer of two dormant Lithuanian Holocaust era bank accounts, previously held by Citigroup, to The Foundation for the Lithuanian Jewish Heritage (the "Foundation"), a non-profit institution based in Vilnius, Lithuania.

The HCPO was approached by Citigroup to assist with research and settlement options with regards to two Holocaust era dormant Lithuanian accounts. The HCPO established that the two dormant bank accounts were for a defunct Jewish cooperative bank in Lithuania. In turn, the HCPO facilitated a meeting with members of the Foundation and Citigroup which resulted in an agreement to transfer the balance of the account to the Foundation.

The funds are being held in escrow by the JDC until the Foundation is fully operational.

**8. Holocaust Claims Processing Office Expenses in 2007**

The HCPO has an approved full-time staff of nine, reduced from 12 due to budget cuts throughout the Department, and one Graduate Assistant; currently seven positions are filled. The total cost of operating the HCPO during 2007 was $844,239, including personal service, fringe and indirect costs, and non-personal service expenditures, as follows.

**Calendar Year 2007**

| | Banking Department | Suballocation from Insurance Department[30] | TOTAL |
|---|---|---|---|
| Personal Service | $321,372 | $244,445 | $565,817 |
| Fringe and Indirect Costs | $162,596 | $108,398 | $270,994 |
| Non-Personal Service | $7,204 | $224 | $7,428 |
| TOTAL | $491,172 | $353,067 | $844,239 |

[30] Includes $224 in travel costs reimbursed by Insurance Department.

## Appendix


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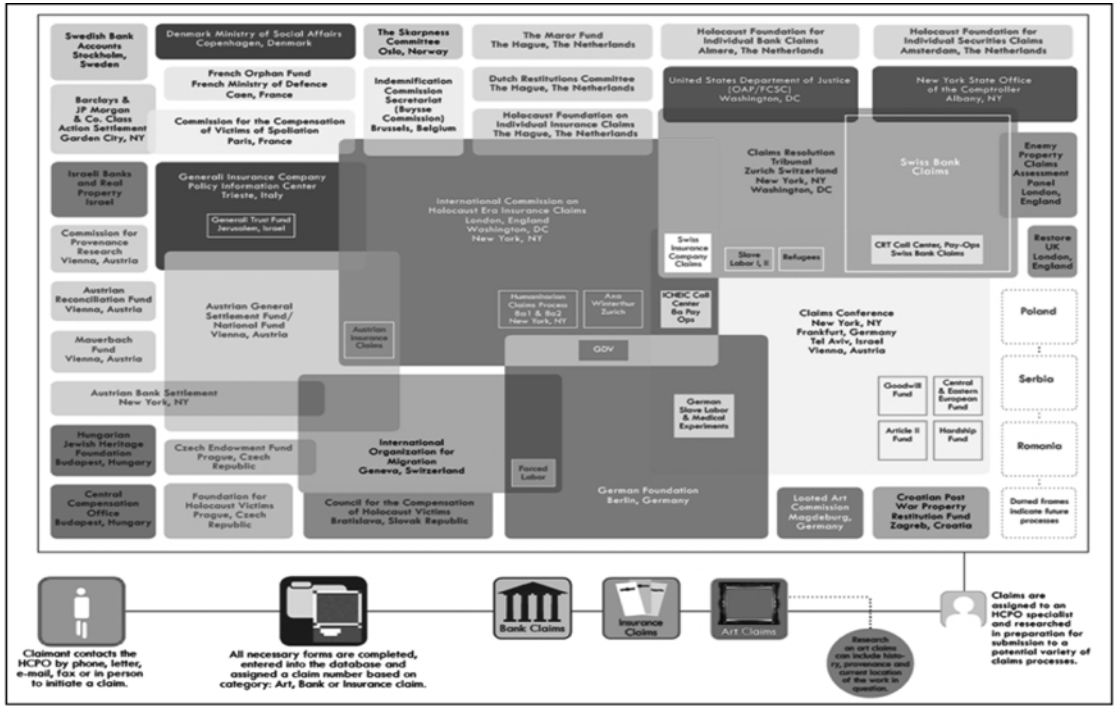


Figure 7 - Compensation Organizations and the HCPO

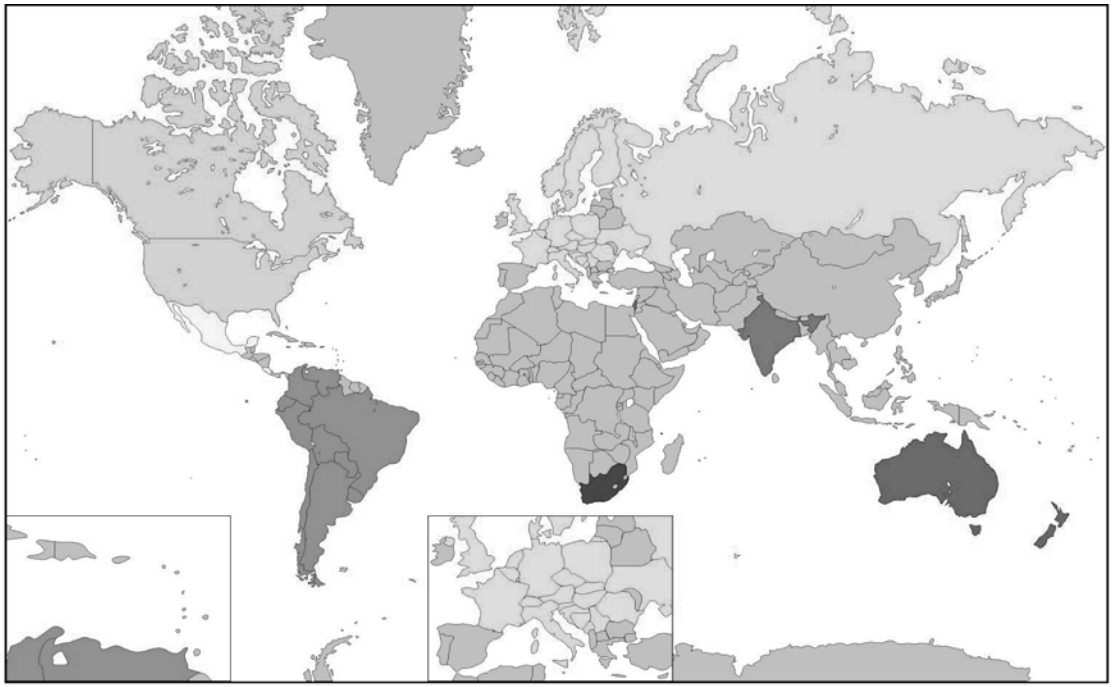

Figure 8 – International Geographic Distribution of HCPO Claimants
(Areas appearing in color represent countries where HCPO claimants reside.)

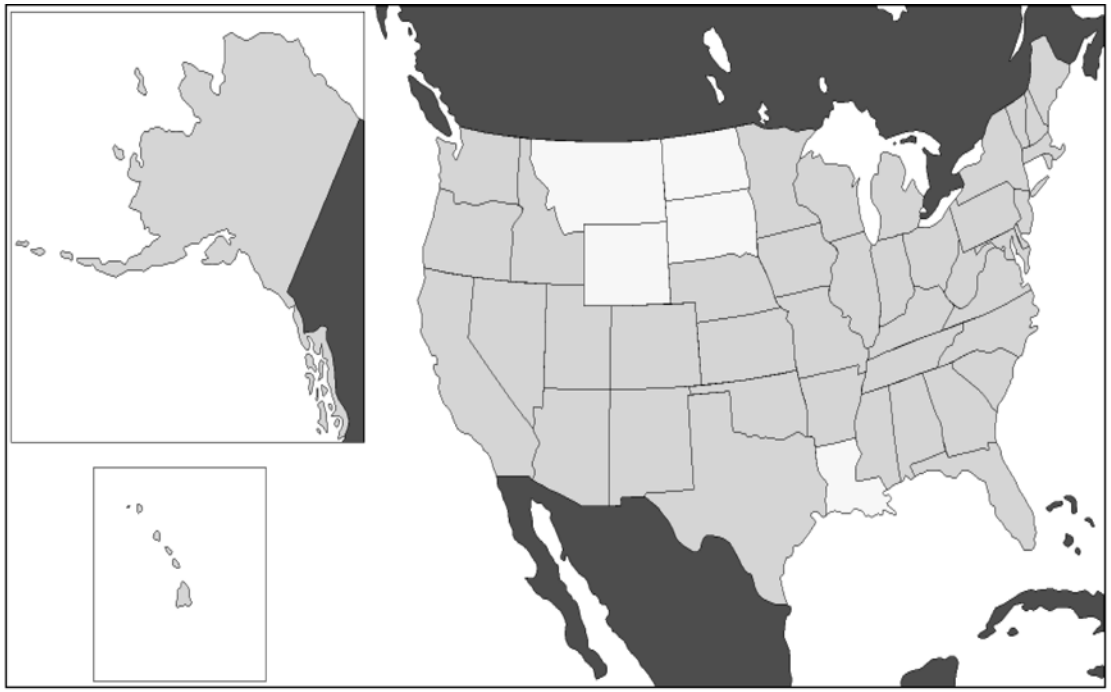

Figure 9 - Domestic Geographic Distribution of HCPO Claimants
(Areas shaded green represent states where HCPO claimants reside.)

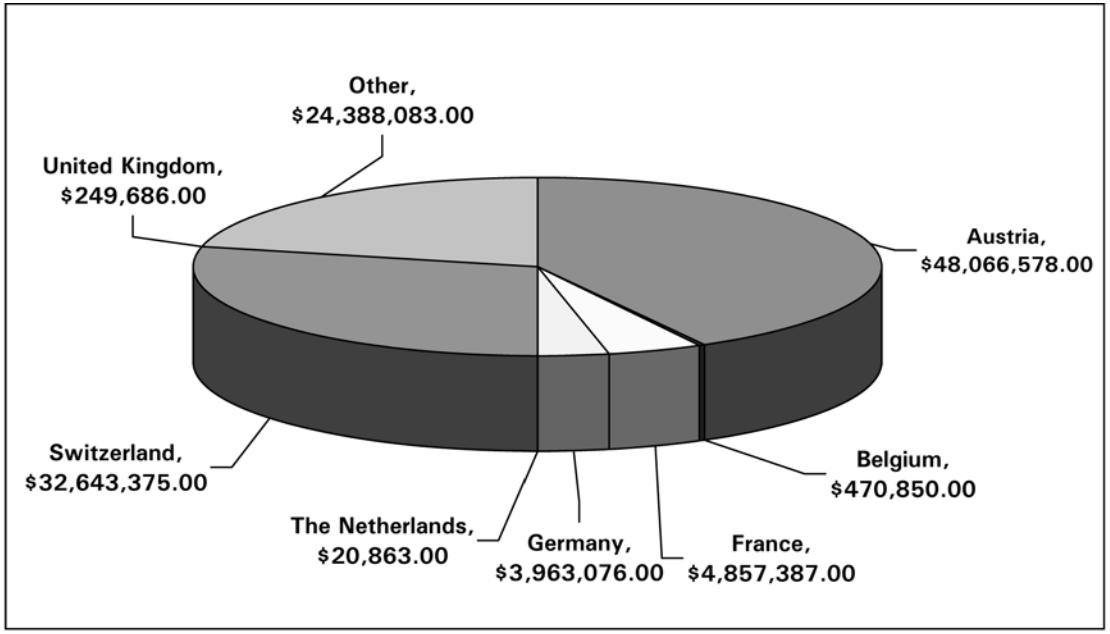


Figure 10 - Total Offers Extended to HCPO Claimants To Date By Country

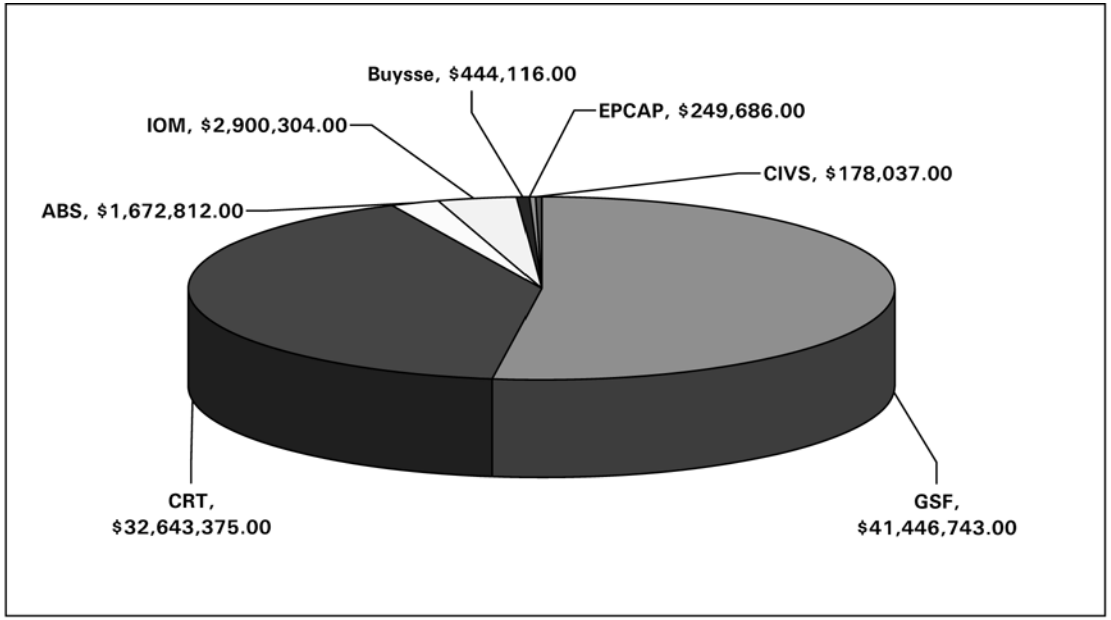


Figure 11 - Bank Claims - Over $70 Million Offered To Date

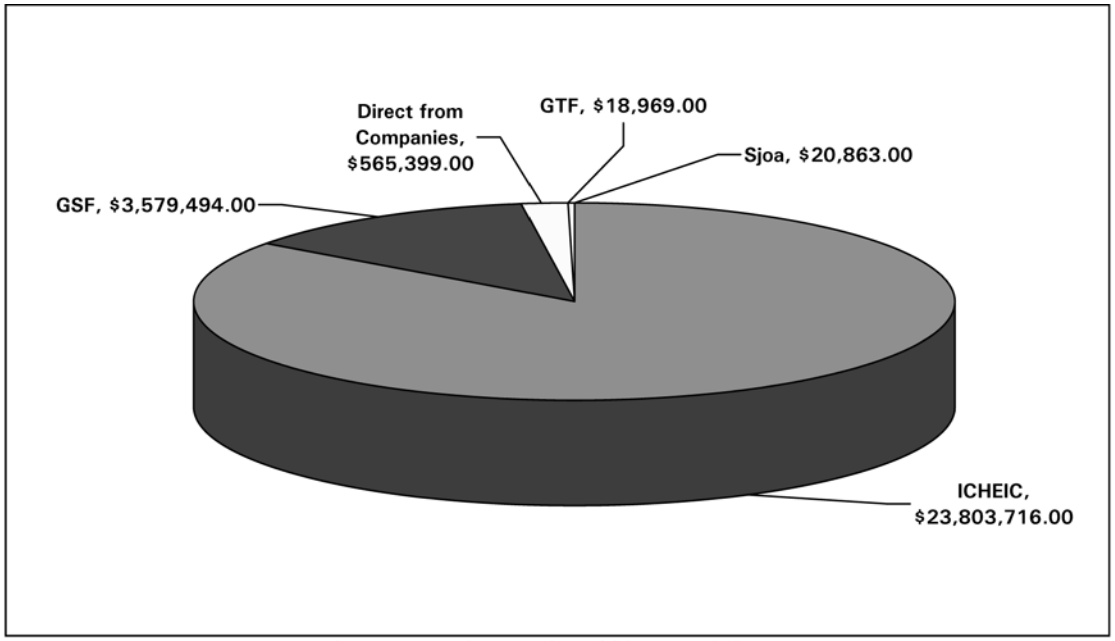


Figure 12 - Insurance Claims - Over $26 Million Offered To Date

Figure 7 - *Portrait of Jan van Eversdyck* by Nicolas Neufchâtel

Figure 8 - *Wooded Landscape with Herd Near a Pond* by J.S. van Ruysdael

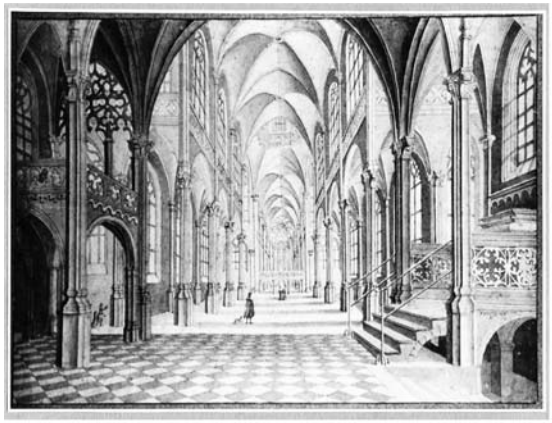

Figure 13 - *Drawing of Architecture or Interior of a Church* attributed to the school of Pieter Neeffs the Elder

Figure 14 - *Landscape with travelers on a track near a walled town with a castle, and church village beyond* by Jan de Vos II

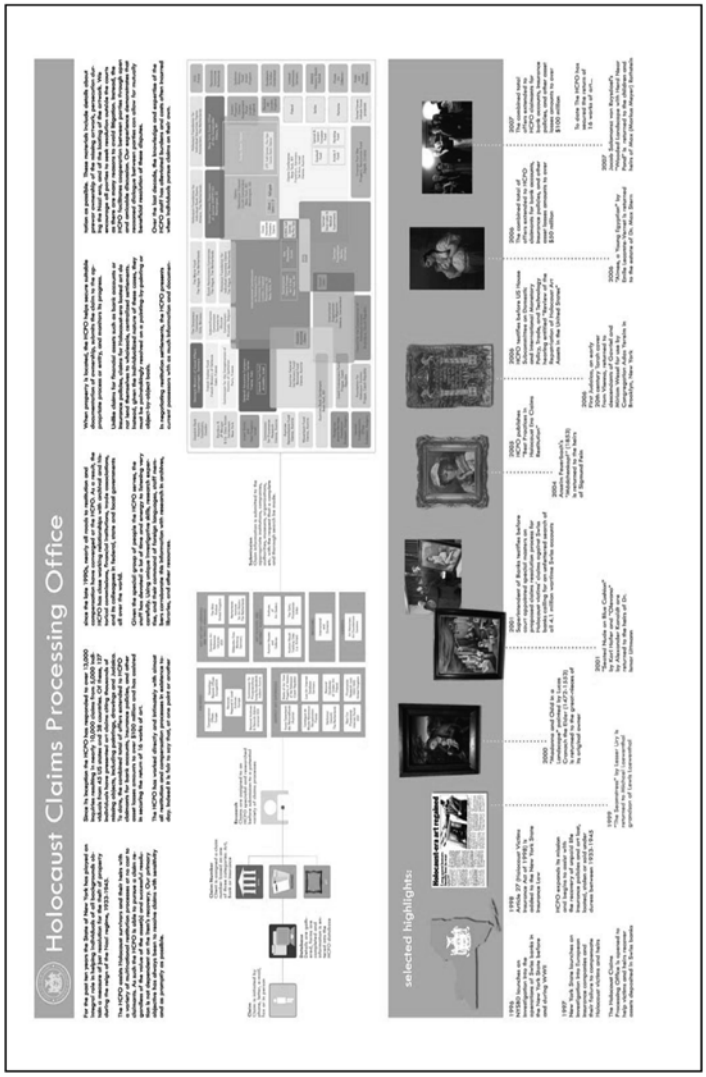


Figure 11 - HCPO Panel at the Ben Uri Gallery: The London Jewish Museum of Art

## Section 2.—Overview of the Interwar Economy and the European Insurance Industry

### I. Overview of Interwar Economic History

The aftermath of World War I was characterized by political and economic upheavals across Central and Eastern Europe. The costs of financing four years of warfare, the decline in agricultural and industrial production, and consequent shortages of food, fuel and raw materials and finally the dissolution and dismemberment of the Russian, Austro-Hungarian and German Empires contributed to a period of economic and political chaos.

The German and Austro-Hungarian Empires had financed their war efforts through printing paper currency, and by the end of World War I, the number of banknotes in circulation far outstripped the reserves of gold available to central banks to back paper money. As a consequence, several countries, most notably Germany, suffered through periods of hyperinflation in the early 1920s.

International intervention helped to stabilize currencies in the countries affected by hyperinflation. In 1924 Germany introduced a new currency, the Reichsmark, at the rate of one trillion paper marks to one Reichsmark. The Reichsmark was pegged at the German mark's prewar exchange rate against the dollar (1 US dollar equaled 4.2 Reichsmarks). Austria and Hungary both used loans from the League of Nations to stabilize their new currencies (the schilling and pengö respectively). Poland unsuccessfully attempted to stabilize its currency using only internal resources at first; in 1926 a new currency, the zloty, was introduced with the help of American loans.

Unlike the other countries formed out of the wreckage of the Austro-Hungarian Empire, the new Czechoslovak Republic managed to escape the worst of the postwar economic toil. As a consequence, by 1925, when the other former members of the Danube monarchy and the Germans to the north were only just

achieving currency stabilization, Czechoslovakia had already achieved its pre-1914 rate of industrial production.[1]

In contrast to the immediate post-war period, the mid-to-late 1920s were a time of relative calm and stable economic growth for most European countries. This relative prosperity was short-lived as the decline in agricultural prices that began in 1928 was followed by the collapse of the New York stock market in 1929 and world-wide economic depression.

The financial sector in Central and Eastern Europe also experienced a series of crises, beginning with the collapse of the Austrian Creditanstalt in May 1931. The Austrian banking crisis quickly spread to Germany – in May 1931, German banks lost 337 million RM (2.6 percent of total deposits); by the end of June, the three largest German banks (Deutsche Bank, Dresdner Bank and the Darmstädter- und Nationalbank) had lost a total of nearly 1.4 billion RM in deposits.[2] In addition to its direct impact on the industry, the 1931 banking crisis also ended the availability of new loans and credit on international financial markets for the countries of Central and Eastern Europe.

Without the availability of additional short-term credit, these countries were increasingly unable to service their existing debts. Central banks were forced to deplete their own foreign-exchange and gold reserves in order to prevent the collapse of industrial firms and banks. Countries across Europe abandoned the gold standard by the mid-1930s. In addition, Germany restricted currency convertibility and placed foreign exchange transactions under the aegis of the Reichsbank, rather than relying on private banks, and other countries quickly adopted these measures in an effort to stem further capital flight.

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[1] http://www.czech.cz/en/economy-business-science/general-information/economy-development-and-potential/economic-history/czechoslovak-republic-and-protectorate-of-bohemia-and-moravia/
[2] Harold James, *The German Slump: Politics and Economics, 1924-1936* (New York: Oxford University Press, 1987), p. 302

Given the economic uncertainty introduced by the currency crises of the early 1920s and the banking crises of the early 1930s, the purchase of term life insurance policies and related life products, such as dowry and endowment insurance became one of the primary methods of savings for many people in Europe during the interwar years. However, the insurance market varied widely across countries in terms of number of companies issuing life insurance policies, policies per capita, premium income, and other assets.

**II. The HCPO's Valuation**

To estimate the potential number of Holocaust-era insurance policies it was necessary to assess the size of the prewar European insurance market as a whole as well as to compare markets in different countries.

Rather than using insured sums, a nominal and often speculative amount, considering that companies wrote policies in excess their existing reserves reserves (one of the causes of the failure of the Austrian Phönix insurance company in 1936), this report uses the actual income of insurance companies as represented by premium income to estimate the market size and market share of various companies.

The year 1936 was chosen as a representative prewar year in part because statistics for 1936 would include many policies that would have been cashed in or surrendered by 1938-1939 (as a result of the *Anschluss* of Austria and the German occupation of the Sudetenland region of Czechoslovakia as well as the imposition of asset reporting requirements on German Jews in April 1938).

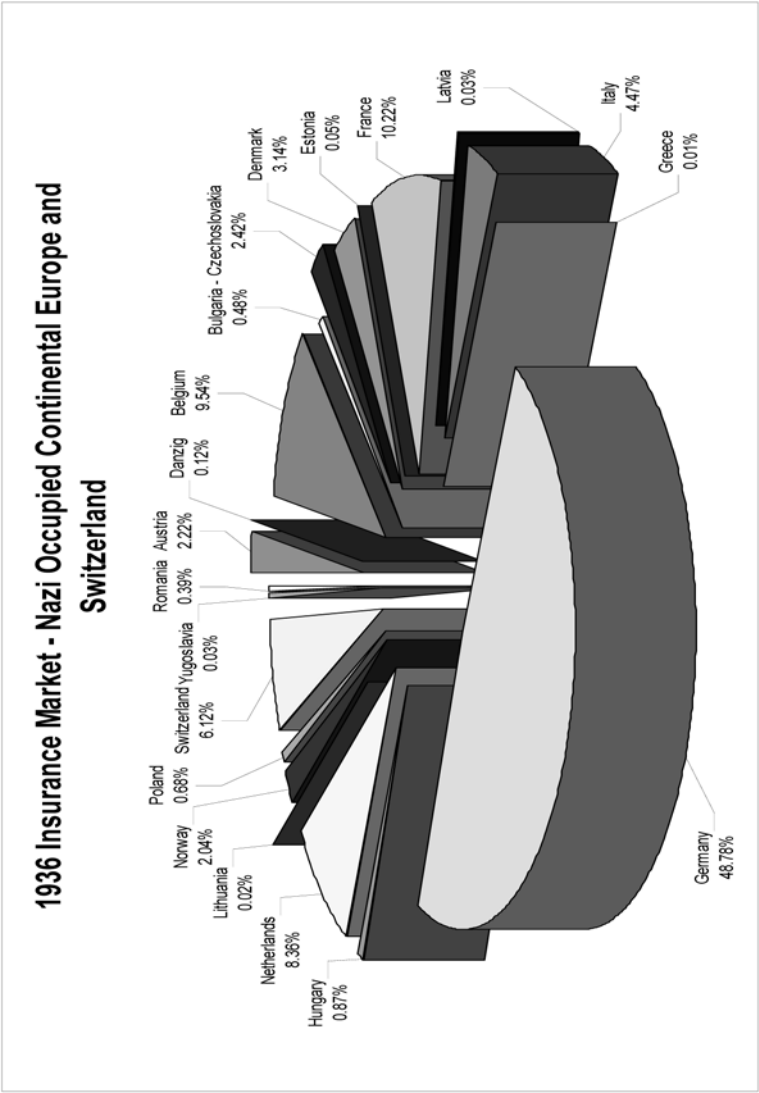
The relevant volumes of the *Assekuranz Jahrbuch* and *Assekuranz Kompass*, annual insurance industry publications summarizing statistics provided by European government insurance regulators, provided data on premium income for 1936 in the local currency for each country. The aggregate premium income for each country was converted into 1936 US dollars (to provide a point of

comparison across countries with different currencies) using conversion information from the *League of Nations Statistical Yearbook.*

ICHEIC's valuation guidelines for each country were applied to the 1936 sums to bring them up to December 2006 ICHEIC value as this was the final date for ICHEIC decision.

This method of converting 1936 dollars to present-day sums, unlike using the US Consumer Price Index or long bond rates, takes into consideration the deflation suffered by most European currencies after 1945. We are all aware of the 10:1 Reichsmark:Deutsche Mark conversion of 1948 which was introduced by the Western Allies. However, perhaps it bears repeating that, for example, hyperinflation in Hungary reduced the value of the pengö as follows:

**1936 - $1 = 3.39 pengö**
**1946- January: $1=104,000 pengö**
**1946 – April: $1=10.3 million pengö**
**1946 – July: $1=1.835 billion pengö**


1936 Insurance Market - Nazi Occupied Continental Europe and Switzerland
Poland 0.68%
Norway 2.04%
Lithuania 0.02%
Netherlands 8.36%
Hungary 0.87%
Switzerland 6.12%
Yugoslavia 0.03%
Romania 0.39%
Austria 2.22%
Danzig 0.12%
Belgium 9.54%
Bulgaria - Czechoslovakia 0.48%
Denmark 3.14%
Estonia 0.05%
France 10.22%
Latvia 0.03%
Italy 4.47%
Greece 0.01%
Germany 48.78%

| Country | Population as of last office census in 1936[3] | Premium income in 1936 local currency | Premium income in 1936 | 1936 Premium income - revaluation using ICHEIC valuation guidelines for through December 2006[4] |
|---|---|---|---|---|
| Austria | 6,760,000 | 108,054,000.00 | $20,195,292.60 | $961,762,635.18 |
| Belgium | 8,092,000 | 512,614,000.00 | $86,631,766.00 | $1,370,702,549.01 |
| Bulgaria | 6,090,000 | 359,230,000.00 | $4,346,683.00 | $46,953,216.70 |
| Czechoslovakia | 14,729,000 | 623,772,872.00 | $21,956,805.09 | $226,737,472.25 |
| Danzig[5] | 408,000 | 5,951,000.00 | $1,122,358.60 | $2,929,296.20 |
| Denmark[6] | 3,550,000 | 129,940,000.00 | $28,469,854.00 | $74,304,843.27 |
| Estonia | 1,126,000 | 1,576,000.00 | $428,987.20 | $4,327,489.01 |
| France | 41,229,000 | 1,987,350,000.00 | $92,809,245.00 | $91,012,232.57 |
| Germany | 66,104,000 | 1,100,931,000.00 | $442,904,541.30 | $1,155,957,895.06 |
| Greece[7] | 6,204,000 | 13,239,055.00 | $119,151.50 | $11,240,585.73 |
| Hungary | 8,688,000 | 26,873,000.00 | $7,906,036.60 | $56,003,677.06 |
| Italy | 41,177,000 | 771,237,000.00 | $40,567,066.20 | $942,182,444.30 |
| Latvia | 1,900,000 | 1,439,000.00 | $277,295.30 | $2,825,411.92 |
| Lithuania | 2,029,000 | 1,234,800.00 | $207,693.36 | $18,701,591.97 |
| Netherlands | 7,936,000 | 139,070,000.00 | $75,890,499.00 | $4,841,515,155.42 |
| Norway[8] | 2,814,000 | 75,010,000.00 | $18,497,466.00 | $48,277,427.48 |
| Poland | 32,133,000 | 32,970,000.00 | $6,214,845.00 | $66,098,327.80 |
| Romania | 18,053,000 | 486,974,000.00 | $3,554,910.20 | $37,540,972.02 |
| Switzerland | 4,077,000 | 241,650,000.00 | $55,531,170.00 | $3,148,207,128.39 |
| Yugoslavia | 13,934,000 | 135,501,000.00 | $311,652.30 | $32,712,427.56 |
| **Total Market of Nazi-occupied Europe and Switzerland** | **287,033,000** | | **$907,943,318.25** | **$13,139,992,778.90** |

[3] Statistical Yearbook of the League of Nations, 1935/1936 (Geneva, 1936), p. 23

[4] The highest ICHEIC multiplier for each country was used to calculate present values in order to arrive at the most generous estimate of the prewar market in 2006 US dollars.

[5] In 1936, the size of the Danzig market was 0.25% of the German market. Because there is no ICHEIC valuation rate available for Danzig, this percentage of the German market was used to calculate the approximate size of the Danzig market in 2006 US dollars.

[6] In 1936, the size of the Danish market was 6.4% of the German market. Because there is no ICHEIC valuation rate available for Denmark, this percentage of the German market was used to calculate the approximate size of the Danish market in 2006 US dollars.

[7] Data from the 1938 *Assekuranz Kompass* is incomplete.

[8] In 1936, the size of the Norwegian market was 4.17% of the German market. Because there is no ICHEIC valuation rate available for Norway, this percentage of the German market was used to calculate the approximate size of the Norwegian market in 2006 US dollars.

## Section 3.—Correspondence Between NAIC and New York

NAIC
National Association of Insurance Commissioners

May 1, 2008

Superintendent Eric Dinallo
New York State Insurance Department
25 Beaver Street
New York, NY 10004

Superintendent Richard H. Neiman
New York State Banking Department
1 State Street
New York, NY 10004

Re: Holocaust Claims Processing Office Monitoring of Holocaust-era Insurance Claims

Dear Superintendents Dinallo and Neiman,

The National Association of Insurance Commissioners ("NAIC") is interested in partnering with the New York State Banking Department's Holocaust Claims Processing Office ("HCPO"), in monitoring the processing of claims for Holocaust-era insurance policies submitted to insurance companies after the filing deadline (March 30, 2004) of the International Commission on Holocaust Era Insurance Claims ("ICHEIC"). We believe that through this joint effort we can continue to collectively assist claimants seeking compensation for Holocaust-era insurance and ensure compliance with the rules and guidelines established by ICHEIC.

This task would be financially supported by the NAIC and conducted in cooperation with state insurance regulators. The NAIC recognizes that the HCPO, in agreeing to carry out this monitoring role, will incur administrative and other expenses. To assist in defraying such costs, the NAIC will remit to the HCPO an agreed to sum on a monthly basis.

Through this partnership, the HCPO will monitor the processing of any claims submitted through the HCPO to insurance companies to ensure compliance with ICHEIC's relaxed standards of proof. The HCPO will also serve as the primary contact point for insurance companies and claimants with inquiries concerning Holocaust-era policies and the ICHEIC guidelines. The HCPO will then report the results of its monitoring activities to the NAIC on a quarterly basis.

In order to facilitate insurance company reporting of Holocaust-era insurance claims to the HCPO, the NAIC and its members will work with HCPO to develop a Model Bulletin on claim reporting. This Bulletin will also serve as the formal notification for the World Jewish Congress, the American Gathering of Jewish Holocaust Survivors, and other interested groups of this procedure.

We ask for your commitment to exploring this joint venture. We look forward to working with you to define the parameters of our respective obligations under this agreement and finalizing the specifics of this endeavor. We appreciate your willingness to take on these additional responsibilities as we continue to support the ICHEIC goal of assisting potential claimants, at no cost to them, with resolving their claims outside of the courts.

Sincerely,

Catherine J. Weatherford
Executive Vice President & CEO

cc: Anna B. Rubin, Director, HCPO
Diane Koken


| | | | | |
|---|---|---|---|---|
| EXECUTIVE HEADQUARTERS | 2301 McGee Street, Suite 800 | Kansas City, MO 64108-2662 | p \| 816 842 3600 | f \| 816 783 8175 |
| GOVERNMENT RELATIONS | 444 N. Capitol Street, NW, Suite 701 | Washington, DC 20001-1509 | p \| 202 471 3990 | f \| 202 471 3972 |
| SECURITIES VALUATION OFFICE | 48 Wall Street, 6th Floor | New York, NY 10005-2906 | p \| 212 398 9000 | f \| 212 382 4207 |

www.naic.org

STATE OF NEW YORK

Eric R. Dinallo
Superintendent
Insurance Department

Richard H. Neiman
Superintendent
Banking Department

May 2, 2008

Catherine J. Weatherford
Executive Vice President & CEO
National Association of Insurance Commissioners
NAIC Executive Headquarters
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

**Re: Holocaust Claims Processing Office Monitoring of Holocaust-era Insurance Claims**

Dear Ms. Weatherford,

We write in response to your letter dated May 1, 2008, which proposes that the National Association of Insurance Commissioners ("NAIC") partner with the Holocaust Claims Processing Office ("HCPO") to, among other things, monitor the processing of claims for Holocaust-era insurance policies submitted to European insurance companies after the March 30, 2004 filing deadline established by the International Commission on Holocaust Era Insurance Claims ("ICHEIC"), which ceased its operations in 2007.

The New York State Banking Department and the New York State Insurance Department enthusiastically endorses the NAIC's proposal, and welcomes the opportunity to continue to assist claimants who seek compensation under Holocaust-era policies in accordance with the relaxed rules and guidelines established by ICHEIC. We believe that through the HCPO, the State of New York can provide a valuable service to those Holocaust survivors or their heirs who, for whatever reason, were unable to meet the ICHEIC filing deadline. Through monitoring and regular reporting, and by serving as a primary contact point for insurance companies and claimants, the HCPO can facilitate a process that will obviate the need for recourse to the judicial process. The willingness of NAIC to shoulder some of HCPO's costs will facilitate that enterprise, and help ensure its success.

We look forward to working with the NAIC in defining the parameters of the proposed arrangement.

Very truly yours,

Eric R. Dinallo
Superintendent
New York State Insurance Department

Richard H. Neiman
Superintendent
New York State Banking Department

cc: Anna B. Rubin, Director, HCPO
Diane Koken

## Section 4.—Additional Material Submitted by Ms. Rubin

### Appendix 1
### HCPO Analysis of the 1936 European Life Insurance Market

To provide a snapshot of market share in the total prewar European insurance market, the HCPO compiled statistics on direct premium income (the industry standard used to measure market share) in 1936. Analyzing market share provides a tool to determine the comprehensiveness of restitution efforts both past and present, while studying the size of the market as a whole provides a perspective on the number of potential unpaid Holocaust-era policies, i.e. the smaller the market, the fewer policies overall, and therefore, the fewer policies that potentially remain to be paid today.

The year 1936 was chosen as a representative prewar year because, with the exception of Germany, none of the countries in the sample had as yet enacted discriminatory legislation. Even in Germany, it was not until the aftermath of the November Pogrom in 1938 that mass repurchase of Jewish life insurance assets occurred. Therefore 1936 provided a baseline as a "normal" year for the prewar industry.

The primary sources used were the *Assekuranz Jahrbuch* and *Assekuranz Kompass*, annual insurance industry periodicals published at the time, which compiled statistics provided by national insurance regulatory agencies. The aggregate premium income for each country was converted into 1936 US dollars (to provide a point of comparison across countries with different currencies) using conversion information from the *League of Nations Statistical Yearbook*.

The resulting chart and table illustrate that the domestic German market was by far the largest in continental Europe in 1936, comprising nearly 50% of the whole. (*See* Figures 1 and 2). In contrast, the domestic markets in other Central and Eastern European countries, even in Czechoslovakia, the most industrialized of those states, were significantly smaller. For example, the aggregate market share of the combined domestic markets of Austria, Hungary, Czechoslovakia, Poland, Bulgaria, Yugoslavia and Romania was approximately 7% of the total market, although their combined populations comprised over 100 million in comparison to Germany's 66 million.

Ongoing research on the 1936 market has confirmed the relatively underdeveloped state of the Eastern European insurance market at the time. Relative to population, the insurance markets in these countries were substantially smaller than those in their West European counterparts. (*See* Figure 3). Poland, the most populous country in Eastern Europe other than the USSR, had one of the smallest markets, both in terms of market share and per capita insurance. Other countries in Eastern Europe, such as Romania and Yugoslavia, had similarly underdeveloped insurance markets. Of the countries of the former Austro-Hungarian Empire, Austria and Czechoslovakia had the most developed insurance industries. Although Germany had the largest domestic market, as seen in Figure 1, Belgium and the Netherlands had the largest per capita premium payments.

The total European market, however, was overshadowed by the United States domestic market; the direct premium income for life insurance policies in the United States in 1936 was $3.68 billion. (*See* Figure 4). The US population at the last official census prior to 1936 was 122 million; the population of what would eventually be Nazi-occupied Europe (minus

Soviet territories) at this time was 287 million. In other words, the US, with a population less than half the size of the continental European population, had an insurance market four times as large.

Trying to assign an overall present-day US dollar value to the prewar European insurance market is highly contingent on the chosen valuation method (e.g. consumer-price index; thirty-year Treasury bond yields). Therefore, the HCPO's analysis focuses on market share as we believe this provides a clear perspective of the market. Nevertheless, in order to provide a reference point in present-day terms, we used ICHEIC's valuation guidelines to calculate the value of the 1936 direct premium income across the European market. This method of converting 1936 dollars to present-day sums, unlike using the US Consumer Price Index or long bond rates, takes into consideration the deflation suffered by most European currencies after 1945. (*See* Figure 2).

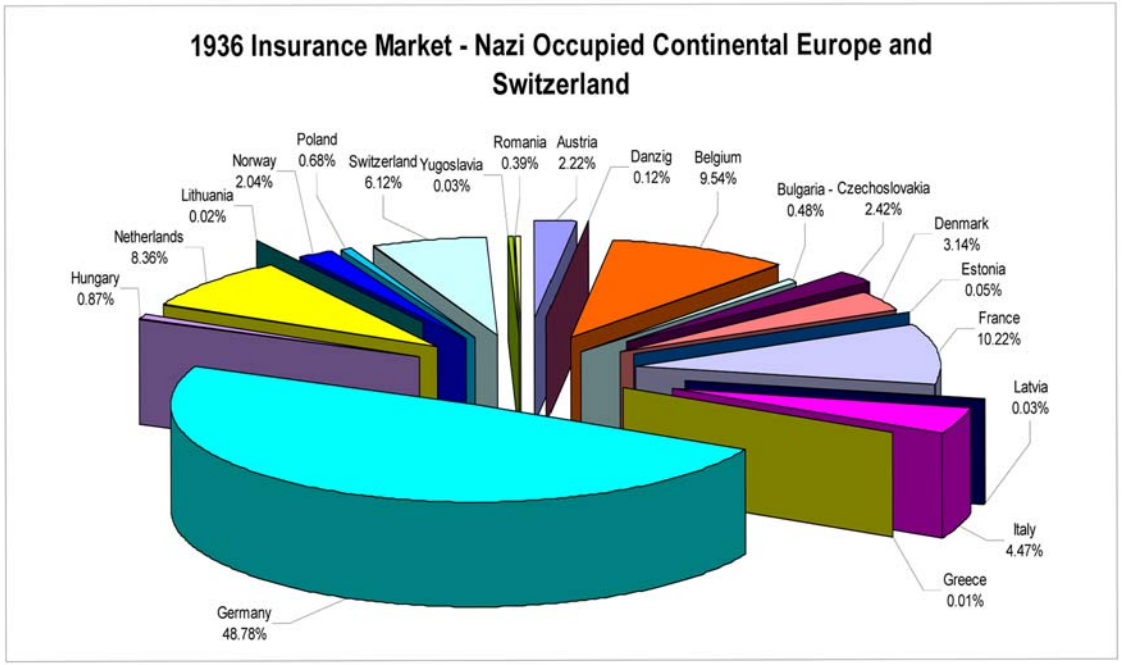



**Figure 1 - This chart shows the relative size of the domestic European insurance markets in 1936 as compared to one another. The German domestic market was by far the largest. The countries of Western Europe had more developed insurance markets than those of Eastern Europe.**

| Country | Population as of last official census in 1936[1] | Premium income in 1936 local currency | Premium income in 1936 | 1936 Premium income - revaluation using ICHEIC valuation guidelines for through December 2006[2] |
|---|---|---|---|---|
| Austria | 6,760,000 | 108,054,000.00 | $20,195,292.60 | $961,762,635.18 |
| Belgium | 8,092,000 | 512,614,000.00 | $86,631,766.00 | $1,370,702,549.01 |
| Bulgaria | 6,090,000 | 359,230,000.00 | $4,346,683.00 | $46,953,216.70 |
| Czechoslovakia | 14,729,000 | 623,772,872.00 | $21,956,805.09 | $226,737,472.25 |
| Danzig[3] | 408,000 | 5,951,000.00 | $1,122,358.60 | $2,929,296.20 |
| Denmark[4] | 3,550,000 | 129,940,000.00 | $28,469,854.00 | $74,304,843.27 |
| Estonia | 1,126,000 | 1,576,000.00 | $428,987.20 | $4,327,489.01 |
| France | 41,229,000 | 1,987,350,000.00 | $92,809,245.00 | $91,012,232.57 |
| Germany | 66,104,000 | 1,100,931,000.00 | $442,904,541.30 | $1,155,957,895.06 |
| Greece[5] | 6,204,000 | 13,239,055.00 | $119,151.50 | $11,240,585.73 |
| Hungary | 8,688,000 | 26,873,000.00 | $7,906,036.60 | $56,003,677.06 |
| Italy | 41,177,000 | 771,237,000.00 | $40,567,066.20 | $942,182,444.30 |
| Latvia | 1,900,000 | 1,439,000.00 | $277,295.30 | $2,825,411.92 |
| Lithuania | 2,029,000 | 1,234,800.00 | $207,693.36 | $18,701,591.97 |
| Netherlands | 7,936,000 | 139,070,000.00 | $75,890,499.00 | $4,841,515,155.42 |
| Norway8[6] | 2,814,000 | 75,010,000.00 | $18,497,466.00 | $48,277,427.48 |
| Poland | 32,133,000 | 32,970,000.00 | $6,214,845.00 | $66,098,327.80 |
| Romania | 18,053,000 | 486,974,000.00 | $3,554,910.20 | $37,540,972.02 |
| Switzerland | 4,077,000 | 241,650,000.00 | $55,531,170.00 | $3,148,207,128.39 |
| Yugoslavia | 13,934,000 | 135,501,000.00 | $311,652.30 | $32,712,427.56 |
| **Total Market of Nazi-occupied Europe and Switzerland** | **287,033,000** | | **$907,943,318.25** | **$13,139,992,778.90** |

**Figure 2 – Population, premium income, and estimated 2006 values of the 1936 insurance market in Nazi-occupied continental Europe and Switzerland.**

[1] Statistical Yearbook of the League of Nations, 1935/1936 (Geneva, 1936), p. 23

[2] ICHEIC's valuation guidelines for each country were applied to the 1936 sums to bring them up to December 2006 ICHEIC value as this was the final date for ICHEIC decisions. The highest ICHEIC multiplier for each country was used to calculate present values in order to arrive at the most generous estimate of the prewar market in 2006 US dollars.

[3] In 1936, the size of the Danzig market was 0.25% of the German market. Because there is no ICHEIC valuation rate available for Danzig, this percentage of the German market was used to calculate the approximate size of the Danzig market in 2006 US dollars.

[4] In 1936, the size of the Danish market was 6.4% of the German market. Because there is no ICHEIC valuation rate available for Denmark, this percentage of the German market was used to calculate the approximate size of the Danish market in 2006 US dollars.

[5] Data from the 1938 *Assekuranz Kompass* is incomplete.

[6] In 1936, the size of the Norwegian market was 4.17% of the German market. Because there is no ICHEIC valuation rate available for Norway, this percentage of the German market was used to calculate the approximate size of the Norwegian market in 2006 US dollars.

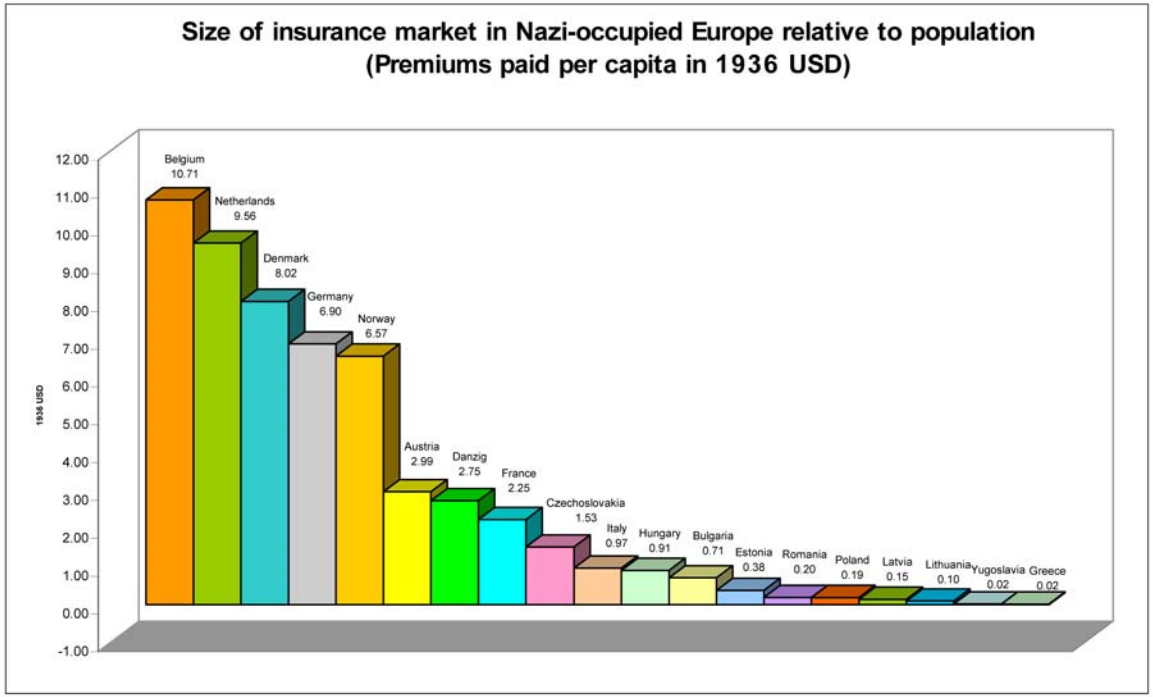



**Figure 3 - This chart shows the difference in premium payments between European countries as related to the size of population (as of the last official census figures as of 1936). The figures for each country represent the amount in 1936 US Dollars each person would have paid in life insurance premiums.**

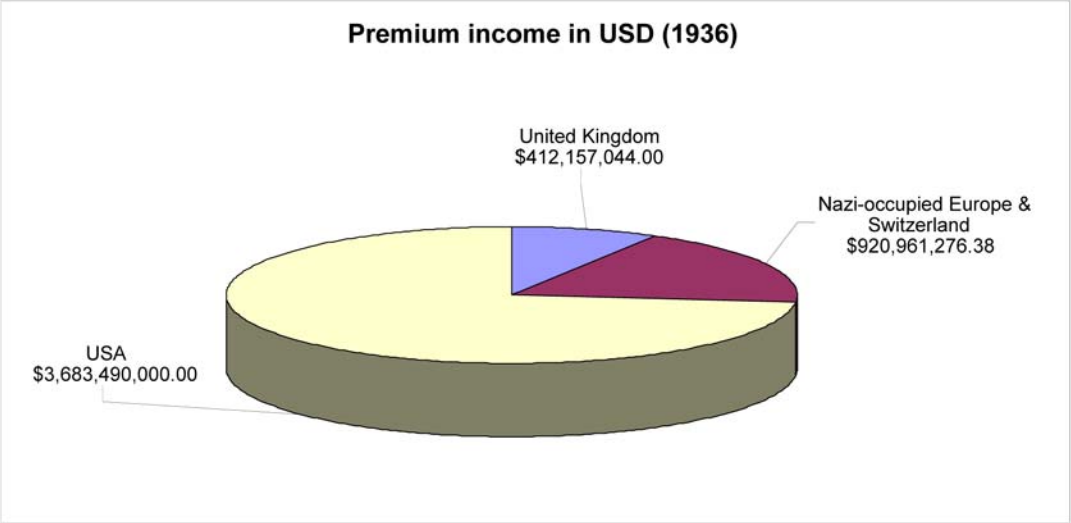



**Figure 4 - This chart shows the relative size of the USA and United Kingdom insurance markets in 1936 as compared to the size of the of the market in what would become Nazi-occupied Europe and in Switzerland. As the chart demonstrates, the United States market was more than two and a half times the size of the European and United Kingdom markets combined, and nearly four times as large as the market in Nazi-occupied Europe.**

## Appendix 2
## HCPO Analysis of ICHEIC Member Companies' and Partner Entities' Coverage of the Relevant Insurance Market

According to the HCPO's research on market share and successor companies and organizations, over 85% of the companies doing business in the 1936 European insurance market were covered by the ICHEIC process – either directly by ICHEIC member companies, or by various partner entities such as the German Insurance Association and the Austrian General Settlement Fund. (*See* Figure 1 below).

About 3% of the companies present in the Eastern European market in 1936 were nationalized or liquidated after World War II and have no present-day successors. However, policies issued by these companies were covered by the ICHEIC humanitarian claims process (the 8A2 process.)

In addition, based on the HCPO's research, about 0.5% of the companies present in the 1936 European market, were not covered by the ICHEIC process and are still in existence or have successors who are still in existence today. For example, Prudential plc (based in the United Kingdom) covers policies written during the relevant period by its Polish subsidiary Przezorność, and has established its own claims process.

**Market Share of Companies (1936)**

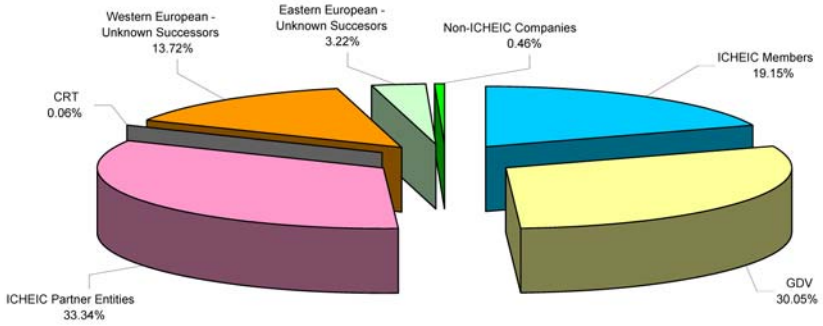



**Figure 1 - Based on 1936 direct premium income, this graph illustrates that approximately 85% of the prewar insurance market in countries subsequently occupied by the Nazis was covered by the ICHEIC process, either directly by ICHEIC member companies or through ICHEIC's partner entities.**

**Categories**:

**ICHEIC member companies** (**19.15%**): This subset includes the five signatories of the ICHEIC MOU (Allianz, AXA, Generali, Winterthur and Zurich) as well as those subsidiary companies for which they continue to be responsible.

**GDV (Gesamtverband der Deutschen Versicherungswirtschaft – German Insurance Association)** (**30.05%**): The GDV is the trade association of German private insurance companies which, through the German Foundation Agreement, contributed $350 million to ICHEIC to pay Holocaust era claims issued by German companies or their foreign subsidiaries (both current and historical). This subset also includes the German branches of Swiss companies like Basler Leben and Schweizerische Leben.

**ICHEIC partner entities (33.34%)**: This subset includes the companies covered by the French Commission for the Compensation of Victims of Spoliation (CIVS); the Jewish Community Indemnification Commission (Buysse Commission) in Belgium, the Dutch Holocaust Foundation for Individual Insurance Claims (Sjoa Foundation), and the Austrian General Settlement Fund. Assessment of claims on policies issued by companies domiciled in these countries falls to the appropriate ICHEIC partner entity. (It should be noted, however, that the Austrian GSF also requires the loss or looting of the asset to have taken place within the boundaries of the present-day Federal Republic of Austria.)

**Claims Resolution Tribunal (CRT)** (**0.06%**): This subset is composed of a small number of policies either directly issued or reinsured by the Swiss companies participating in the CRT's process. Unlike all other ICHEIC partner entities, the CRT does not take responsibility for policies issued by all companies domiciled in Switzerland. The CRT's responsibility is limited to two Swiss insurance companies and their various subsidiaries.

**Eastern Europe – unknown successors** (**3.22%**): This subset includes policies issued by Eastern European companies that were nationalized and/or liquidated after World War II and which have no present-day successors. It should be noted that ICHEIC's in-house policy-specific humanitarian claims process (under Section 8A2 of the Memorandum of Understanding that founded ICHEIC) reviewed claims for policies issued by these companies. Therefore, this small subset of claims has been counted as part of the market share covered by ICHEIC.

**Western Europe – unknown successors** (**13.72%**): This subset is comprised of publicly chartered insurance companies within the territory of the German Reich in 1937, which includes parts of modern-day Poland such as the areas formerly known as Silesia and West Prussia. These companies were often linked to municipal and state governments which guaranteed their activities. Postwar territorial transfers make determination of the appropriate successor for such companies largely impossible. This subset also includes burial societies and life insurance policies issued through organizations affiliated with the Catholic and Protestant churches whose successors are similarly unknown.

**Non-ICHEIC companies** (**0.46%**): This subset is comprised of policies issued by companies which were neither ICHEIC members nor covered by an ICHEIC partner entity but whose successors are known. An example is Prudential plc, UK, which currently has its own compensation program for policies issued by its only continental European subsidiary Przerzorność.

**Methods:**

This graph includes information on the following countries only: Austria, Belgium, Bulgaria, Czechoslovakia, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania and Yugoslavia. Danzig, Denmark, Greece, Norway and Switzerland were not included as there was no information on succession or valuation guidelines for the first four. In the case of Switzerland, the foreign operations of Swiss companies would be covered under the respective countries anyway – e.g. Basler's German operations are considered under the GDV market share for Germany.

Using the HCPO's research on successor companies and organizations, each company was assigned to one of the above-mentioned categories. The market share was calculated by taking the figures for each company's 1936 direct premium income in the local currency, and converting these figures into 1936 US dollars to get a uniform measure of comparison across countries. The US dollar figure for each category was divided by the total premium income in US dollars for all countries (other than the exceptions listed above) and this provided the market share covered by each category.

**Appendix 3**
**Letter from HCPO Claimants**

December 10, 1999

Holocaust Claims Processing Office
State of New York
Banking Department
2 Rector Street
New York, New York 10006

Dear Ms.

I am writing to let you know what wonderful, professional attention I received from Ms. in your department. I contacted your department various times over a claim, and eventually wound up in the good care of Ms. She organized an investigation of my claim, and sent me full documentation to show that there was nothing open.

The summary of the case, the backup documentation prepared were outstanding. And she was through out the process helpful and gracious, her questions intelligent and to the point. I am the of a company so I have a good appreciation of what is involved in preparing the quality work that Ms. prepared.

I am conveying my gratitude to you and the State for having such outstanding professionals on staff.

Please accept my best wishes for a Happy Holiday Season.

Sincerely,

RECE
SEP 17 2
CONSUMER BANKI STATE OF YORK

9.10.02

RECEIVED
SEP 16 2002
OFFICE OF SUPERINTENDENT
NYS BANKING DEPT.

Ms.
Superintendent, New York State Banking Dept.
2 Rector Street, New York, NY 10006-1894

Dear Ms. __

A bank statement I have just received is crediting my account with $ deposited in my name by the Assicurazioni Generali. This payment was to compensate for policies my late father, had been forced to turn over to the Nazies more than half a century ago.

After years of extensive, often discouraging efforts, I am naturally obliged to Generali for their move that culiminated in this disbursement. At the same time however, I am aware that this may never have happened in my lifetime had it not been for you, your organisation, and your dedicated staff.

That finally brings me to the most important point: I need to single out your Mr. who was the principal intermediary between Generali, the Holocaust processing Office and me. Mr. radiates concern and sympathy. He can calm a persons concern effectively and does so without fail. There never was a time when he was too busy to respond to my questions or to provide me with cuncelling and information. Whatever paperwork emanated from him always has reached me promptly. His unlimited patience, tact and diplomacy apparently reaches into all directions and I have never heard him critical of any act, person or institution. I have no doubt his contribution was substantial in getting my problem moved to its welcome conclusion.

Please accept my thanks for what has been achieved on my behalf and please also convey this gratitude to Mr a true gentleman.

Sincerely

August 5, 2003

RECEIVED
AUG 08 2003
OFFICE OF SUPERINTENDENT
NYS BANKING DEPT.

Superintendent of Banks
State of New York Banking Dept.
1 State Street
New York, N.Y. 10004-1417

Dear Ms.

I am the recipient of a most generous settlement (together with my late sister's children) of my father's life insurance. The AssecurazoneGenerali after many years and considerable efforts of a great many individual finally settled a debt of more than sixty years. I am grateful to still be alive and to be a beneficiary. But grateful as I am, I am very well aware that many people helped including your excellent staff, Ms. and particularly Ms. who could not have been more kind, patient, and helpful! It has really been a most touching experience to encounter such sympathy and concern-- and I must stress again such patience--on the part of and several of her predecessors who were invariably helpful. As I am about to enjoy a long European vacation, I did want to take the time to express my thanks and admiration for what the N.Y. State Banking Department has done in my behalf.

Again, many thanks!

Cordially,

Holocaust Claims Processing Office
Attn. CEO
New York State Banking Department
One State Street
New York, NY 10004-1417

December 23, 200:

Dear Sir or Madam:

I would like to express my gratitude to your office for effective help in resolving my holocaust era insurance claim.

I filed my claim for the insurance policy of my grandfather, who perished in the Holocaust, in fall 1999. This matter was of great emotional importance for me. My late father spent years trying to redeem the policy, and this experience was very embittering for him, he would never buy a life insurance for himself.

As time was passing, I did not see any progress. The ICHEIC was not helpful at all. When I complained to them more than a year ago, I was told, that my claim was being processed by Generali, and that although Generali did not answer their repeated requests about my application, I should not worry and just wait, because Generali would certainly contact me one day. Meanwhile my wife found on the internet, that her uncle had had an unclaimed policy with Generali (my grandfather's policy was with another company), claimed it in fall 2000 and settled in 2002. While this was good news for her, to me it seemed to indicate that I would not be more successful than my father.

This September I wrote a letter about my problems to your office. Honestly, I did not expect too much, but I did not want to leave anything unused. But here I was in for a surprise. Less than 24 hours after I dropped my letter to the mailbox I received an e-mail from , your claims specialist, informing me that she had already sent a request to Generali for a status update. was extremely nice to me, we talked several times over the phone and she kept me also posted via e-mail. She even forwarded to me an e-mail with research about the end of my grandfather, I did not know these details. After your office got involved, things started moving rapidly, and we received the settlement money in November.

Thank you very much. As an American by naturalization, I am very impressed by how much my new country helps the victims of the Holocaust. This stands in a great contrast to Czechoslovakia, my previous country.

Sincerely,

Ms. Superintendent
New York State Banking Department
Holocaust Claims Processing Office
One State St.
New York, N Y 10004 – 1417

RECEIVED
JUN 18 2004
OFFICE OF SUPERINTENDENT
NYS BANKING DEPT.

Dear

I began being a client of the Holocaust Claims office when was my counselor, then worked with and for me, and now I am fortunate enough to have as my counselor.

I am deeply grateful to you and to the organization which you supervise. I began filling out forms and working with these wonderful people almost ten years ago and with their help, my brother and I have received a small portion of our father's assets.

Recently, however, Mr. began working seriously on the insurance policies that my father had taken out in Austria before 1938 and a few months ago, we received what we felt was a very generous payment from Generali Insurance Company.

A couple of weeks ago, however, I received a call from Mr and he informed me that your organization had pointed out to Generali that their calculations were not quite correct and that Generali actually owed us much more. Sure enough, yesterday we received the official confirmation from Generali that they owed us a substantial amount. The letter contained various forms and their written assurance that they would make the deposit into our bank accounts as soon as they received the paper work.

I am deeply grateful to Mr. who has now guided me for several years. He has been knowledgeable, kind, courteous, always patient in answering my questions and always helpful in finding ways to solve my problems. I know he has spent countless hours trying to get the other insurance companies to meet their obligations.

My deepest gratitude to Mr. to the New York State Banking Department and the Holocaust Victims Claims Processing Office and, of course, to you.

Gratefully,

Please feel free to use my letter any way you wish

April 6, 2006

Director
Holocaust Claims Processing Office
New York State Banking Department
One State Street
New York, NY 10004

Dear Ms.

I am taking the liberty to write this brief, unsolicited letter to tell you how much I appreciate Ms 's assistance in processing several of my family's claims.

Ms. has been working on our claims for a number of years. Her dedication to getting the work done promptly and efficiently has, in every instance, exceeded my expectations.

I am very particular with people I contact in or out of government, and I do save my platitudes. However, I do feel an obligation to share with you my admiration for Ms. job's performance. I trust that I am not the only one who would give her the highest possible rating.

It is very comforting to know that you have a person of such high caliber on your staff, and now that she has returned from Australia, I more than pleased that she continues working on matters related to our claims.

I thank you for paying attention to this letter.

Sincerely yours,

# Appendix 4
# HCPO Case Studies Group 1

**Mr. A.A. – Relaxed Standards of Proof – Case Study #1**

Mr. A.A., a Holocaust survivor who was born in Poland, filed a claim with our office in September 1999 for the policies of his grandfather, Mr. E.B., a wealthy Polish businessman who perished in the Warsaw Ghetto in 1942, as did his wife. His daughter, the mother of Mr. A.A., perished in Auschwitz in October 1944. Mr. A.A. and his father were the only members of his family to survive the Holocaust.

After the war, Mr. A.A.'s father attempted to claim the insurance policies from the Italian insurance company Riunione Adriatica di Sicurtà (RAS). However, because the policies were written in Poland, the Italian headquarters of the company had no information regarding the contracts and advised Mr. A.A.'s father to contact the Polish state insurance authority instead. Mr. A.A.'s father was unable to make any headway in this regard and so the matter languished for decades until Mr. A.A. filed his claim with the HCPO.

The HCPO forwarded Mr. A.A.'s claim to ICHEIC, which in turn forwarded the claim to RAS. There were no policy numbers and very few other details available to either the company or the claimant; however, the claimant did have some correspondence between his father, his father's attorneys and RAS during the immediate postwar period and using this, RAS was able to locate a letter from an Italian lawyer detailing some of the terms of the insurance policies taken out by Mr. E.B (namely the insured sums and the beneficiaries, in one case Mr. E.B.'s wife, in the other case, his daughter, the claimant's mother.) Under ICHEIC's Relaxed Standards of Proof, which stipulated that insurers would consider the existence of an insurance policy as adequately substantiated by written correspondence between the insurer or agent or representative of the insurer with the policyholder, claimant or agent of the policyholder or claimant that verified the existence of the insurance policy, RAS used these documents as the basis for their May 2005 offer of over $1 million to Mr. A. A. on both of his grandfather's policies.

The valuation was calculated as follows: According to the letter from the Italian lawyer, both policies were taken out in 1926, for a face value respectively of $20,000 and $80,000. As the policyholder and both beneficiaries had perished during the Holocaust, ICHEIC's valuation guidelines required that RAS use the full insured sum to calculate the present-day valuation. Therefore, in the case of the first policy, the insured sum of $20,000 was converted into Polish zloty at the rate of $1=5.4 Zloty. (This rate was established by the Polish government in 1936 under a law of general application that converted all foreign-currency holdings in Poland into Polish currency.) This yielded the sum of Zl. 108,000, which was in turn converted into $20,422.80 at the December 1938 conversion rate of $1=0.1891 Zloty. This in turn was reduced by 30% as agreed upon under the ICHEIC valuation guidelines to account for the wholesale depreciation of Eastern European currencies after World War II, yielding a base sum of $14,288.40. This amount, in turn, was multiplied by 10 to bring it up to the 1998 figure agreed upon under the Memorandum of Understanding that created ICHEIC. The resulting $142,884 was then multiplied by 40.29% which accounted for interest between 1998 and May 2005, the date of the offer, for a final offer of $202,011.12. The second policy, originally taken out for the

insured sum of $80,000, was subjected to the same steps to yield a final offer to Mr. A.A. of $808,044.48, for a combined total of $1,010,055.60 for both policies.

In addition, ICHEIC circulated Mr. A.A.'s claims to other companies that did business in Poland, and subsequent to the offer from RAS, Mr. A.A. also received offers from Assicurazioni Generali S.p.A (Generali) on four additional policies taken out by Mr. E.B. which Generali had located in their records. Mr. A.A. received an additional $229,000 offer from Generali on these four policies.

**Mrs. R. G. – Relaxed Standard of Proof – Case Study #2**

Mrs. R.G., a Holocaust survivor who was born in Czechoslovakia, filed a claim with our office in February 1999 for the policies of her uncles, Mr. K.K. and Mr. E.K., who had purchased two policies with Assicurazioni Generali S.p.A (Generali) and one with Phoenix in Prague before World War II. Mrs. R.G. was the sole surviving heir of Mr. K.K. and Mr. E.K., and her only information regarding the insurance policies was a 1946 letter to her from her uncle, Mr. E.K., indicating policy numbers and insured sums for these policies.

The HCPO forwarded Mrs. R.G.'s claim to ICHEIC, which in turn forwarded the claim to Generali. Generali located records of the two Generali policies for Mr. E.K. and Mr. K.K. mentioned in the letter from Mr. E.K.; the details in the letter including the insured sums and dates of issue were matched exactly by the records in Generali's possession, and they made offers to Mrs. R. G. on those two policies.

The Phoenix policy of Mr. E.K., however, was written by a company whose successor (Star) was liquidated/nationalized by the Czechoslovakian state after World War II. Therefore, Mrs. R.G.'s claim was sent to ICHEIC's "8A2" process, which paid claims for policies issued by Eastern European companies that were nationalized or liquidated after World War II and have no present-day successors. The Czechoslovak (and later Czech) insurance authorities did not have any records from the Star insurance company. Under ICHEIC's Relaxed Standards of proof, the data provided in the letter from Mr. E.K., which had been completely verified by Generali's records, could be assumed to prove the existence of the Star Phoenix policy. Therefore, the 8A2 process made an award of $6000 to Mrs. R.G.

The valuation was calculated as follows: Because the policyholder, Mr. E.K., had definitely survived the Holocaust (as he was the author of a letter to the claimant in 1946), ICHEIC's valuation guidelines required that the valuation be based on a paid-up value calculated through 1946. However, since Mr. E.K.'s letter only provided the date of issue, and not the duration of the policy in question, it was impossible to calculate the correct paid-up value for this policy. Instead, the average insured sum for Czechoslovakia (12,070 Kcs) was used as the basis for the award to Mrs. R.G. The insured sum of 12,070 Kcs was converted into US dollars at the 1938 exchange rate, and discounted by 30% in order to account for changes in the purchasing power of currencies in wartime and postwar Europe. This sum, in turn, was multiplied by 10 to bring the amount up to a 1998 valuation, and that amount was then multiplied by 46.6% to apply interest up until the date of the offer in February 2006, yielding a value of $4,248.10. As stipulated by ICHEIC's valuation guidelines, this sum was multiplied by three, and then capped at $6,000, resulting in the offer made to Mrs. R.G.

**Mr. I.V. – Anecdotal Claim – Generali Research Match**

Mr. J.V., a Holocaust survivor who was born in Hungary, filed a claim with our office in October 2003 for the policies of his father, Mr. I.V., and his great-uncle, Mr. A.G. Mr. I.V., who managed a business in Budapest, was take to a forced labor camp in April 1944 and thereafter transported to Austria. Mr. I.V. was never heard from again and by order of the Hungarian courts was declared dead. Mr. A.G., a Hungarian citizen, resided and did business in the Netherlands, from where he was deported to Auschwitz where he perished in 1944, as did his wife.

Mr. J.V. was unable to provide any details about the insurance policies he believed were owned by his relatives, including the names of the companies from which the policies were purchased. After the HCPO forwarded his claim to ICHEIC, his claim was circulated to all ICHEIC member companies who did business in Hungary, as stipulated by ICHEIC's operating guidelines.

As a result, of ICHEIC's dissemination of Mr. J.V.'s claim, Assicurazioni Generali S.p.A (Generali) located one policy purchased by Mr. I.V and three policies owned by Mr. A.G. According to company records, the completeness of which was confirmed by independent audit, the policy owned by Mr. I.V. was not in force during the Holocaust-era. Therefore Mr. J.V. did not receive compensation for the policy purchased by his father. Of the three policies owned by Mr. A.G., one reached maturity in 1938 and remained among the pending policies in Generali's Hungarian portfolio and was therefore subject to compensation, while the other two were not in force during the Holocaust-era. In December 2006 Generali offered Mr. J.V. $2,000 for Mr. A.G.'s policy.

The valuation was calculated as follows: According to Generali records, the policy was taken out in 1923, with a duration of 15 years, for a face value of 1,000,000 Hungarian Crowns, converted to 80 Pengos at the official rate of 12,500 Austro-Hungarian Crowns to 1 Pengö in 1926, when the Pengö was established as Hungary's official currency. Since the policy reached maturity in 1938 and the policyholder had perished during the Holocaust, ICHEIC's valuation guidelines required that Generali use the full insured sum to calculate the present-day valuation. Therefore, the insured sum of 80 Pengo was converted by 30% as agreed upon under the ICHEIC valuation guidelines to account for the wholesale depreciation of Eastern European currencies after World War II, yielding a base sum of $11. This amount, in turn, was multiplied by 10 to bring it up to the 1998 figure agreed upon under the Memorandum of Understanding that created ICHEIC. The resulting $110 was then multiplied by 52.76% which accounted for interest between 1998 and December 2006, the date of the offer, for a final amount of $168.04.

As the resulting amount of $168.00 was below the minimum payment amount set by ICHEIC's guidelines, Generali offered Mr. J.V. $2,000 for his great-uncle's policy.

**Mrs. C.S. – Anecdotal Claim – ICHEIC Research Match**

Mrs. C.S., a Holocaust survivor, who was born in the Czechoslovakia, filed a claim with our office in September 1998 for the life insurance policies of her father Mr. H.S. Mr. H.S. was a successful clothing manufacturer and retailer in Czechoslovakia. In 1939, when the Nazis occupied Czechoslovakia, Mr. H.S. fled with his family to the United States where Mr. H.S. died in 1953. Because the family made a narrow escape from the Nazis, they were unable to gather any financial documents before fleeing their home. Therefore, when Mrs. C.S. made a claim for her father's insurance policies, she lacked any supporting documentation or indeed any specific information about which companies, how many policies, etc. her father may have taken out. The HCPO forwarded Mrs. C.S.'s anecdotal claim to ICHEIC.

Through research in Czech national archives, ICHEIC found a list of assets deposited on behalf Mr. H.S. with the Boehmische Union-Bank. Among other assets listed, ICHEIC found reference to a Phoenix policy. The archival record did not provide complete terms of the policy, but the record did indicate that the policy was taken out for 30,000 KCS and had a maturity date of 1945. As the policy was purchased in Czechoslovakia and because there is no successor to the defunct Phoenix insurance company, ICHEIC forwarded the claim to its 8A2 process, which assessed claims for policies issued by Eastern European companies that were nationalized or liquidated after World War II and have no present-day successors. In August, 2006 ICHEIC made an offer to Mrs. C.S. in the amount of $10,818.61.

ICHEIC valuated the policy as follows: Because Mr. H.S.'s Phoenix policy would have come due during 1945, ICHEIC considered the policy to have matured during the Holocaust era, and therefore, the full insured sum of 30,000 KCS was used to calculate present-day US dollar value. The insured sum of 30,000 KCS was converted into US dollars at the 1938 exchange rate of $1 = 29.15 KCS. This sum was then reduced by 30% as agreed upon under the ICHEIC valuation guidelines to account for the wholesale depreciation of Eastern European currencies after World War II, which yielded a base sum of $720. This was multiplied by 10 to bring it up to the 1998 value of $7,200, which was in turn multiplied by 50.25% to account for interest between 1998 and August 2006, for a final offer of $10,818.61.

**Mr. P.L. – Anecdotal Claim – HCPO Research**

Mr. P.L., a Holocaust survivor born in Czechoslovakia, filed a claim with our office in February 1999 for the life insurance policies of his father, Mr. R.L., the owner of a metal works factory who was arrested by the Nazis following their occupation of Czechoslovakia in 1939. Mr. R.L. was deported to Mauthausen concentration camp where he perished in 1940. Mr. P.L. was able to flee Czechoslovakia and made his way to Australia. Mr. P.L. had no documentation concerning his family's looted assets, but believed that his father had taken out insurance with a Swiss insurance company. The HCPO forwarded Mr. P.L.'s anecdotal insurance application to ICHEIC.

In November, 2003 the HCPO wrote to various insurance companies and to the relevant archives in Brno requesting information about Mr. P.L.'s family. The archive produced extensive records which showed, among other looted family assets, a life insurance policy with the now-defunct Phoenix insurance company. While the archival documents did not contain terms of the policy (e.g., dates, duration), they did indicate the sum insured was 220,000 KCS.

The HCPO forwarded this information to ICHEIC. Because there is no present-day successor to the Czech Phoenix insurance company, ICHEIC made an award to Mr. P. L. from its 8A2 Humanitarian Fund, which was set up to pay policies issued Eastern European companies that were nationalized or liquidated after World War II and have no present-day successors. Unfortunately, Mr. P.L. passed away in 2004, but compensation for her father's insurance policy was made to Mr. P. L.'s daughter, Mrs. T.P. In July of 2006, ICHEIC offered Mrs. T/P. $79,016.59 for the Phoenix policy of her grandfather, Mr. R. L.

Because the policyholder had perished during the Holocaust, ICHEIC's valuation guidelines required that the full sum insured be used to calculate the present-day valuation. Therefore, the insured sum of 220,000 KCS was converted into US dollars at the December 1938 conversion rate of 29.15 KCS=1 USD. This sum in turn was reduced by 30% as agreed upon under the ICHEIC valuation guidelines to account for the wholesale depreciation of Eastern European currencies after World War II, yielding a base sum of $5,280. This amount was multiplied by 10 to bring it up to the 1998 figure agreed upon under the Memorandum of Understanding that created ICHEIC. The resulting $52,800 was then multiplied by 49.65% which accounted for interest between 1998 and July 2006, the date of the offer for a final offer of $79,016.59.

# Appendix 5
# HCPO Case Studies Group 2

**Mr. I. W. – Non-ICHEIC Company**

Mr. I.W., a Holocaust survivor who was born in Poland, filed a claim with our office in November 1999 for the policy taken out by his father, Mr. S. W., the owner of a factory in Wilno (Poland, subsequently Lithuania) with the Polish insurance company Przezorność before the war.

Przezorność was a subsidiary of a non-ICHEIC company, Prudential plc, based in the United Kingdom, which has its own claims process outside of the ICHEIC process, and has published lists of Przezorność's policyholders at the time. Although Mr. S.W.'s name did not appear on the list, Prudential accepted Mr. I.W.'s contention that his father had had insurance with the company as well as the sum insured of 100,000 Zl., recollected by Mr. I.W., who was an adult at the time.

Prudential used 100,000 Zl. as the full face value of the policy, which they subsequently converted to £4,000 using the pre-war exchange rate of 25 Zloty=1 £. They then added compound interest at the rate of 5% per annum from the date of Mr. S.W.'s death in 1941 until the date of their offer to Mr. I.W. in 2001, for a total offer of £75,000, or $106,000 at the July 2001 exchange rate.

**Mr. J. G. – Successor Company**

Mr. J.G, a Holocaust survivor who was born in France, filed a claim with our office in March 1998 for the policies of his grandfather, Mr. L.L. Mr. L.L., born in Hungary in 1880, was a successful engineer and businessman, with real property and financial interests throughout Europe and in what was then Palestine (preset-day Israel). After the annexation of Austria in 1938, Mr. L.L. fled his Viennese home to his residence in Poland. A few years later, he and his wife were deported to the Lwów Ghetto and from there to a concentration camp where they both perished.

As Mr. L.L. was resident in Austria as of the April 1938 decree requiring Jews to report their assets to the authorities, the HCPO obtained a copy Mr. L.L.'s 1938 Austrian property declaration. Among the assets listed was an insurance policy purchased from Anker valued at 1,000 RM. An annotation along side this entry indicated that payments related to this "Palestinian" policy were made from Mr. L.L.'s Polish bank. Based on this information the HCPO contacted Der Anker Allgemeine Versicherungs Aktiengesellschaft (Anker).

Anker concluded that the policy either could have been purchased by Mr. L.L. while living in Poland and was assigned to Anker's Polish offices or the policy was issued by Anker Palestine. Anker informed the HCPO that nearly all of the company's Vienna files for the period of 1920 to early 1945 were destroyed when the company's headquarters suffered a major fire in April 1945. In addition, the Anker Palestine portfolio was transferred to Migdal Insurance Co. Ltd. (Migdal), in Jerusalem, before World War II.

As Migdal is a subsidiary of Assicurazioni Generali S.p.A (Generali), the HCPO submitted a claim to the Generali Policy Information Center for assessment. Generali in turn forwarded to the claim to Migdal. Migdal was unable to locate any additional information concerning Mr. L.L.'s policy. Nevertheless, drawing on information contained in Mr. L.L.'s Austrian asset declaration, Migdal extended an offer to Mr. J.G. in September 2000 in the amount of $11,000.

**Mr. G.H. – Austrian General Settlement Fund**

Mr. G.H., a Holocaust survivor who was born in Austria, filed a claim with our office in October 1997 for the insurance policies of his father, Mr. O.H., a shoe store owner, who fled Vienna in 1938 and immigrated to the United States via London in 1939. Upon receipt of Mr. G.H.'s claim the HCPO obtained a copy of Mr. O.H.'s 1938 Austrian property declaration. Among the assets listed was an insurance policy purchased from the Österreichische Versichergungs Aktiengesellschaft (ÖVAG). Based on this information the HCPO contacted UNIQA (the successor of ÖVAG) and obtained additional information about the ÖVAG policy listed on the asset declaration as well as two other insurance policies owned by Mr. O. H.

The HCPO forwarded Mr. G.H.'s claim to ICHEIC and enclosed a copy of the Austrian asset declaration and letter from UNIQA. Pursuant to ICHEIC's agreement with the Austrian General Settlement Fund (GSF), this claim was forwarded to the GSF, prior to the GSF's deadline of May 28, 2003, for settlement. As this claim is for policies purchased from an Austrian company and because the loss of the property occurred on the present-day territory of the Federal Republic of Austria, the GSF issued a decision on Mr. H's claim in June 2006 based the information provided by the HCPO and ICHEIC.

The GSF Claims Committee reviews all applications using relaxed standards of proof and in accordance with one of two processes: the claims-based process or the equity-based process. In the claims-based process, in order to establish eligibility, evidence supporting the claim are necessary (e.g. birth or marriage certificates, last will and testament, old passport, certificate of right of residence [Heimatschein], victim card [Opferausweis], contracts, land register records, property declaration, etc.). If, however, no relevant evidence is available, a claim can be made under the equity-based process. Applications submitted under the claims-based process that do not meet these relaxed standards of proof are considered under the equity-based process. Decisions made under the claims-based process are subject to appeal, whereas decisions rendered under the equity-based process are not.

Based on information provided by the successor of ÖVAG, one of Mr. O.H.'s policies was worth $125, the second was worth 1914 RM (the repurchase value listed in Mr. O.H.'s asset declaration) and the third $570. Of the three policies claimed by Mr. G.H., the GSF made an offer on two of them, the first and second policy, for $23,272.43 and $3,897.25 respectively. Because the GSF's valuation guidelines are not publicly available, it is not possible to ascertain how these award amounts were calculated. The GSF denied Mr. G.H. his claim for the third policy indicating that it had reached maturity in February 1937 and was paid out that same year.

In accordance with GSF procedure, Mr. G.H. will receive 15% of the amount offered for these two policies as an advance payment ($4,075.45), with the possibility of receiving an additional 0-3% more as a second payment.

The valuation would have been calculated under ICHEIC's guidelines as follows: For the first policy, which was insured in US dollars, ICHEIC would have taken the US dollar multiplier for the event year (1943) of 26.2 and multiplied this by the

insured sum to give a value of $3275 for the year 2000. Interest from 2000 to the date of the offer would amount to a further $910.26, for a total award amount of $4185.76. For the second policy, because the only information is the repurchase value and the date of maturity (1945), the repurchase value would be converted into Austrian Schillings at the rate of 1RM=1.5ATS to yield a repurchase value of ATS 2,872.50. The Austrian Schilling multiplier for 1945 is 54.3, which yields a base sum of 155,976.75 ATS in 2000. Adding interest through the date of the offer gives an award of 205,998 ATS (or 14976.05 Euros), which equaled $18,824.90 at the June 2006 exchange rate. Because the third policy matured in 1937, before the deemed date of the beginning of the Holocaust-era in Austria, ICHEIC guidelines would have precluded an award on the third policy.

Hence, Mr. G.H.'s total offer from ICHEIC would have been $23,010.66, of which he would have received 100%.

**Mr. F.B. – Foreign Claims Settlement Commission and ICHEIC Appeals**

Mr. F.B., a Holocaust survivor who was born in Czechoslovakia, filed a claim with our office in November 1997 for the insurance policies of his father, Mr. B.B., who fled with his family to the USA after the Nazi occupation of Czechoslovakia. The HCPO forwarded Mr. F.B.'s claim to ICHEIC which circulated the claim to all companies that did business in Czechoslovakia.

As a result of this effort, Victoria zu Berlin (Victoria) located documentation through archival research noting that Mr. F.B.'s father had filed a claim with the United States Foreign Claims Settlement Commission (FCSC) for a Victoria policy with a surrender value of 72,100 KCS in December 1945. The FCSC compensated the policy using the rate 2 US cents per KCS (or $1,442) plus interest of 6% for a five year period.

Victoria denied Mr. F.B.'s claim, citing the FCSC compensation, and contending that ICHEIC's valuation guidelines stipulated that when a policy was previously compensated, there would be no further obligation on the part of the companies. Mr. F.B. submitted an appeal to the ICHEIC Appeals Panel noting that for other policies that were similarly compensated by the FCSC, companies had offered him top-up payments calculated by applying ICHEIC's valuation guidelines to the policies and then subtracting the amount of FCSC compensation his father had received.

The Appeal Panel determined that the valuation guidelines only referred to decisions issued by German restitution or compensation authorities, not to any other forms of compensation. Therefore, the payment received by Mr. B.B. from the FCSC did not bar Mr. F.B. from receiving additional compensation for the same policy. The Appeal Panel instructed Victoria to calculate the policy under ICHEIC valuation guidelines and deduct from its value the FCSC payment, resulting in an October 2006 offer to Mr. F.B. of $24,259.25.

Because the policyholder had survived the Holocaust and the policy had not reached maturity before 1945, ICHEIC's valuation guidelines stipulated that the company could use either the average value of a Czech policy at the time, or the surrender value, depending on which sum was more advantageous to the claimant. The surrender value, in this case, was substantially greater than the average value of a Czech policy, so this amount (72,100 KCS) was converted to US dollars at the December 1938 rate of 29.15 KCS= 1 USD. This sum was reduced by 30% as agreed upon under the ICHEIC valuation guidelines to account for the wholesale depreciation of Eastern European currencies after World War II, yielding a base sum of $1,730. This amount was multiplied by 10 to bring it up to the 1998 figure agreed upon under the Memorandum of Understanding that created ICHEIC. The resulting $17,300 was then multiplied by 51.45% which accounted for interest between 1998 and October 2006, the date of the decision of the Appeals Panel, for an award of $26,208.27. The sum of $1,442, i.e. the FCSC compensation paid to Mr. B.B., was deducted from this amount to yield a final offer of $24,259.25.

**Mrs. L.K. – Documented Claim – Claims Resolution Tribunal**

Mrs. L.K., a Holocaust survivor who was born in Poland, filed a claim with out office in May 1999 for the policy of her father, Mr. J.Z., a business man from Lwów, who perished in 1943. Enclosed with her claim form, Mrs. L. K. provided the HCPO with a copy of the policy purchased in March 1933 with an insured sum of $1,000, two premium payment receipts, and a 1938 statement from Vita-Kotwica noting that the policy was converted from US dollars to Polish zloty (in accordance with Polish currency laws of the time).

The HCPO forwarded Mrs. L.K's claim to ICHEIC and enclosed a copies of all documentation provided. Pursuant to ICHEIC's agreement with the Claims Resolution Tribuna (CRT), this claim was forwarded to the CRT, which accepts some Polish Vita Kotwica claims because Swiss Re reinsured some Anker and Vita Kotwica policies. Vita Kotwica no longer exists as a company as it was sold off in parts during the 1930s. Swiss Re acquired a small amount of archival data about Vita Kotwica policies.

The CRT submitted Mrs. L.K.'s claims to Swiss Re for research. Though unable to locate additional information on Mr. L.K.'s policy, Swiss Re recommend that an award be offered based on the information Mrs. L.K. provided with her claim. Based on the policy information available, the CRT made Mrs. L.K. an offer in June 2005 for $12,500. Because the CRT's valuation guidelines, with respect to insurance claims, are not publicly available, it is not possible to ascertain how this award amount was calculated.

Had the claim been paid through the ICHEIC process, the payment would have been calculated as follows: Because the policyholder perished during the Holocaust, ICHEIC's valuation guidelines would require that the company use the full insured sum to calculate the present-day valuation. Therefore, the insured sum of $1,000 would be converted into Polish zloty at the rate of $1=5.4 Zl. (established by the Polish government in 1936 under a law of general application that converted all foreign-currency holdings in Poland into Polish currency.) This would yield the sum of Zl. 5,400, which in turn would have been converted into $715 at the December 1938 exchange rate discounted by 30% to account for the depreciation of Eastern European currencies after World War II. This sum would, in turn, have been multiplied by 10 to bring it up to the 1998 figure agreed upon under the Memorandum of Understanding that created ICHEIC. The resulting $7,150 would then have been multiplied by 41.9%, which would have accounted for interest between 1998 and June 2005, the date of the CRT's offer, for a final offer of $10,146.75.

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