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THE STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VICTIMS AND THEIR HEIRS

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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THE STATUS OF INSURANCE RESTITUTION FOR HOLOCAUST VICTIMS AND THEIR HEIRS

THURSDAY, NOVEMBER 8, 2001

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

The committee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, Hon. Christopher Shays (acting chairman of the committee) presiding.

Present: Representatives Gilman, Morella, Shays, Ros-Lehtinen, Horn, LaTourette, Waxman, Maloney, Norton, Kucinich, Tierney, Schakowsky, Clay and Lynch.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy chief counsel; Mark Corallo, director of communications; Chad Bungard, Pablo Carrillo, Randall Kaplan, Matt Rupp, and James J. Schumann, counsels; Robert A. Briggs, chief clerk; Michael Bloomrose and Michael Layman, staff assistants; Robin Butler, office manager; Josie Duckett, deputy communications director; Joshua Gillespie, deputy chief clerk; Nicholas Mutton, assistant to chief counsel; Leneal Scott, computer systems manager; Corinne Zaccagnini, systems administrator; Phil Barnett, minority chief counsel; Kristin Amerling, minority deputy chief counsel; Michelle Ash, minority counsel; Ellen Rayner, minority chief clerk; and Jean Gosa and Earley Green, minority assistant clerks.

Mr. SHAYS. Good morning. A quorum being present, the Committee on Government Reform will come to order.

I ask unanimous consent that all Members' and witnesses' written and opening statements be included in the record. Without objection, so ordered.

I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record. Without objection, so ordered.

I ask unanimous consent that questioning for panel two of the hearing proceed under clause 2(j)(2) of the House rule 11 and committee rule 14 in which the chairman and ranking member may allocate time to a committee member as is deemed appropriate for questioning, not to exceed 60 minutes between the majority and minority in alternate 10-minute rounds. Without objection, so ordered.

I ask that the requests for information the committee has sent out in this matter as well as the responses received be placed in the record. Without objection, so ordered.

I understand, Mr. Waxman, that you have a motion.

Mr. WAXMAN. Yes. Before we begin the hearings on the topic today, I would ask unanimous consent that Representative Stephen F. Lynch of Massachusetts be appointed to the Subcommittee on National Security, Veterans' Affairs and International Relations and the Subcommittee on the District of Columbia.

Mr. Lynch is a new member of the committee. We want to welcome him today to our committee. He has been a member of the Massachusetts Legislature since 1994, and he has an interest in long-term care and prescription drugs. And when it comes to the issue of post office reform, he has a family connection because his mother has been a postal clerk.

We are delighted to have him join us on the Democratic side, and I would request that he be placed on the subcommittees, as I have indicated in my request for unanimous approval.

Mr. SHAYS. Your question is noted. It is part of the record.

Mr. Lynch, we are delighted to have you as a member of the committee. Very delighted.

Mr. LYNCH. Thank you.

Mr. SHAYS. And by unanimous consent, it is approved; and you are, in fact, a member of the committee. That is a lot of power that I have here.

I would like to welcome our witnesses, I would like to welcome our guests, and I would like the record to note that this hearing is at the request of Mr. Waxman, eagerly agreed to by our chairman, Mr. Burton, who is not here because his wife is ill. He is with his wife and deeply regrets that he is not here, and I am reading his statement that I concur with, so the ayes are from him.

He wishes us good morning and acknowledges we are here today to discuss the International Commission on Holocaust Era Insurance Claims [ICHEIC].

The Commission was created in 1998 to assure that the Holocaust survivors and the families of Holocaust victims receive payment on insurance policies they owned before the Second World War. The United States played a major role in creating the Commission. So did Germany. So did Israel.

The hope was that we would resolve these issues once and for all by providing restitution to those who deserve it. Today we want to find out if the process is working or not.

Families face serious obstacles in seeking restitution. When the Nazis hauled Jewish families off to concentration camps, their personal documents were confiscated or destroyed. There are no death certificates for millions of people who were murdered at concentration camps.

After the war, the new Communist government in Eastern Europe expropriated insurance companies and destroyed large volumes of records. The challenges that these families face are substantial. The Commission was created to try to head off years and years of civil litigation.

Former Secretary of State Lawrence Eagleburger was asked to head the Commission. This is a Herculean task, and it has been a frustrating process. He deserves to be commended for taking it on. I appreciate the fact that Secretary Eagleburger is going to be here today.

All parties involved in ICHEIC—the Jewish organizations, the insurance regulators and the insurance companies—believe that legitimate insurance claims should be paid. But at this point nobody is very happy with the process or the results.

There are a number of serious concerns that we are going to examine today. Very few claims have actually been paid since the ICHEIC process was initiated. Less than 2 percent of all of the claims submitted to the Commission have resulted in offers from the insurance companies. That is something that we are concerned about.

We are fortunate to have with us several survivors who have been through this process and can shed some light on the problems that people face. I am eager to hear about their own personal experiences.

One of the biggest issues that remains unresolved is whether insurance companies should publish lists of all of their unpaid policyholders. European insurance companies agreed to review their files for all insurance policies held by Holocaust victims. The insurance companies were supposed to publish the names of people holding unpaid policies. However, to date, very few names have been published. As a result, families that have no documentation have very little to work with.

To be fair, I should point out that what we are asking these insurance companies to do is very difficult. We are asking those companies to search through archives that go back 60 or 70 years. Those files have been through war, Communist control, and the passage of 60 years. But it simply has to be done.

The insurance companies want legal peace. If they want to escape litigation, they have to leave no stone unturned. The families deserve it. Justice requires it.

Another issue of great concern is the fact so many European insurance companies aren't participating in the process at all. Only five large companies have joined ICHEIC. These are companies with subsidiaries in the United States. These are the companies that face liability problems in the United States.

Many other German insurance companies have resisted joining ICHEIC for too long. By refusing to participate in ICHEIC, these companies are denying Holocaust victims and their heirs a fair shake.

Secretary Eagleburger is working hard to try to get these companies to participate. It has been a very frustrating process. I would like to see our State Department communicate to the German Government how important this is. We need to bring closure to this issue. We can't do that unless every company participates. I urge those companies to join the Commission and bring some measure of justice to Holocaust victims and their heirs.

There is also the question of who should pay for ICHEIC operating expenses. German insurers have proposed that they should be reimbursed for their administrative expenses. This reimbursement would come from funds that are supposed to go toward paying policyholders. We are talking about tens of millions of dollars that could be used to pay deserving claimants. The reimbursement issue is obviously significant.

One final issue that merits our attention is the deadline. Should it be moved back? The Commission deadline for submitting claims is early next year. If there are other valid claims out there that have not yet been filed, the deadline should be moved back. That is why this hearing is especially timely right now.

The U.S. Government plays an important role as an observer of ICHEIC. Ambassador Bindenagel, the State Department authority on this issue, is here to give us his perspective on whether ICHEIC is accomplishing its goals.

We have an important stake in this issue. We have many Holocaust survivors living in this country. They are our constituents. They deserve to be treated fairly. We have an important foreign policy interest. We have a very strong relationship with Germany. We have worked together for decades. Bringing closure to this issue will make that relationship even stronger. It will also strengthen the ties between Israel and her European allies.

But one point has to be perfectly clear. There is only one way to achieve closure. That is to make sure that every family that deserves restitution gets restitution. We have to make sure that every Holocaust survivor feels like he or she is getting a fair shake.

A lot of work has been done. Progress has been made. But we are not there yet. My hope is that this hearing can shed some light on whether ICHEIC is working. If not, we need to find out how to fix it. Congress and this committee in particular need to play a productive role in making sure that all Holocaust-era victims are paid what rightfully belongs to them, and we should do everything we can to encourage the German Foundation to participate fully and meaningfully in the claims process.

I want to thank all of our witnesses for being here today. I thank Mr. Waxman for his dedication to resolving this issue. This is something that he has been following for a very long time, and now I yield to him for his opening statement.

[The prepared statement of Hon. Christopher Shays follows:]

Shays

Good morning.

We are here today to discuss the International Commission on Holocaust Era Insurance Claims (ICHEIC) – also known as "I-check".

The Commission was created in 1998 to help Holocaust survivors and the families of Holocaust victims receive payment on insurance policies they owned before the Second World War.

The United States played a major role in creating the Commission. So did Germany. So did Israel. The hope was that we could resolve these issues once and for all by providing restitution to those who deserve it. Today, we want to find out if the process is working or not.

Families face serious obstacles in seeking restitution. When the Nazis hauled Jewish families off to concentration camps, their personal documents were confiscated or destroyed. There are no death certificates for the millions of people who were murdered at concentration camps.

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The challenges that these families face are substantial. The Commission was created to try to head off years and years of civil litigation. Former Secretary of State Lawrence Eagleburger was asked to head the Commission. This is a Herculean task, and it's been a frustrating process. He deserves to be commended for taking it on. I appreciate the fact that Secretary Eagleburger is going to be here today.

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To be fair, I should point out that we're asking these insurance companies to do is very difficult. We're asking these companies to search through archives that go back 60 or 70 years. These files have been through war, communist control, and the passage of 60 years. But it simply has to be done. If the insurance companies want "legal peace," if they want to escape civil litigation, they have to leave no stone unturned. The families deserve it.

Another issue that's of great concern is that many European insurance companies aren't participating in the process at all. Only 5 large companies have joined ICHEIC. These are companies with subsidiaries in the United States. These are the companies that faced liability problems in the United States. Many other German insurance companies have resisted joining ICHEIC for too long. By refusing to participate in the ICHEIC, these companies are denying Holocaust victims and their heirs a fair shake.

Secretary Eagleburger is working hard to try to get these companies to participate. It's been a very frustrating process. I would like to see our State Department communicate to the German government how important this is. We need to bring closure to this issue. We can't do that unless every company participates. I urge these companies to join the Commission and bring some measure of justice to Holocaust victims and their heirs.

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But one point has to be perfectly clear – there's only one way to achieve closure. And that's to make sure that every family that deserves restitution gets restitution. We have to make sure that every Holocaust survivor feels like he or she is getting a fair shake. A lot of work has been done. Progress has been made. But we're not there yet.

My hope is that this hearing can shed some light on whether ICHEIC is working. If not, we need to find out how to fix it. Congress, and this Committee in particular, need to play a productive role in making sure that all Holocaust-era victims are paid what rightfully belongs to them. And we should do everything we can to encourage the German Foundation to participate fully and meaningfully in the claims process.

I want to thank all of our witnesses for being here today. I thank Mr. Waxman for his dedication to resolving this issue. This is something that he's been following for a long time. And I now yield to him for his opening statement.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to thank you for chairing this hearing and Congressman Burton for calling this hearing today so that we can air what I think is an important issue.

Holocaust-era insurance restitution is an emotional and complex subject, and I appreciate that we are getting an opportunity to look at it and the work of ICHEIC, the International Commission on Holocaust Era Insurance Claims.

It was 63 years ago this week, in November 1938, that the Nazis' violent and pervasive persecution of Jews was launched with Kristallnacht. For those who do not know, Kristallnacht was a massive pogrom organized by the Nazis against Jewish synagogues, schools and shops. For 3 days, rampaging mobs freely attacked Jews in the street. It was known as Kristallnacht, the night of broken glass, because of the mass destruction left in its wake. By an official Nazi count, during Kristallnacht more than 1,000 synagogues were burned, almost 7,500 Jewish businesses were destroyed and numerous others were vandalized. In addition, thousands of Jews were rounded up and sent off to concentration camps.

The repudiation of valid insurance claims started with Kristallnacht. In the days following it, the Gestapo issued an order requiring Jews to be billed for the damage and that any insurance money due them would be confiscated by the state.

The Kristallnacht order largely concerned property insurance. But the failure of survivors to receive compensation also occurred with other popular types of insurance like life, health, education and dowry insurance.

Jewish families paid premiums for years. Insurance companies prospered from these payments. But when Jews were killed or their property was confiscated or destroyed in the Holocaust, their insurance policies went uncompensated.

The situation is especially poignant today. For decades, families have been seeking compensation for those insurance policies. Now they are reaching the ends of their lives, and they may never see justice on this matter.

ICHEIC was created in 1998 with the hope that it could help resolve the insurance claims of Holocaust-era survivors and their families who face long-term intransigence by companies that held their policies. But ICHEIC is simply not working very well. The system has failed to ensure thorough identification of policyholders, a dismally low percentage of the claims filed through ICHEIC have been approved, ICHEIC standards have been ignored, the majority of German insurance companies have not even agreed to follow the ICHEIC procedures, and questions have been raised regarding whether ICHEIC has been responsible with its own expenditures.

The experience of Judith Steiner is representative. She is a Holocaust Survivor from Los Angeles who contacted me in despair over the rejection of her ICHEIC claim by RAS, a subsidiary of the big German insurance company Allianz. Mrs. Steiner filed her claim with a copy of the receipt for the last premium payment her grandfather paid before the family was taken from Hungary and sent to concentration camps. The company insignia was on the receipt. Yet

RAS responded that her claim was denied because the existence of the policy could not be corroborated in the company's files.

Some of the concerns that have been raised about the ICHEIC system involve the administrative management of ICHEIC itself. ICHEIC's purpose is to facilitate the compensation of claimants, yet it has spent on itself twice as much as has been offered to survivors and their families. ICHEIC has spent $40 million on salaries, conferences, marketing, and administrative expenses, but only $20.9 million has been offered to survivors, and even less has actually been paid out.

An even bigger problem is the actions of the insurance companies. The ICHEIC process imposes a February 2002 deadline for submitting claims applications. It appears that both member and non-member companies are engaged in the strategy of dragging their feet until the deadline has expired or potential claimants have died off.

Most of the German companies have refused to join the ICHEIC process. They have spent months offering various proposals that condition the terms under which they would join. For example, media accounts report that such companies are demanding that a significant portion of the funds set aside for insurance claim reimbursement be refunded to those companies as a condition of joining.

As a result, families of survivors are caught in a catch–22. They are facing an imminent deadline to file claims, but they cannot file effective claims without information from these companies about the policies they issued.

Most companies that have joined have not vigorously participated. Unfortunately, it appears that, 3 years after the funding of ICHEIC, an exhaustive policyholder list by member companies has yet to be published. One study by a state insurance commissioner estimated that, of a pool of 3 million Holocaust-era policies issued, member companies had produced only 9,000 names by the end of last year.

Further, since the establishment of ICHEIC, its member companies have approved survivor claims at an alarmingly low rate. This problem persists even where survivors were able to identify the companies that held their families' policies. To date, less than 2 percent of claims presented to companies have resulted in offers. That really is quite remarkable. Less than 2 percent of the claims presented to the companies have resulted in offers. Thousands of other applications are still in limbo because the survivors who filed them cannot name the company holding their assets.

Allianz has been sent approximately 15,000 claims and has made only 4 offers. Winterthur has been sent approximately 6,500 claims and has made no offers at all.

ICHEIC established relaxed standards for assessing insurance claims to help Holocaust survivors reclaim their policies and set forth guidelines to help ensure appropriate valuation of policies. Often, however, their claims have been unfairly rejected, undervalued, or issued with confusing explanations. Individuals who have received compensation have often received minimal amounts, some totaling less than $2,000.

Time is running out for resolving all of those questions and concerns, as the current ICHEIC deadline for accepting claims is February 2002.

I am hopeful that we can accomplish two major goals with this hearing. First, we must assess the concerns raised regarding the ICHEIC system; and, second, we must help determine what remedies may be appropriate to improve the ICHEIC system.

At a minimum, one remedy deserves our immediate attention: extending the February 2002 deadline for filing claims. Fundamental reforms to the ICHEIC process would be integral to such a step.

I am looking forward to today's testimony. The U.S. Government has played a vital role in pressing for the equity Holocaust survivors and families deserve, and today we will hear from Ambassador Bindenagel.

In addition I look forward to the testimony of our other distinguished witnesses. I am pleased that ICHEIC Chairman Lawrence Eagleburger is with us today to help us look into these matters. I want to thank him for making the effort to be here during his recovery from surgery.

I also want to welcome the other organizations participating today which, as members of ICHEIC, have tirelessly advocated for the rights of survivors. The National Association of Insurance Commissioners has tried to make sure that European companies and subsidiaries operating in the United States have dealt with Holocaust-era insurance issues openly and honestly. The Claims Conference has been pressing this issue for the 50 years of its existence. And Roman Kent, chairman of the American Gathering of Jewish Holocaust Survivors, has been a strong moral voice on this issue.

Finally, I especially want to welcome the Holocaust survivors who have traveled from around the country to share their stories with us. The whole process was set up to help you. Unfortunately, it appears that others are benefiting before you.

Mr. Chairman, I appreciate this opportunity for an opening statement, and I look forward to the hearing.

Mr. SHAYS. I thank the gentleman.

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

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Statement of Representative Henry A. Waxman
Committee on Government Reform
Hearing on Holocaust Insurance Claims Restitution
November 8, 2001

Holocaust-era insurance restitution is an emotional and complex subject. I thank Chairman Burton for giving the Committee the opportunity to look at this issue and the work of ICHEIC, the International Commission on Holocaust-Era Insurance Claims.

It was 63 years ago this week, in November 1938, that the Nazi's violent and pervasive persecution of Jews was launched with *Kristallnacht*. For those who do not know, *Kristallnacht* was a massive pogrom organized by the Nazis against Jewish synagogues, schools, and shops. For three days, rampaging mobs freely attacked Jews in the street. It was known as *Kristallnacht*, the night of broken glass, because of the mass destruction left in its wake. By an official Nazi count, during *Kristallnacht*, more than 1,000 synagogues were burned, almost 7,500 Jewish businesses were destroyed, and numerous others were vandalized. In addition, thousands of Jews were rounded up and sent off to concentration camps.

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identification of policyholders . . . a dismally low percentage of the claims filed through ICHEIC have been approved . . . ICHEIC standards have been ignored . . . the majority of German insurance companies have not even agreed to follow the ICHEIC procedures . . . and questions have been raised regarding whether ICHEIC has been responsible with its own expenditures.

The experience of Judith Steiner is representative. She's a Holocaust survivor from Los Angeles who contacted me in despair over the rejection of her ICHEIC claim by RAS, a subsidiary of the big German insurance company Allianz. Mrs. Steiner filed her claim with a copy of the receipt for the last premium payment her grandfather paid before the family was taken from Hungary and sent to concentration camps. The company's insignia was on the receipt. Yet RAS responded that her claim was denied because the existence of the policy could not be corroborated in the company's files.

Some of the concerns that have been raised about the ICHEIC system involve the administrative management of ICHEIC itself. ICHIEC's purpose is to facilitate the compensation of claimants. Yet it has spent on itself twice as much as has been offered to survivors and their families. ICHEIC has spent $40 million on salaries, conferences, marketing, and administrative expenses. But only $21.9 million has been offered to survivors. And even less has actually been paid out.

An even bigger problem is the actions of the insurance companies. The ICHEIC process imposes a February 2002 deadline for submitting claims applications. It appears that both member and nonmember companies are engaged in a strategy of dragging their feet until the deadline has expired or potential claimants have died off.

Most of the German companies have refused to join the ICHEIC process. They have spent months offering various proposals that condition the terms under which they would join. For example, media accounts report that such companies are demanding that significant portions of the funds set aside for insurance claim reimbursement be refunded to these companies as a condition of joining.

As a result, families of survivors are caught in a catch-22. They are facing an imminent deadline to file claims. But they cannot file effective claims without information from these companies about the policies they issued.

Most companies that have joined have not vigorously participated. Unfortunately, it appears that, three years after the founding of ICHEIC, an exhaustive policyholder list by member companies has yet to be published. One study by a state insurance commissioner estimated that, of a pool of 3,000,000 Holocaust-era policies issued, member companies had produced only 9,000 names by the end of last year.

Further, since the establishment of ICHEIC, its member companies have approved survivor claims at an alarmingly low rate. This problem persists even where survivors were able to identify the companies that held their families' policies. To date, less than 2% of claims presented to companies have resulted in offers. Thousands of other applications are still in limbo because the survivors who filed them cannot name the company holding their assets.

Allianz has been sent approximately 15,000 claims and has made only 4 offers. Winterthur has been sent approximately 6,500 claims and has made no offers at all.

ICHEIC established relaxed standards for assessing insurance claims to help Holocaust survivors reclaim their policies, and set forth guidelines to help ensure appropriate valuation of policies. Often, however, their claims have been unfairly rejected, undervalued, or issued with confusing explanations. Individuals who have received compensation have often received minimal amounts -- some totaling less than $2000.

Time is running out for resolving all of these questions and concerns, as the current ICHEIC deadline for accepting claims is February 2002.

I am hopeful that we can accomplish two major goals with this hearing. First, we must assess the concerns raised regarding the ICHEIC system. Second, we must help determine what remedies might be appropriate to improve the ICHEIC system.

At a minimum, one remedy deserves our immediate attention: extending the February 2002 deadline for filing claims. Fundamental reforms to the ICHEIC process would be integral to such a step.

I am looking forward to today's testimony. The U.S. government has played a vital role in pressing for the equity Holocaust survivors and families deserve, and today we will hear from Ambassador Bindenagel.

In addition, I look forward to the testimony of our other distinguished witnesses. I am glad that ICHEIC Chairman Lawrence Eagleburger is with us today to help us look into these matters, and I thank him for making the effort to be here during his recovery from surgery.

I also want to welcome the other organizations participating today which, as members of ICHEIC, have tirelessly advocated for the rights of survivors. The National Association of Insurance Commissioners has tried to make sure that European companies and subsidiaries operating in the United States have dealt with the Holocaust-era insurance issue openly and honestly. The Claims Conference has been pressing this issue for the 50 years of its existence, and Roman Kent, Chairman of the American Gathering of Jewish Holocaust Survivors has been a strong moral voice on this issue.

Finally, I especially want to welcome the Holocaust survivors who have traveled from around the country to share their stories with us. The whole process was set up to help you. Unfortunately, it appears that others are benefitting before you.

Mr. SHAYS. If the members don't mind, Mr. Foley is here just to make a very brief introduction of one of our witnesses. I would like him to be able to do that so he can get on his way. So, without objection, if we can just recognize Mr. Foley.

Mr. FOLEY. Thank you very much, Mr. Chairman. Those of us, in Ways and Means Oversight, are investigating the Red Cross and September 11th Fund, and how they have used their money. I think it is analogous to the conversation today. It goes to integrity of the system.

I am pleased to introduce, Mr. Chairman, a constituent of ours, Arthur Falk, from Palm Beach County, FL, who is now 80 years old. He was present in 1936 when his mother, Elsa Falk, purchased 100,000 Swiss Franc life annuity policy from Winterthur Insurance Co. in Geneva, Switzerland.

After his mother was murdered by the Nazis, Mr. Falk came to America and served in the U.S. Intelligence Section of the Bomber Command of the 8th Air Force Station in England. He participated in 20 missions in the Flying Fortress over Germany and occupied Europe. After the war ended, Mr. Falk found documents showing that the Winterthur policy had in fact been issued to Elsa Falk and that the Winterthur was aware of the policy. The company continues to deny its obligations to this day.

Mr. Falk tried repeatedly to get Winterthur to honor his mother's policy. The company stiffly refused for years, using all of the same excuses: There is no death certificate; you don't have a copy of the policy; even if the policy is or if there was a policy, it lapsed because your loved one stopped paying premiums during the Nazi period.

Mr. Falk was in his late 70's when he found information in Germany that the company claimed it could not find which proved that the company indeed sold his mother the policy and revealed for the first time a policy number. Winterthur continued to refuse, even after Mr. Falk's own research provided that the company has indeed sold his mother a policy. The company still denied payment.

Mr. Chairman, I didn't fight to include insurance policies in the Holocaust Commission law 3 years ago to watch insurance companies continue to thumb their noses at Holocaust survivors. That is morally deplorable and reprehensible. While CEOs of these companies are sitting back on their billions, Holocaust survivors and their families are being denied what is rightfully theirs.

Mr. Falk not only survived the Holocaust, he was a hero of World War II. To deny this man his benefits is atrocious and should sicken anyone with a conscience.

I thank the chairman.

Mr. SHAYS. I thank the gentleman. I also thank the members for allowing us to go out of order. So you can get on your way, sir.

I would now like to recognize Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman.

I also want to thank Congressman Burton for this hearing, and I want to thank Mr. Waxman for the incredible work that he has done on it. It was a privilege to hear our colleague, Mark Foley, with his articulation also of the problem before us.

So this is a very important issue, whether the families of Holocaust victims are being fairly compensated for insurance policies

that they held during World War II. It is a very difficult problem in cities across Europe. As they were swept away to concentration camps, their personal papers were lost or destroyed. Families were separated from their loved ones, never to be seen again. Families scattered and resettled in countries all over the world.

Under these circumstances, how do families collect on life insurance policies? There are many cases where children of Holocaust victims remember that their parents had life insurance policies, but they don't have the documentation. In some cases, they recall the name of the insurance company involved, but in many cases they don't.

These are very trying issues. These disputes have been going on for more than half a century. But for the sake of families that suffered through the Holocaust we need to bring this matter to closure.

That is why the International Commission on Holocaust-era insurance claims was created. This Commission, chaired by the distinguished former Secretary of State, Lawrence Eagleburger—he has been working on this for the last 3 years trying to solve these problems, and he will be here on our second panel.

I also want to welcome the witnesses who have assembled on our first panel, Holocaust survivors. Thank you very much for coming. Thank you for your commitment through the years. They are here to tell us about the problems they faced in this process.

We also have several other Commission members whose testimony will be very valuable.

One of the real frustrations with this process is that an extremely low number of claims have been settled. According to the most recent numbers that we have, about 40,000 claims or inquiries have been submitted to the Commission. Some of these families have documentation. Many of them don't. But less than 2 percent of those claims have been settled by the companies—less than 2 percent.

In a situation like this, the only way to resolve these cases is for the insurance companies to publish their lists of unclaimed policies. These companies have been reluctant to do that.

The process of getting lists from the companies reviewing them and posting them on the Internet has been extremely slow. I think it just stands to reason that when you have thousands of families who lost everything they had, the only way to resolve these cases is for the companies to publish those lists. The companies are in the best position to produce documentation on unpaid claims, and they have a moral responsibility to do so.

Another disturbing issue is that many of the German insurance companies are not participating in this process. Right now, five of the biggest European companies are working with the Commission. They are doing that because they were facing lawsuits in the United States. But many smaller companies have resisted cooperating, and that is just plain wrong. Just because these smaller companies aren't subject to lawsuits in the United States doesn't mean that they shouldn't be held accountable.

It is a very difficult process. It is time consuming. It is expensive. But every company that wrote insurance policies to people who

died in the Holocaust should do everything humanly possible to resolve those claims.

I know that Secretary Eagleburger and other members of the Commission, like Mr. Taylor, Mr. Kent, and Mr. Shapo, have been working very hard to solve those problems; and I know it has been the source of frustration.

One of the things I would like to know today is how we can help or what we can do to prod the German insurance association to take part in the process. What can we do to try to get these lists published more completely? My point is that there is a deadline. You have heard this mentioned by the other members who have spoken. The deadline is in January or February for people to submit claims. That is really just a couple of months away.

There is a lot of confusion. Many companies aren't participating yet. Complete lists haven't been published. I certainly think the Commission ought to take a serious look at extending that deadline. I know that everyone's goal is to bring closure to this matter, but if there is an arbitrary deadline, if all of the issues haven't been resolved, then many families of the Holocaust victims aren't going to have any closure.

So, again, I want to thank all of our guests for being here. I look forward to hearing the testimony.

Thank you, Mr. Chairman, for the courtesy to give an opening statement.

Mr. SHAYS. I thank the gentlelady.

[The prepared statement of Hon. Constance A. Morella follows:]

Opening Statement
Rep. Connie Morella
Committee on Government Reform
"The Status of Insurance Restitution for Holocaust Victims and Their Heirs"
November 8, 2001

Good morning.

Today we're going to review a very important issue -- whether the families of Holocaust victims are being fairly compensated for insurance policies that they held at the time of World War II.

This is a very difficult problem. In cities across Europe, Jews were swept away to concentration camps. Their personal papers were lost or destroyed. Families were separated from their loved ones and never saw them again. Families were resettled in countries all over the world.

Under these circumstances, how do families collect on life insurance policies? There are many cases where children of Holocaust victims remember that their parents had life insurance policies, but they don't have documentation. In some cases, they know which insurance company was involved. In some cases they don't.

These are very trying issues, and these disputes have been going on for more than half a century. For the sake of families that suffered through the Holocaust, we need to bring this matter to closure. That's why we created the International Commission on Holocaust Era Insurance Claims. This Commission is chaired by

the distinguished former Secretary of State, Lawrence Eagleburger. He has been working for the last three years to try to solve these problems. I'm very pleased that he's going to be here to testify today.

I also want to welcome the witnesses on our first panel, who are Holocaust survivors. They're here to tell us about the problems they've faced in this process. We also have several other Commission members, who's testimony will be very valuable.

One of the real frustrations with this process is that an extremely low number of claims have been settled. According to the best numbers that we have, about 40,000 claims or inquiries have been submitted to the Commission. Some of these families have documentation. Many of them don't. But less than two percent of those claims have been accepted by the companies.

In a situation like this, the only way to resolve these cases is for the insurance companies to publish their lists of unclaimed policies. The companies have been very reluctant to do that. The process of getting lists from the companies, reviewing them, and posting them on the internet has been extremely slow.

I think it just stands to reason that when you have thousands of families who lost everything they had, the only way to resolve these cases is for the companies to publish those lists.

Another disturbing issue is that many of the German insurance companies

are not participating in this process. Right now, five of the biggest European companies are working with the Commission. They're doing that because they were facing lawsuits in the United States. But many smaller companies have resisted cooperating. That's wrong. It's a very difficult process, and it's very time-consuming and expensive. But every company that wrote insurance policies to people who died in the Holocaust should be doing everything humanly possible to resolve those claims.

I know that Secretary Eagleburger and other members of the Commission like Mr. Taylor and Mr. Kent and Mr. Shapo have been working very hard to try to solve these problems. I know it's been a great source of frustration. One of the things I'd like to know today is how we can help. For instance, what can we do to prod the German Insurance Association to take part in the process? What can we do to try to get these lists published more completely?

My final point is that there is a deadline in January or February for people to submit claims. This is just a couple of months away, and there is a lot of confusion. Many companies aren't participating yet. Complete lists haven't been published. I think that the Commission ought to take a serious look at extending that deadline. I know that everyone's goal is to bring closure to this matter. But if there's an arbitrary deadline, and if all of the issues haven't been resolved, then many, many families of Holocaust survivors aren't going to have closure.

I want to thank all of our witnesses for being here, and I look forward to hearing your testimony.

Mr. SHAYS. I recognize Carolyn Maloney.

Mrs. MALONEY. I would like to thank the chairman and ranking member for holding this important hearing and especially thank the witnesses, Dr. Brauns, Mr. Arbeiter, and Mr. Kadden for coming to share your stories with us today.

I would also like to recognize one of my former constituents, Neil Levin, who was head of the Port Authority, and who tragically died in the World Trade Center disaster. Neil Levin was one of the founding members of ICHEIC. He was last seen on the 63rd floor helping others during the World Trade Center disaster and crash. His courage and compassion at a time of crisis was a wonderful measure of his strength and humanity.

As Superintendent of Banks for the State of New York, he created the Holocaust Claims Office within the banking department of New York. He was instrumental in persuading the insurance companies to enter into a memorandum of understanding that led to the creation of ICHEIC.

ICHEIC, for all of its faults has enabled Holocaust survivors to receive more money in less time than the Swiss settlement. In many ways, ICHEIC is part of Neil Levin's legacy. More than 50 years ago, we witnessed one of the most tragic episodes of man's inhumanity man, the slaughter of 6 million Jews and millions of others in Eastern and Central Europe during World War II. Some were able to hide or escape death, many with lingering memories and medical conditions that will be with them for life.

There are currently 280,000 Holocaust survivors and family members in the United States alone. It is these survivors who in many cases are still struggling to live out their remaining years with dignity.

Many of them have contacted the Claims Conference which is located in the district that I represent. Many have come to my office for help to receive the benefits they are rightfully owed, and I would like to cite two examples that have come to my office.

One woman made a claim based on the deposit receipt issued by a bank. Before her parents were deported, they went to a bank and put all of their valuable documents in a deposit box. They received a receipt listing the contents, including a RAS policy, which is an Italian subsidiary of the German insurance company Allianz. During the war, the box was looted and the contents taken. The insurance company says that the bank receipt doesn't prove that the policy existed.

Another survivor who came to my office and into the claims court had a diary that survived the war. In the diary an insurance policy and number is listed. The insurance company says that the diary could have been forged and that this isn't sufficient proof that the policy ever existed.

It is for these people and too many more that I and many of my colleagues request—demand that the insurance companies publish all of the information regarding policies issued to people before and during the war where no claims were made.

So far, the insurance companies have given only partial information. We need a list of thousands and thousands of policies that were issued during that era where no claims were paid out and the names of the policyholders.

We owe it to the past. We owe it to the truth. With every year that goes by, more and more survivors pass away. They cannot wait any longer. Time is of the essence. Those who are alive now were young then. Many of them did not know what financial arrangements their parents or other relatives made.

Not surprisingly, more than 80 percent of all applicants filing with ICHEIC could not name the company holding their assets. Now they are in the twilight of their years. If the insurance companies would publish the names of policyholders, survivors could check to see if their families are listed. Under the current system, they are left guessing, filling out applications, waiting and wondering but, more often, being denied.

To date, almost 40,000 claims have been presented to companies, but only 545 offers have been made, while 92,295 claims have been denied. This system is simply unfair to the survivors. It needs to be streamlined, and the list must be published.

Thank you very much, and thank you for coming.

Mr. SHAYS. Thank the gentlelady.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

CAROLYN B. MALONEY
14TH DISTRICT, NEW YORK

2430 RAYBURN BUILDING
WASHINGTON, DC 20515–3214
(202) 225–7944

COMMITTEES:
BANKING AND FINANCIAL SERVICES

GOVERNMENT REFORM

JOINT ECONOMIC COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–3214

DISTRICT OFFICES:

☐ 1651 THIRD AVENUE
SUITE 311
NEW YORK, NY 10128
(212) 860–0606

☐ 28–11 ASTORIA BOULEVARD
ASTORIA, NY 11102
(718) 932–1804

STATEMENT OF CONGRESSWOMAN CAROLYN B. MALONEY
Committee on Government Reform
Full Committee Hearing
"The Status of Insurance Restitution for Holocaust Victims and Their Heirs"
Thursday, November 7, 2001

Mr. Chairman and Ranking Member, thank you holding this hearing today. I would especially like to thank our witnesses, Dr. Brauns, Mr. Arbeiter, and Mr. Kadden for coming to share your stories with us today.

I would also like to recognize Neil Levin who was head of the Port Authority and died in the World Trade Center disaster. Mr. Levin was one of the founding members of ICHEIC. He was last seen on the 63rd floor after the crash, providing assistance to his colleagues. His courage and compassion at a time of crisis was a wonderful measure of his strength and humanity. As Superintendent of Banks for the State of New York he created the Holocaust Claims Office within the Banking Department. He was instrumental in persuading the insurance companies to enter into a Memorandum of Understanding that led to the creation of ICHEIC. ICHEIC, for all of its faults, has enabled holocaust survivors to receive more money in less time than the Swiss Settlement. In many ways ICHEIC is part of Neil Levin's legacy.

More than fifty years ago, we witnessed one of the most tragic episodes in the history of man's inhumanity to man -- the slaughter of six million Jews and millions of others in Eastern and Central Europe during World War II. Some were able to hide or escape death, many with lingering memories and medical conditions that will be with them for life.

There are currently 280,000 Holocaust survivors and family members in the United States alone. It is these survivors who in many cases are still struggling to live out their remaining years with dignity. Many of them have contacted the Claims Conference, which is located in my district, for help to receive the benefits they are rightfully owed.

For example, one woman made a claim based on a deposit receipt issued by a bank. Before her parents were deported, they went to a bank and put all of their valuable documents in a deposit box. They received a receipt listing the contents, including an RAS policy (RAS is an Italian subsidiary of the German insurance company Allianz). During the war, the box was looted and the contents taken. The insurance company says that the bank receipt doesn't prove that the policy existed.

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Another survivor has a diary that survived the war. In the diary, an insurance policy and number is listed. The insurance company says that the diary could have been forged and that this isn't sufficient proof that the policy ever existed.

It is for these people, and too many more, that I demand that the insurance companies publish all of the information regarding policies issued to people before and during the war where no claims were made. So far, the insurance companies have given only partial information. We need a list of the thousands and thousands of policies that were issued during that era where no claims were paid out, and the names of the policyholders.

We owe it to the past. We owe it to the truth. With every year that goes by, more and more survivors pass away. They cannot wait any longer -- time is of the essence. Those who are alive now were young then. Many of them did not know what financial arrangements their parents or other relatives made. Not surprisingly, more than 80% of all applicants filing with ICHEIC (I-check) could not name the company holding their assets. Now they are in the twilight of their years. If the insurance companies would publish the names of policyholders, survivors could check to see if their families are listed. Under the current system, they are left guessing -- filling out applications, waiting and wondering, but more often, being denied. To date, almost 40,000 claims have been presented to companies, but only 545 offers have been made while 9,295 claims have been denied. This system is simply unfair to the survivors. It needs to be streamlined and the lists should be published immediately.

Thank you.

Mr. SHAYS. At this time, I recognize Mr. Gilman from New York.

Mr. GILMAN. Thank you, Mr. Chairman, and thank you once again for conducting an important hearing.

Mr. Chairman, today's hearing on the status of insurance resolution for Holocaust victims is extremely important and necessary since it examines the efforts of the International Commission on Holocaust Era Insurance Claims, the ICHEIC group, and whether the Commission that is chaired by a devoted public servant and our good friend, former Secretary of State Larry Eagleburger, is ensuring timely, efficient and appropriate resolution of Holocaust-era claims.

It is the responsibility of the International Commission on Holocaust Era Insurance Claims, a nonprofit entity comprised of survivors, representatives, United States and European insurance regulators, the Israeli Government——

Mr. SHAYS. Would the gentleman suspend just a second? I would welcome any other member who would like to go now to vote, and I will let them convene if I am not here to convene and start so we can continue the statements without having to hold our guests.

So if anyone would go and vote now, you can come back and just convene and give your statements. Thank you.

Mr. GILMAN [continuing]. Also comprised of Allianz, AXA, Winterthur, Zurich and Generali insurance companies, to make public the names of policyholders, developing and enforcing relaxed standards of proof for resolving claims and overseeing audits of member companies to assess their compliance with ICHEIC rules.

Pursuant to the rules, the deadline by which all claims are going to have to be filed is fast approaching. And while there appears to be some dispute regarding whether the date is January 31, 2002, or February 15, 2002, what is not in dispute is that after those dates the insurance companies will no longer be obligated to accept and process new claims.

We are here today to listen to our witnesses, and we thank them for taking the time to be with us, and to determine how ICHEIC and the insurance companies are dealing with this particularly painful period in not only our Nation's recent history but a period in the 20th century that ranks among the world's most barbaric periods of humanity.

During this time, not only did the Nazi regime murder more than 6 million of Europe's Jews, but they also stole their property, and those who survived and their heirs saw little or nothing of what property remained or received any compensation. In fact, following World War II, many Holocaust survivors and their heirs contacted European banks and insurance institutions to seek compensation on their claims but were turned away due to a lack of documentation.

The treatment that our survivors received as they sought to rebuild their lives is reprehensible, and our Nation and its allies must work diligently to try to right this terrible wrong. We have to right these wrongs and do it while there is still time, and ICHEIC cannot perform its job without the full cooperation of its participating insurance companies.

A recent article from the May 14th issue of Forbes magazine quotes Herbert Hansmeyer, the managing director of Allianz,

which is charged with overseeing the insurance giants, Western Hemisphere operations and an ICHEIC participant, as stating, regarding those claims, "ultimately, it is an act of public appeasement. I cannot become emotional about insurance claims that are 60 years old," said Mr. Hansmeyer.

I find that particularly distressing, particularly because while, as Allianz pocketed insurance premiums and enjoyed a special relationship with the Nazi regime, its policyholders were being exterminated in death camps with names like Auschwitz, Bergen-Belsen and Dachau, to name a few.

Managing Director Hansmeyer is wrong! There is a lot to become emotional about regarding Holocaust-era insurance claims and about the untimely settlement of them.

I have been actively involved in making certain that our survivors and their heirs receive due financial compensation in a manner that is expeditious and painless as possible for them. My State of New York is one of the few States that has enacted a law that penalizes companies that fail to report the name of any Holocaust-era policyholder to either the State insurance office or to ICHEIC.

What is troubling to our committee is the rate at which the claims are being processed and the number of claims rejected versus those accepted and paid, as well as the issue of publishing the names of all potential Holocaust-era policyholders.

I understand the difficult task that Secretary Eagleburger and his team have and the time constraints all of us are operating under. Rather than sit here and point fingers at ICHEIC, I feel it is more productive to ascertain what they are doing to expeditiously process the claims and respond to the needs of all prospective claimants and what all of us can do to make certain that all of those entitled to compensation will have their claim applications filed prior to the January or February 2002 deadline and that the Austrian and German Governments abide by their agreements entered into to facilitate the publication, processing and payment of Holocaust-era insurance claims in full accordance with ICHEIC's rules.

I understand that these agreements were entered into after ICHEIC was established, but, nonetheless, a solution must be found to honorably settle all of the outstanding Holocaust-era insurance claims for our survivors and for their heirs.

I thank the witnesses for appearing before us today. I thank our chairman for conducting this hearing, and I will look forward to their remarks on this important, sensitive issue for Holocaust survivors and their heirs.

Mr. SHAYS. I thank the gentleman.

We are going to try to recognize Mrs. Norton and Mr. Tierney. Mr. Tierney, do you have a short statement?

Mr. TIERNEY. So short it is amazing, as I really want to hear from the panel.

Mr. Chairman, I thank you. I think what we are trying to do here is the right thing to do, to assess the performance of this and to move forward on that.

I will submit my statement for the record and allow you to move on and to allow these gentlemen to be heard today.

Mr. SHAYS. Thank you, Mr. Tierney.

[The prepared statement of Hon. John F. Tierney follows:]

Statement of Rep. John F. Tierney
House Government Reform Committee Hearing on The Status of Insurance Restitution for Holocaust Victims and Their Heirs
Nov. 8, 2001

Mr. Chairman, thank you for holding this important hearing. I am pleased that we have the opportunity to review the operation of the International Commission on Holocaust-Era Insurance Claims.

Tomorrow marks the 63rd anniversary of Kristallnacht, the Night of Broken Glass. On that terrible night in 1938, the Nazis coordinated a massive attack on the Jews living within the Reich.

Hundreds of Jews were arrested and many lost their lives. But the real lesson learned that tragic night was the ease with which the Nazis were able to destroy Jewish owned property. Jewish-owned stores were trashed, synagogues were burned and thousands of Jewish homes were vandalized.

The Night of Broken Glass was merely one early step in the Nazi's effort to strip the Jews of Europe of their property, their humanity and ultimately, their lives.

This effort would become more systematic and more efficient during the course of the war.

As we will hear from today's witnesses, companies that have over the past sixty years resisted paying insurance restitution to those who held policies before the war, or their heirs, have compounded the suffering of Holocaust survivors.

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The International Commission on Holocaust-Era Insurance Claims was established to assist with the claiming of those policies. The Commission works to make public the names of policyholders, develop standards of proof for resolving claims, and oversee audits of member companies to assess their compliance with the Commission. Yet if this process is not working as intended, we must address that problem.

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Mr. Chairman, time is the one element that we do not have in abundance. The survivors of the Holocaust will not be with us indefinitely. As the Commission seeks to do its work, it will not have the benefit of the survivors' memories. For this reason, we need to determine the cause of the low rate of claims approval, whether policyholder's names are being publicized as fully as possible and how the process can be improved so that survivors can reclaim even a small portion of what is rightfully theirs.

I look forward to learning from today's witnesses and thank you again for holding this hearing.

Mr. SHAYS. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Here we are in the midst of another war of fanaticism with ethnicity and religion at its center and we are still trying to resolve claims from the last World War. It is insult on top of injury that the ICHEIC remedy has been so ineffective. I don't think that we can let this matter stand without trying to find out what happened.

The bottom line, as far as I can tell, is that ICHEIC has not worked. It has been like Sisyphus rolling a stone up some hill. The remedies do not come forward. Time is running out, or somebody is trying to run the time out.

It seems to me, Mr. Chairman, that we will have no alternative but to see that there is an extension of the deadline for ICHEIC so as not to let the forces that were involved defeat the very claims for which they are likely responsible.

I thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentlelady.

What we are going to do, as far as the first member who comes in, Democrat or Republican, we are going to hand them the gavel, and they can start their statements. We are adjourned until they call us back into session.

[Recess.]

Mr. WAXMAN. Now we will continue with the opening statements for members of the committee.

And I want to recognize the gentleman from Ohio, Mr. Kucinich.

Mr. KUCINICH. I thank you very much, Mr. Chairman. I want to tell Mr. Waxman how much I appreciate his work to make sure that the International Commission on Holocaust Era Insurance Claims [ICHEIC], is proceeding along a path of effective resolution of the claims, and I want to thank you for your dedication in that regard.

I have to say, Mr. Chairman, I am very concerned about the pattern of facts and evidence laid out before us today. It strongly suggests that the German insurance industry has little intention of restitution. The credibility of any insurance company rests on trust.

In case anyone didn't hear that I will go over that again.

The credibility of any insurance company rests on trust that when people pay premiums up until their death, that their survivors, their beneficiaries, are entitled to payment. Holocaust survivors and their families have had their suffering compounded, and I hope this hearing will add to the momentum to creating relief for these families. When you go over the record and you see that people were denied claims because their documents were confiscated in the ghettos or concentration camps, because they didn't have documents because their family members were murdered in gas chambers or murdered by Nazi death squads, I have to tell you as someone who looks at this, that on its face it cries out for justice.

There is a time when insurance companies have to stop acting like insurance companies and start beginning to act like they have some connection with the rest of the human race. When a person harms another person, they really have three options. The first is to feel honest sorrow and to make amends, or, in this case, restitution. The second option is to defend your actions. Thankfully that's not the case here. The third is to admit your wrongs and to make

amends and to pay a penalty. Now, this insurance industry seems to have admitted its wrongs and made available funds; however, it's been suggested that the industry is withholding key evidence and therefore limiting its liability.

My message today, then, is very simple. The insurance industry here can heal these wounds or they can let the wounds linger. It's a matter of moral responsibility as well as smart business to make amends now. Efforts for insurance restitution are important for those who suffered in the Holocaust. But it's not just important for them, I submit it's important for the world. We must not and we cannot forget the Holocaust, and we must never forget its victims. And I would submit that as long as uncompensated claims of the Holocaust remain unsatisfied, justice remains unsatisfied.

So while this hearing will proceed, I expect, and in a very gentlemanly tone, do not mistake that for a lack of commitment that Members of Congress have to pursue this issue, to not let it go. And I want to again thank Mr. Waxman for his dedication on this and to let him know that he has allies all over this country. Thank you.

Mr. WAXMAN [presiding]. Thank you very much, Mr. Kucinich, for your very powerful statement. The Chair wants to recognize Ms. Schakowsky for opening comments.

Ms. SCHAKOWSKY. I want to be on record as thanking Chairman Burton for convening this hearing today and to express my gratitude to our ranking member for the outstanding leadership he has demonstrated on behalf of Holocaust victims and survivors. He and his staff should be commended for the substantial time that they have invested in this issue.

My District includes Skokie, IL, home to perhaps the largest concentration of survivors in the country, and this hearing means a lot to them. I appreciate the committee's willingness to focus members' attention on this subject. We're fortunate to have with us today extremely distinguished witnesses; a lot of friends and familiar faces are here with us today. I want to extend a special welcome to Nat Shapo who is director of the Illinois Department of Insurance and has been extremely helpful to my staff and me and has spent a lot of his time focusing on issues of importance to survivors.

The most important voices we'll hear today are the survivors who have traveled here today to help us understand the devastating impact of the Holocaust and the subsequent decades of frustration working for some small measure, some semblance of restitution.

Today we're focusing on ICHEIC, on the organization set up to resolve insurance-related issues. I have numerous concerns about the process, the lack of cooperation by insurance companies, the length of time it's taken. Survivors are an aging population, and the fact that so many issues remain unresolved and so many survivors and heirs have yet to receive a dime is simply reprehensible. On November 10, 1997, I participated in a hearing in Skokie that was convened under the leadership of Deborah Senn, who at that time was Washington State's Insurance Commissioner. Danny Kadden, who is here today was there as well. We heard compelling testimony by people like Erna Gans, a leader in the survivor community who never received payment for the dowry insurance her

father purchased for her when she was born. Unfortunately, Erna and so many others have already passed away.

There are still some 10,000 survivors in Illinois, and it is my understanding that roughly 1,100 of them have filed claims for insurance. To my knowledge only a handful, 14 have received offers for payments.

I understand there is a deadline for filing claims and I'm aware that serious outreach was conducted, but I have a lot of concerns about this deadline. It's unfair, if only symbolically, to give survivors such a short time to apply when these companies have been stalling for a lifetime.

This is an issue that goes beyond urgency. There are serious problems that need to be resolved, and Congress has a responsibility to make sure that it's done so that those who have lived to recall the Holocaust may also have some measure of justice and dignity paid to them.

I have a number of specific questions for our witnesses, and I look forward to the testimony and again thank Mr. Waxman and the Chair for this opportunity. Thank you.

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

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEES:
FINANCIAL SERVICES
GOVERNMENT REFORM

FLOOR WHIP

515 CANNON HOUSE OFFICE BUILDING
Telephone: 202-225-2111
Fax: 202-226-6890
TTY: 202-225-1904

Congress of the United States
House of Representatives
Washington, DC 20515-1309

5533 N. BROADWAY
CHICAGO, IL 60640
Telephone: 773-506-7100
Fax: 773-506-9202

2100 RIDGE AVENUE, ROOM 2203
EVANSTON, ILLINOIS 60201
Telephone: 847-328-3399
Fax: 847-328-3425

6767 N. MILWAUKEE AVENUE
NILES, IL 60714
Telephone: 847-647-6955
Fax: 847-647-6954

Statement of the Congresswoman Jan Schakowsky (D-IL)
Government Reform Committee Hearing on the Status of Insurance Restitution for Holocaust Survivors, Victims and Their Heirs
November 8, 2001

Thank you, Mr. Chairman for convening this hearing today to evaluate the status of efforts to gain restitution for insurance policies that were sold to victims and survivors of the Holocaust but were never paid. My district includes Skokie, home to perhaps the largest concentration of survivors in the country and certainly in the state of Illinois, and this hearing means a lot to them. I appreciate the Committee's willingness to focus members' attention on this subject.

I want to also express my gratitude to our ranking member for the outstanding leadership he has demonstrated on behalf of Holocaust victims and survivors. He and his staff should be commended for the substantial time that they have invested in this issue.

We are fortunate to have with us today a witness panel full of extremely distinguished individuals. A lot of friends and familiar faces are here with us today. I want to extend a special welcome to Nat Shapo, who is the Director of the Illinois Department of Insurance and has been extremely helpful to my staff and me, and has spent a lot of his time focusing on issues of importance to survivors.

The most important voices we will hear today are those of the survivors who have traveled here to help us understand the profound impact and devastation that the Holocaust had on so many people. I thank you for being here with us.

The Holocaust was the most horrific human atrocity the world saw during the last century. Millions of Jews and others were brutalized, raped, beaten, dehumanized, enslaved, robbed, and murdered. Men, women, children, babies, and families were ravaged by the hateful acts of the Nazi regime. There is no way for me to put into words the unspeakable horrors experienced. We can only listen to the recollections of survivors of the Holocaust.

Those who have lived to tell the gruesome tales of the holocaust era from a first hand perspective were robbed of their childhood and livelihood and had their family history-indeed their whole world stripped away.

The Holocaust was not only the worst murder case in history, but it was also the biggest exploitation and theft. Jews and others were enslaved-worked literally to death for various companies. Millions of bank accounts were seized and millions of insurance policies were liquidated by the Nazis-with the assistance of insurance companies in Germany and throughout Europe. I am sad to say that, to this date, there has not been adequate restitution for the bulk of those crimes.

Negotiations to repay stolen assets are ongoing and the process is slow. To make real progress will require the complete cooperation of foreign governments, and multinational corporations, who have yet to own up to their role in the crime of the last century. The fact that some insurance companies still deny responsibility or refuse full compliance with negotiations only adds to the suffering and prolongs the justice that survivors deserve.

We can not even attempt to repay them for the suffering and the loss. What we can do is to honor holocaust victims and survivors first, by never allowing our children to forget what happened and by denouncing in the strongest of terms, rhetoric and behavior that is tainted with the reminiscence of the Nazi era.

We must also make every effort to provide as much financial and material restitution for those to whom it is entitled, in as timely a manner as is possible.

Today we are focusing on the organization set up to resolve insurance related issues, the International Commission on Holocaust-Era Insurance Claims, ICHEIC and its members.

I have numerous concerns about the process, the lack of cooperation by insurance companies, and the length of time it has taken. Survivors are an aging population and the fact that so many issues remain unresolved and so many survivors and heirs have yet to receive a dime is reprehensible.

On November 10, 1997, almost four years ago today, I participated in a hearing in Skokie that was convened under the leadership of Deborah Senn, who was at the time Washington State's Insurance Commissioner. Danny kadden, who is here today was there as well. We heard compelling testimony from people like Erna Gans, a leader in the survivor community who never received payment for the dowry insurance her father purchased for her when she was born. Unfortunately, Erna and so many others have already passed away.

There are still some 10, 000 survivors in Illinois and it is my understanding that roughly 1100 of them have filed claims for insurance. To my knowledge, only a handful, 14 have received offers for payments.

I understand that there is a deadline for filing claims of January 31, 2002. I am also aware that serious outreach has been conducted. But is a deadline really necessary? Isn't it unfair, if only symbolically, to give survivors such a short time to apply when these companies have been stalling for a lifetime?

This is an issue that is beyond urgency. There are serious problems that need to be resolved and Congress has a responsibility to make sure that is done so that those who have lived to recall the Holocaust may also have some measure of justice and dignity paid to them.

I have specific questions for all of our witnesses. I look forward to the testimony and again thank the Chair for this opportunity.

Mr. WAXMAN. Thank you, Mr. Chairman, Ms. Schakowsky. And I do want to acknowledge the fact that one of the reasons we're holding this hearing today is you have been adamant in trying to get to the bottom of this whole issue and I thank you for your leadership.

Mr. Clay, do you wish to make an opening statement?

Mr. CLAY. Mr. Waxman, good morning, Mr. Chairman and members of the committee and the panel of witnesses. Today this hearing will scrutinize the efforts the International Commission on Holocaust-Era Claims and whether ICHEIC is efficiently resolving the insurance claims.

We have several issues, problems, and questions that need to be addressed. The rate of claim approval is unacceptably low. The failure of companies to publish policyholders' names are subjected to privacy laws in other countries. However, when there are over 3 million Holocaust-era policies and only 9,000 names have been published, we have to address this. We have to address the problem of a January or February deadline.

Why do we have an imminent deadline and we do not have the names of all policyholders and, additionally, all insurance companies have not finalized the terms of their participation? It appears that efforts are being made to terminate a process before the logistics are in place to implement it. This is just not right.

Why has there been 10 times more money spent on salaries, meetings, and expenses than on claims? For the survivors it is not just the closing of the business end of the estates in question. Rather, it is the emotional closing of decades of anguish and angst over the inability to have a final settling of affairs of so many family members. This for many is an open wound that never heals. Let us assist in bringing relief to the surviving families that allows them to have a more peaceful existence. We must find ways to exponentially raise the 2 percent settlement rate for submitted claims. I know that it isn't easy for the various countries, insurance companies, or the families, for everyone involved in the process. We simply have to get the job done.

Mr. Chairman, I ask to submit my remarks for the record.

Mr. SHAYS [presiding]. That will be done.

[The prepared statement of Hon. Wm. Lacy Clay follows:]

OPENING STATEMNET – REP WM Lacy Clay
Full Committee Hearing of the Committee on Government Reform

"The Status of Insurance Restitution for Holocaust Victims and Their Heirs"

GOOD MORNING! MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. GOOD MORNING TO THE PANELS AND WITNESSES.

TODAY THIS HEARING WILL SCRUTINIZE THE "EFFORTS OF THE INTERNATIOINAL COMMISSION ON HOLOCAUST-ERA CLAIMS (ICHEIC)", AND WHETHER ICHEIC IS EFFICIENTLY RESOLVING THE THOUSANDS OF HOLOCAUST-ERA INSURANCE CLAIMS.

WE HAVE SEVERAL ISSUES, PROBLEMS, AND OR QUESTIONS THAT NEED TO BE ADDRESSED.

THE RATE OF CLAIM APPROVAL IS UNACCEPTABLY LOW; THE FAILURE OF COMPANIES TO PUBLISH POLICYHOLDERS NAMES ARE SUBJECTED TO PRIVACY LAWS IN OTHER COUNTRIES; HOWEVER, WHEN THERE ARE OVER 3,000,000 HOLOCAUST-ERA POLICIES AND ONLY 9,000 NAMES HAVE BEEN PUBLISHED – WE HAVE TO ADDRESS THIS; WE HAVE TO ADDRESS THE PROBLEM OF A JANUARY OR FEBRUARY DEADLINE.

WHY DO WE HAVE AN IMMINENT DEADLINE AND WE DO NOT HAVE THE NAMES OF ALL POLICYHOLDERS AND, ADDITIONALLY, ALL INSURNACE COMPANIES HAVE NOT FINALIZED THE TERMS OF THEIR PARTICIPATION. IT APPEARS THAT EFFORTS ARE BEING MADE TO TERMINATE A PROCESS BEFORE THE LOGISTICS ARE IN PLACE TO IMPLEMENT IT. THIS IS JUST NOT RIGHT.

WHY HAS THERE BEEN TEN TIMES MORE MONEY SPENT ON SALARIES, MEETINGS AND EXPENSES THAN ON CLAIMS?

FOR THE SURVIVORS IT IS NOT JUST THE CLOSING OF THE BUSINESS END OF THE ESTATES IN QUESTION. RATHER, IT IS THE EMOTIONAL CLOSING OF DECADES OF ANGUISH AND ANGST OVER THE INABILITY TO HAVE A FINAL SETTLING OF THE AFFAIRS OF SO MANY FAMILY MEMBERS. THIS, FOR MANY, IS AN OPEN WOUND THAT NEVER HEALS. LET US ASSIST IN BRINGING RELIEF TO THE SURVIVING FAMILIES THAT ALLOWS THEM TO HAVE A MORE PEACEFUL EXISTENCE. WE MUST FIND WAYS TO EXPONENTIALLY RAISE THE TWO PERCENT (2%) SETTLEMENT RATE FOR SUBMITTED CLAIMS. I KNOW THAT IT ISN'T EASY FOR THE VARIOUS COUNTRIES,INSURANCE COMPANIES OR THE FAMILIES. FOR EVERYONE INVOLVED IN THE PROCESS, WE SIMPLY HAVE TO GET THE JOB DONE.

MR. CHAIRMAN, I ASK TO SUBMIT MY REMARKS TO THE RECORD.

Mr. SHAYS. Well, I want to thank the patience of our witnesses and just say that in speaking with other members, it's a very important issue and members did want to address it before you spoke.

We will now hear testimony from the first panel which includes Dr. Jack Brauns, Israel Arbeiter, Arthur Faulk, and Daniel Kadden. And I would ask that you stand and we administer the oath as we do in this committee, and then we will hear the testimony. If you will stand and raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. Just note for the record that we have sworn in all of our witnesses. The only one who has never been sworn in, and chickened out, was Senator Byrd.

We will start with Dr. Brauns.

STATEMENTS OF DR. JACK BRAUNS, COVINA, CA; MR. ISRAEL ARBEITER, NEWTON, MA; MR. ARTHUR FALK, BOCA RATON, FL; AND MR. DANNY KADDEN, OLYMPIA, WA

Mr. BRAUNS. Thank you very much for inviting me. I'd like to take the opportunity of giving you the mosaic of the situation of my tragedy, and I would also ask you to give me 2 extra minutes. I time myself and——

Mr. SHAYS. Well, we'll hit the clock and then we will roll it over for 2 extra minutes.

Mr. BRAUNS. OK. Thank you very much. Now, the mosaic of life in 1930, Europe was already in turmoil and most of the parents tried to do one thing: to get an insurance for the education of their children because this was extremely important, and my father was not a pioneer. There were many other people who turned to insurance companies. This was the only way of providing, the funds for the education of the children. So my father turned to Riga Insurance Co. and Assicurazioni Generali. Why Assicurazioni Generali? Assicurazioni Generali was one of the biggest companies in Europe and they enticed people with two items. The first item, that the premiums have to be paid in dollars. That was the requirement, to have the maturity of the insurance to be paid in dollars, and my father got this special permission of the Lithuanian—where I was born, I'm Lithuanian by birth—to get a special permission to obtain dollars to pay the insurance company.

The second enticement was that during the war the premiums didn't have to be paid. They kind of abolished the premiums to be paid during the war. So the premiums were paid until 1940, when the Russians came and occupied Lithuania. That was a year after the war already started. The war started in 1939. So the premiums were paid. This enticement in the insurance that I know that I had was for my education. Nobody had to die. I didn't need a death certificate.

Now, I was liberated after 4 years of concentration camps. I was liberated in Dachau on April 29, 1945, by the Third American Army. My father went back to Lithuania to look for my mother and my brother. He found my mother and my brother was unfortunately killed in Stuttgart Concentration Camp.

Before he went to look for my mother, my father told me "Go to Italy. Your education is paid in Italy." And it was a very difficult time after the war to go to Italy. We had to go to Hungary, and

then we had to go to Austria and cross the border. It was a nightmare, but I got to Italy and I enrolled in the University of Medicine at the University of Torino, Faculty of Medicine. The problem was my whole income was $10 which was given by UNRA, United Nations Refugee Administration. And this $10 I learned to live on, but it was not enough as soon as I joined the faculty of medicine.

In the policy—and I'm one of the fortunate. I have the policy with me here, I will show you a little later. At that time I didn't have the policy. My father went back to Lithuania and he—it was buried, and fortunately he found it and it had only the number 332, and with this number I went to Rome and visited the Assicurazioni Generali headquarters on Piazza Venetia. When I got there, they looked at the number and said, "Well, we will look at it. Give us your address, you're studying in Italy. We will contact you as soon as we found out." I never heard from them.

In 1960 I was very fortunate that Vice President Nixon gave a letter to Mrs. Kruschev to let my parents out of Lithuania. Maybe some of you know, maybe you don't. And in 1960 my parents were the only people who left Lithuania. And my father and mother came to live with us in California. He brought with him the original policy. So I'm fortunate that he had the foresight to bury it and that it wasn't found by people who were trying to look for peoples buried things in the ghetto.

Well, in 1960, I went back to Italy, I went again to the Assicurazioni Generali the original policy. They looked at it. They were very excited to see it. The policy was issued in Triesta and has a stamp of Triesta—I mean the original was issued in Triesta. They shook their head. They took my address in California. I never heard from them.

Then I was very fortunate that Rabbi Cooper, the dean of the Weisenthal Center in Los Angeles, went to Triesta and I asked him personally to stop at the headquarters of Triesta. He's a good friend of mine and he did it. He went down and he presented them a copy of the original. He didn't want to take the original. And they shook their head and said they will contact us. Well, 2 years later, we didn't hear anything. Two years later, I got the letter from ICHEIC, and this is the biggest tragedy. You're talking about ICHEIC. In the policy—and you will read it, how it's written, not only in numbers but only spell them out. It's only a $2,000 policy. That was the money that they were supposed to pay me.

Now, I want to tell you that I was starving in Italy as a student because $10 was not enough for me. So the money that I had to substitute for books and other things came from my food. And after 4 years of camps, it was not a big pleasure to cut the amount of food that was available to me. But anyhow, Rabbi Cooper went, and 2 years later I got a letter from ICHEIC with a big explanation.

Please help me to understand the letter. It says that my policy basically is worth nothing because it was written in Lats, which is Latvian money, and Lith, Lithuanian money; but they haven't read my policy, because I would like you to read it today and see what it says. My conclusion is that ICHEIC never read my letter and made a judgment somehow saying—and they offered $5,000, said that would be enough because it's worth nothing. And I didn't even

get it, Rabbi Cooper got it. Anyhow, the maturity in the policy is written and we will see it, that on September 25, 1945, the policy is mature, and the value of $2,000 will be paid in dollars. See, the Italian company is counting on not to have a lawsuit. I have lived in Italy for 6 years and I got to know a lot of very important people.

And just to make an answer to the comment that I heard before at Generali's headquarters which is in Triesta. They have a building for records. There were no floods there, no earthquakes, and no fires. And I was told by a very close friend of mine, the director of Generali who just finished his duty of being director 2 years ago, not one document is missing. Why did they deny me when I was so hungry? I mean, $10; I mean, it's hard for you to understand to live on $10 and go to school. But I finished. In spite of that, I finished by determination. Maybe later I'll give you more answers if you ask me, but anyhow——

Mr. SHAYS. Let me just encourage you to kind of wrap up because we're almost going into 10 minutes.

Mr. BRAUNS. Yeah. What I'm asking is ICHEIC has interfered in my lawsuit. I filed a lawsuit, and I cannot pursue it because ICHEIC said it would interfere in the commerce between Italy and United States. And the insurance company broke the trust that my father took on himself. He trusted them. He's not the only one, and this is a big trust breaking by an insurance company.

In my family alone, there were four physicians and two doctors in chemistry. I know they had insurance, but I cannot prove it. With my parting from this world, the insurance company is the winner. They have never released the name, and they engaged in fraud. What did they do in fraud? Because they gave the list to Yad Vashem and Yad Vashem, a clause that says—they had to find the Jewish names, but they couldn't release the names because they paid them for the contract. The contract says you cannot release the names. So they go around and say, well, we gave the names to Yad Vashem. But you call up Yad Vashem now, they say, yes, we have the names but we cannot release in the contract.

So I beg you not to interfere in the lawsuit. Let me sue them. And the reason they're afraid from a lawsuit because Generali has just applied and has gotten from them, Italian Government, the funds for retirement that they administer, and they didn't want any lawsuit or any negative feelings. And I feel that ICHEIC has contributed for them achieving something which is fraud.

And I want to say one more thing. My father said a woman can either be pregnant or not. There is nothing in between. And the same thing goes with honesty. Either you're honest or you're not honest. You cannot be honest in the morning and dishonest at night or vice versa. Thank you very much.

Mr. SHAYS. Thank you very much, Dr. Brauns.

Mr. BRAUNS. I will be glad to answer any questions.

Mr. SHAYS. And I think you will have an opportunity to make any other point you wish. The committee really values your testimony and——

Mr. BRAUNS. I did it in 5 minutes.

Mr. SHAYS. No, you did it in 10. And I was thinking you did a perfect job, and we were delighted to hear from you.

Mr. BRAUNS. Thank you very much.

Mr. SHAYS. And we think of your being in a concentration camp for 4 years, and it takes our breath away. You honor us by being here.

Ms. Ros-Lehtinen wants to just make a very brief introduction of someone——

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman. I appreciate the time. I'd like to welcome my congressional constituent and my dear friend, Mr. Samuel J. Dubbin to our hearing today. Sam has and should be recognized for the work that he's done for many years for our country and especially for survivors of the Holocaust. In 1993 Mr. Dubbin served as special assistant to Janet Reno and as deputy assistant to the Attorney General for policy development. Sam served on the Florida Transportation Commission and has more recently served an appointment on the Miami Dade County steering committee.

Mr. Dubbin is a committed member of several Jewish community groups in my area of south Florida and is a strong advocate for Holocaust survivors, not just in our community but throughout the United States. He has defended members of the State Holocaust Education Task Force and has worked to establish a Hate Crimes Act which would toughen criminal penalties.

Sam Dubbin currently serves on the Board of Directors and the Executive Committee of the Greater Miami Jewish Federation. He's the chairman of the Community Relations Committee of the Federation's Jewish Community Relations Council. In 1992, Sam received the Federation's Stanley C. Myers President's Leadership Award, and in 1993 he received the Partners with Israel Award from the new leadership of Israel bonds. Sam has distinguished himself as an outstanding member of our south Florida community, and I welcome him here to our hearing today because he has a lot to offer on this subject, and I thank you, Mr. Chairman, for the opportunity.

Mr. SHAYS. I thank the gentlelady——

Ms. ROS-LEHTINEN. He's the good looking guy there with the red tie and the mustache.

Mr. SHAYS. We welcome you here. Thank you. I just also want to thank again Mr. Waxman for allowing us to go out of order but also for his request that we have this hearing. I am just so grateful that you made that request.

Mr. Arbeiter.

Mr. ARBEITER. Mr. Chairman, members of the committee, I would like to thank you for inviting me to testify today regarding a matter that is of great importance to my fellow Holocaust survivors, and I appreciate being given the opportunity. And with your permission, Mr. Chairman, I would like to express my most sincere thanks to the staff of this committee for their hard work and for the help and assistance that they gave me in coming here and being able to appear here today. Thank you very much.

I was born in Plozk, Poland, one of five sons of Isaac and Hagara Arbeiter. My father was self-employed as a custom tailor. In addition, he employed two other tailors and an apprentice. As such, my father made a comfortable living. He was considered to have a middle class income. In order to protect his family in case that some-

thing were to happen to him, my father purchased a life insurance policy. However, unable to pay premiums a year in advance, my father periodically made payments to the insurance company. Every week, an agent of the insurance company would call up on our house and collect the premiums. He wrote the date and amount in the booklet that was given to my father for that very purpose. I remember distinctly when my siblings and I asked my father why this man was coming every week to collect money, we were told that payment was security for your future.

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

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

While living in Germany, once a semblance of normality had returned, I attempted to pursue my father's insurance policy. I tried to find out whether the policy could be cashed in, since my father had perished a few years before. However, my efforts were unsuccessful.

Soon thereafter, I moved to the United States. In 1986, I traveled to Poland and visited the house in Plotz in which we lived, hoping to find any items that used to belong to my family. However, the people who then occupied the house told me that there was nothing remaining. It was not until the fall of the year 2000 that I was informed about the existence of the International Commission of Holocaust Era-Claims, ICHEIC, and the availability of claims forms.

Upon learning of the commission, I obtained a claim form and filed a claim. I then received a letter dated December 7, 2000, with the claim No. 00067890, in which it was stated that all member companies will investigate your claim and report their findings within 90 days.

Now, almost a year since the claim was filed, I have yet to hear back one way or the other from ICHEIC. I called the Commission several times; however, each time I've been told that the Commission has not heard back from the member insurance companies.

I'll read a letter that I have received from the International Commission of ICHEIC.

Dear claimant, thank you for sending us your claim. We have passed your claim to all member companies of the Commission that could solve the insurance covered in the information you provided. The companies will investigate your claim and report their findings within 90 days. If a member company traces a policy mentioned your claim and decides either to make an offer or to decline your claim, they will write to you directly or send a copy to us. Member companies that find no trace of any policy mentioned in your claim will inform us. If no member company finds any policy mentioned in your claim, we will write to advise you as soon as all member companies complete investigation. Please bear in mind that unless the companies find a match, their findings need to be passed to us and we cannot respond to you until we hear from all the companies. We hope to be able to advise you within 90 days, but this could take a little longer if any one company takes the full 90 days.

We have assigned the following number to your claim. Please, will you keep a record of this and quote in any future correspondence of this. Your claim number is 00067890. If you have any further inquiries, please do not hesitate to call our help line.

Mr. Chairman, I am 76 years old. I don't have much longer to go nor do many of my fellow survivors. As such time is of the essence, I appeal to you and to the members of this committee to assist us. Please, please, do not allow the insurance companies to retain that which rightfully belongs to us. We cannot allow others to profit from what has been one of the greatest atrocities in human existence.

Thank you for your time, and I appreciate being given the opportunity to speak to you regarding a topic of great concern to many Holocaust survivors. Thank you very much.

Mr. SHAYS. Thank you Mr. Arbeiter.

Mr. Kadden. Mr. Falk. We'll go on to Mr. Falk. You were next on our list, but you were fourth on the table.

Mr. FALK. Good morning.

Mr. SHAYS. Good morning.

Mr. FALK. I want to express my thanks to the committee for holding these hearings, and especially to Chairman Shays and Congressman Waxman and Congressman Foley for assisting me in telling the Congress about my insurance with Winterthur Life Insurance Co. and with ICHEIC.

I was born in Hanover, Germany in 1921. My parents owned a very successful cattle brokerage business as well as a very substantial amount of valuable real estate in and around the city of Hanover. Throughout my childhood, our family had a very high standard of living. My brothers and I attended private schools in Europe. When in 1936, around September, when I was 15 years old, my mother and I packed up a very large amount of money, German mark bills, tightly rolled up into a thermos bottle. We traveled to Geneva, Switzerland, to the home office of Mr. Siegrist, a Winterthur insurance agent. At Mr. Siegrist's insistence, my mother exchanged the marks into Swiss francs in order to be able to buy a Swiss franc policy. I witnessed my mother hand over a great deal of money to Mr. Siegrist and sign some papers. She told me after we left that she had bought insurances which would pay out money to her when she left Germany.

My mother sent a letter to my brother in the same year, in 1936, in which she reported her efforts to provide for her future. It mentioned all kinds of ways she was getting money out of the country and specifically mentioned the insurance from Winterthur. My brother saved the letter for his entire life. The letter was dated December 1936, and it said: "I'm paying a life insurance which I made in Geneva. In case of my death, get in touch immediately with Siegrist in Geneva. Insurance is Winterthur. I also get a payout during my lifetime. That at least is something from which I can live at a later date in a foreign country. You see, I'm constantly working at it."

My mother sent me to live with my brother in New York when I was 17 years old, in 1938. We stayed in touch with my mother who was trying every possible way to leave Germany. This became more urgent after Krystalnacht in November 1938, for which we

have just witnessed the 63rd anniversary. Unfortunately, she never made it to safety. After Pearl Harbor in December 1941, we never received any more information—communications, rather, from my mother. I never saw her again.

During World War II, as a citizen of the United States, I served in the intelligence section of the Heavy Bomber Command of the Eighth Air Force. I served 4 years in the service, and I was stationed in England most of my time. I flew 21 missions in a heavy bomber, B–17, a flying fortress over Europe.

When the war ended, I joined the military government in Germany around 1945–46, and I was stationed in Germany. My first goal was to find out what happened to my mother. It was not easy. Eventually the allied military authorities informed me that she was deported by the Nazis from Hanover to Latvia, to a death camp in December 1941. While I was in Europe, I took the opportunity to try to deal with my family's affairs. In 1946, I personally visited Winterthur's Geneva office and tried to redeem my mother's insurance policies. The company only confirmed at the time that it had a record of policy, but refused payments because I could not produce a death certificate of my mother.

I visited other Winterthur offices in the 1940's, but the company still refused to pay. I even mentioned this to Siegrist, but it didn't help at all. The company even refused to accept the Allied Military Government records documenting my mother's fate. The company also refused to provide me with any information about my mother's policies.

In the early fifties, the German Government instituted a program to provide monetary reparations for Holocaust victims known as the BEG law. Because of Winterthur's denial, I applied to the German Government for compensation for my mother's unpaid Winterthur policy of 1961. The German Government denied my request in around 1963, but we did not appeal because we had many other claims for our property in Germany.

For the next 35 years, I occasionally approached Winterthur for payment of the policy, for copies of the policy, of any kind of information in its files concerning the policy, but Winterthur continued to deny my mother's policy. I really did not press the matter because, quite frankly, it was becoming very painful.

In 1997, I restarted my efforts to collect the Winterthur policy after I saw the news about the bank guard who found a Swiss bank shredding records relating to Jewish accounts. I thought this is exactly what must have happened to my mother's policy.

I began correspondence with Winterthur, and the company continued to deny all my requests. They were very polite about it, but they still denied everything. After several months I contacted the Florida Department of Insurance which assisted me in pursuing a claim under the ICHEIC.

In late 1998, through a record request which I made to the German Government, I obtained copies of materials contained in the German BEG file. For the first time I saw some of the material Winterthur presented in the early 1960's which acknowledged that Mrs. Falk had indeed purchased a policy in Geneva, Switzerland in 1936, with a policy number of 46593. That was the first time I

learned about my mother's Winterthur insurance policy number, and I immediately notified Winterthur of my discovery.

Once I showed Winterthur the records I found, Winterthur finally admitted that, yes, there was at least one policy sold to my mother. A few months later, the company also confirmed that Mr. Siegrist was their employee and that the policy was in fact underwritten. But they have now asserted two new grounds for denial: The premiums lapsed and the policy was illegal because German law forbade German citizens in 1936 to purchase insurance in Switzerland. The most recent offense was actually asserted to an employee of the Florida Department of Insurance in March 2000.

Of course, this did not stop Winterthur from taking my mother's money in 1936. Winterthur's 1961 correspondence does indicate that my mother's policy lapsed because she did not pay the premium through January 1938. And Winterthur's position: She only paid five quarters' worth of premiums. I find this explanation very odd because she paid Siegrist a lot more than 2,100 Swiss francs. Winterthur claims it's all that they paid. And when I say "a lot more," I mean a lot more. She smuggled thousands and thousands of German marks for the purpose of buying that insurance. Still Winterthur says they're sorry, but they don't owe anything if the premium was paid before the 3-year minimum before the policy converts into an annuity or fixed obligation.

Mr. SHAYS. Mr. Falk, if I could ask you a question, you've been 10 minutes, and your testimony is essential. I'm just curious how much longer it will be.

Mr. FALK. Mr. Chairman, can I ask you for 1 minute, please?

Mr. SHAYS. I will definitely give you that. Is that what you can do? You can finish up in a minute.

Mr. FALK. I beg your pardon?

Mr. SHAYS. Do you think you can finish up in a minute?

Mr. FALK. Yes.

Mr. SHAYS. Why don't we do that?

Mr. FALK. Thank you.

So even though Winterthur now admits what they previously denied about my mother's policy and Mr. Siegrist, that they still turned me down, I was shocked because the whole purpose of ICHEIC was for the companies to apply relaxed standards of proof. In addition, Winterthur's denial, based on a lapse in policy premiums occurring in 1933, is a violation of Chairman Eagleburger's ICHEIC ruling. Winterthur turned me down under ICHEIC in 1999. The ICHEIC rules said if I used ICHEIC's appeal process, I would have to waive my rights in the courts or to the courts.

Since Winterthur, as a board member of ICHEIC, had basically ignored my whole premise of ICHEIC, I didn't see any purpose of giving up my legal rights for an ICHEIC appeal. Therefore, I hired an attorney and filed a lawsuit in Federal court in south Florida. Now we are litigating Florida's jurisdiction over Winterthur. I really can't see when we will have a decision on the merits. But Winterthur ignored ICHEIC and there was no remedy except for me to go to court.

Mr. SHAYS. Thank you, sir. I appreciate your testimony.

Mr. Kadden.

Mr. KADDEN. Thank you very much, Mr. Chairman, Congressman Waxman, members of the committee. I will attempt to be succinct in the interest of time, although the subject matter as you can see is a very complex one and we all struggle with it.

My name is Danny Kadden. From 1997 until early this year, I staffed the Washington State Holocaust Survivors Assistance Office, a special project under the direction of the Insurance Commissioner of Washington State. In that capacity I had personal contact with hundreds of Holocaust-era insurance claimants in my State, other States, and from around the world. I have heard their stories, reviewed details of their claims, participated in the formal negotiations that led to the creation of ICHEIC, and have closely monitored ICHEIC up until the present time.

Thank you first and foremost for your interest in this issue and for dealing with a topic that is both important and unfinished. I appreciate the opportunity to share the knowledge that I have developed over the last few years, and I'm especially happy to sit next to these survivors with me today in support of their efforts.

I'm also mindful of the 63rd anniversary of Krystalnacht, which Congressman Waxman alluded to. It's profoundly relevant to our discussion here today, because history notes that in the aftermath of the violence, Jews in Germany lost their right to insure their lives and property and to receive insurance benefits owed to them. The issue of property insurance in Germany looms large today, and I will refer to it in just a moment.

I'm here to communicate today a simple yet sobering assessment of the Holocaust insurance claims process. It is not working. After over 3 years of struggle, the International Commission has simply not taken care of the business it was set up to do. For the survivors in the public, what matters most is the bottom line. This is the bottom line. Over a 3 period and after over 75,000 claims submitted, only 500 and some-odd settlement offers have been made. The denial rate, as has been mentioned, approaches 98 percent.

This is not what survivors expected in 1998 when ICHEIC was formed. At that time there were hopes on all sides this matter would finally be put to rest in dignity. As revelations grew in 1997 about the scope of unpaid insurance policies, and as the threats of class action lawsuits began to be felt by the companies, public officials began to take action.

Washington State Insurance Commissioner Deborah Senn proposed a special working group under the National Association of Insurance Commissioners, and she chaired in 1997 and 1998 a series of public hearings across the country, in which survivors and heirs movingly told of their efforts to recover insurance proceeds from European companies. Legislation was adopted in several States requiring companies to divulge the names of Holocaust-era policyholders so that families could learn that a relative had insurance and that a claim might be pursued.

The creation of ICHEIC was really the product of these lawsuits, hearings, and legislative efforts. The idea was to create a voluntary process to handle worldwide claims according to clear and consistent standards that took into account the special historical circumstances of the Holocaust. Claims would be determined using relaxed standards of proof, and there was a clear recognition that the

names of policyholders located in the extensive records and archives of the European insurers would be published.

That vision has not come to fruition, and here are just a few of the problems we see: First, the claims denial. As I noted, denied claims outnumber offers 19 to 1. Under ICHEIC rules, claims are decided directly by the companies themselves, which are responsible for interpreting and applying the relaxed standards without any oversight at present. From the outset, the ICHEIC process has been seriously compromised by a lack of accountability and independent oversight. After arduous negotiations, a complex set of rules and guidelines were adopted to govern the validity and value of claims. These have been applied by the companies inconsistently and arbitrarily, allowing the burden of proof to be shifted back to the claimants. Relaxed standards have become an insurmountable burden that survivors cannot meet. Rulings by the chairman to correct some of these problems have met with stiff resistance by the companies, and it is unclear when and if they will abide by the rules as interpreted by the chairman. In short, survivors are getting a sense that the process is increasingly stacked against them. That may be a reason why two thirds of those who have received offers have not decided to accept them or not.

Another issue of claims in limbo. Literally thousands of claims have been submitted in good faith and are sitting with nowhere to go. A significant number of these have remained in limbo for well over a year, because the German insurers in particular have not agreed to join ICHEIC. And I believe that at the next panel that will be addressed in more full.

Math and validations are a problem. Whole categories of claims, including the enormous unpaid property losses suffered in the tragic events of Krystalnacht, have not been accepted by ICHEIC and have been invalidated. For these people, ICHEIC is not an available option.

Finally, a growing number of claimants are unable to get responses from ICHEIC about the status of their claims. Some call a right, as we have heard, pleading for answers. To them ICHEIC looks like a bewildering bureaucracy which assigns people a number and doesn't answer at all. Unlike Mr. Huntsmeyer, it is a very emotional issue for the claimants.

Finally, for survivors, the ICHEIC process simply cannot be considered valid without the publication of comprehensive lists of policyholder names. And I want to explicitly link the issue of deadline with the publication of names.

Let me focus the remainder of my time on this issue and why it is so vitally important. Persons making claims today, with very few exceptions, are not the original policyholders. They are primarily survivors who experienced the Holocaust as children and are the legal beneficiaries of policies purchased by their parents or other adult relatives before the war. They did not know details of their parents' finances. They did not inherit well-kept files and documentation. But they do have memories, as we have heard.

It's not at all surprising that up to four out of five claims submitted to ICHEIC do not name a company. Most claimants simply do not know. But they have a high degree of certainty that coverage did exist and that their father and mother's name and other details

lie today in the files of an insurer. They simply want to review lists submitted by the insurers to confirm the existence of the policy and to go forward.

The companies have all along been resistant to the publication of names. This issue lies at the heart of contested State laws. It is the focus of H.R. 2693, the proposed Holocaust Victims Insurance Relief Act. It has been debated endlessly within ICHEIC. The primary bone of contention concerning the German insurers from joining ICHEIC is the requirement of publication of names. Rather than actively challenging company resistance to publication, ICHEIC has attempted to work around the companies and locate policyholder data in public archives in Europe. The names found on the ICHEIC Web site today are almost all the product of this costly research rather than from company sources. It is a welcomed public resource that has proven the value of publishing names, but the research remains unfinished.

Many more archival sources remain untapped due to lack of funding. Archives, while valuable, are not the most effective sources of lists. For every name unearthed by the hired researchers of ICHEIC, there are likely 100 in company files which have not seen the light of day.

I would like to add, if I may, a brief personal note which illustrates this issue. My grandfather, Hermann Motulsky, was a German Jewish merchant in a small town, who was imprisoned in a concentration camp but was able to leave Germany safely before the war started. But he lost everything. After the war, he applied to West Germany for compensation for property and other damages suffered due to persecution. On his application, he left blank a section dealing with unpaid or confiscated insurance, suggesting that he had no policies to claim. Earlier this year his name appeared on the ICHEIC Web site, indicating that a public record had been found of insurance policies he owned in Germany before the war. In fact, I learned he owned three insurance policies in 1938, which he was forced to cash in just weeks before he left the country. The proceeds went to pay exorbitant taxes applied by the Nazis to fleeing Jews, a form of stealing. Years later he did not seek compensation for these policies, no doubt because he thought they were officially cashed in and no longer valid. Our family records did not indicate any record of these policies.

Now we know better, and we'll be pursuing what appears to be three valid insurance claims.

The lists work. As we sit here today, we're just a few weeks away from the 2002 ICHEIC claims deadline. Unless the lists are released, the process will fall far short of dealing with the problem and then the problem won't go away.

Let me conclude by saying survivors and the public are increasingly doubtful that some meaningful measure of justice will be achieved through ICHEIC. The hope they felt that an honest, fair, responsive and transparent system to handle Holocaust-era insurance claims can be achieved is quickly vanishing. They know time is running against them, and it appears they have few places to turn for help. They want to see justice in their lifetimes. They want to have options to pursue what they feel is right.

When they see their own executive branch of our government pledged to defend German companies in the U.S. Courts against lawsuits seeking redress, they are frankly dumbfounded and angered. How, they ask, can legal peace be awarded to the Germans or any company when they have not delivered on their promises to settle insurance claims? Coming after so many decades and so late in their lives, it is a particularly cruel and difficult disappointment for them to feel again victimized and without a voice in the process.

Mr. SHAYS. Thank you, Mr. Kadden.

Mr. KADDEN. Thank you.

Mr. SHAYS. Before I recognize Mr. Waxman for 10 minutes, I'm not sure I will be here when the next panel comes up and given the introduction of two other witnesses, or at least one and a guest, I wanted to acknowledge the presence of a friend and a neighbor and someone who has been very helpful to me on these issues and other issues—Roman Kent, who is the chairman of the American Gathering of Holocaust Survivors and an ICHEIC member—and just point out that he was born in Lodz, Poland and during the war years from 1939 to 1945—this blows me away—he spent that time in the Lodz ghetto and in Auschwitz and Dachau and Flossenburg concentration camps, and he arrived in the United States in 1946 under the auspices of the children's quota of U.S. Government's displaced persons.

He started a very successful international trading company in Atlanta and moved to New York in 1953, and has lived in Stamford for a number of years. I will say he has a tennis court, and we are neighbors, and he's never invited me to play tennis with him, and that's the only negative that I know about him. Thank you for that opportunity to introduce you. And, Roman, it's nice to have you here.

Mr. KENT. Thank you.

Mr. SHAYS. Now, Mr. Waxman, you have 10 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. I appreciate the testimony that each of you has given. It's remarkable that after all these decades have passed that there seems to be no acknowledgment by the insurance companies to the claims, even when you have such clear information about the insurance. And not only are the insurance companies refusing to acknowledge it, the question in my mind is whether the ICHEIC process is working, because that process was set up to streamline the ability for people to receive compensation for insurance policies that they had. Do any of you feel that the ICHEIC policy has been helpful, or do you feel that it has been ineffective? Dr. Brauns.

Mr. BRAUNS. ICHEIC has—first of all, they made a judgment on my insurance company I'd like to show you, written in dollars, that say that it's not a dollar insurance, they have to do it in Lats. But the main thing that bothers me, they interfered with the right of a person to sue the company. They have advised the Justice Department that stopped all the lawsuits for Generali—and I'm sure the German, too—the other insurance company, but this is the problem. Because when you can sue, you can bring all kinds of evidence.

I will tell you something that surprised many people who have forgotten. In the Nuremberg trial it was brought out that the first

minister of Hitler was the president of the German insurance company, and he cooperated with the Gestapo and gave the names of the people who had 50,000 or 20,000——

Mr. SHAYS. Just move the mic a little further away.

Mr. BRAUNS. OK. Who had insurance and they were—he was reported to the Gestapo. The Gestapo went and killed the people and the German Government shared the money with the Gestapo. But this is on the official record of the Nuremberg trial. So we have forgotten what really happened. It was incredible, and many people who are historians have forgotten that or overlooked it, but this is—and I can provide you, I mean——

Mr. WAXMAN. I would like to get that information, so you can put it in the record. But I want to ask about ICHEIC of the other witnesses, because what I want to find out is what we can do now to——

Mr. BRAUNS. Please let them sue, let them——

Mr. WAXMAN. So you feel you should not be barred from your lawsuit?

Mr. BRAUNS. Exactly.

Mr. WAXMAN. OK. Mr. Arbeiter.

Mr. ARBEITER. I don't think that ICHEIC is of any help at all. The only thing that I think they are good at is spending the money.

We understand that out of the very few claims that have been settled with the help of ICHEIC, they spend about $30 million for those few settlements. I have personally called ICHEIC several times and I get the same response, the same answer.

Mr. WAXMAN. I gather the problem with your claim is that you didn't know the insurance company name?

Mr. ARBEITER. Yes.

Mr. WAXMAN. So ICHEIC doesn't know to whom to send it, to which company to send your claim?

Mr. ARBEITER. I don't know if they are doing anything. We didn't hear from the insurance companies. When we hear from the insurance companies, we will get back to you. I don't know whether they are doing anything on it or not, because I get every time the same answer.

Mr. WAXMAN. Mr. Falk, do you want to add anything on the ICHEIC issue?

Mr. FALK. It is very hard for me to judge. Perhaps it is to see to it that perhaps ICHEIC gets to the funds that was promised to them, the funding.

Mr. WAXMAN. They are frustrated. I am sure that we will hear later that the companies are holding back.

Mr. FALK. Well, I am talking about the funding that was coming to them and never got there.

Mr. WAXMAN. Yes.

Mr. FALK. And the funding—the members of ICHEIC should not be able to decide on an independent committee to be established and to pay out the fund at their discretion, meaning whoever presents whatever they have, that is the way to do it. That is the way to wind down, the way I see it.

Mr. WAXMAN. Yeah.

Mr. FALK. There is no other way that I can see it. It is very hard.

Mr. WAXMAN. Let me ask Mr. Kadden questions. All of you, I appreciate what you had to say. Mr. Kadden, you have been representing other people as well as your own family situation.

What suggestions do you have to us to improve this whole situation in the time that we have available to close these cases?

Mr. KADDEN. Unfortunately, I think we are in a very difficult position based on the whole structure of ICHEIC. And I don't want to be sanguine about it, there are those who argue with some force that the whole way ICHEIC was created, its charter, is very hard to overcome.

More than one person has used the expression the fox guarding the hen house. The role of the companies in the government structure of ICHEIC is very troubling. That was certainly not the vision of a number of the State regulators when the first discussions occurred. But that is what was done. That is how it was formed.

We can speak all day, as I have on other occasions, on other days, all day about this. From the point of view of where we are now, I believe there has to be some sort of creative public accountability. It may not be done through any formal legislative or legal structure, but there has to be some sort of openness.

Mr. WAXMAN. On whose part?

Mr. KADDEN. Well, I think there are a number of parties in the public, including the public in the business world, in the Jewish community, in government, who might be willing to step forward and serve as an advisory board to getting ICHEIC's house in order, working closely with—Chairman Eagleburger has worked tirelessly to try to balance the different forces on the ICHEIC. As a private entity, I am not sure what kind of reach other than the voluntary advisory commission could have to address some of the issues.

There are pure business issues involved here with management and accountability of finances and the claims process itself.

Mr. WAXMAN. Management issues within ICHEIC or within the companies?

Mr. KADDEN. Now within ICHEIC. Coming most recently from the point of a State regulator, we always approached this as a regulatory issue. I think I was going to say my final thoughts were, we have 50 State insurance regulators in this country who are well equipped to handle companies. There are some serious legal issues involved. I am not going to address those today, I am not competent to do that. But I think there are a number of regulators who would like to see this logjam lifted, and will provide resources to do that within the different State laws regarding regulation.

Now, I do believe, though, in all honesty, that this has to be done on—as ICHEIC was created—on a voluntary basis. The solution has to be reached on a voluntary basis. The public has to be informed. Your help is very important. This hearing is part of that process.

Mr. WAXMAN. Thank you. I hope so. Some have suggested that claims for the types of insurance processed by ICHEIC may not be appropriate because victims of Nazi persecution were compensated by the German Government, that a lump sum payment was made to Israel. How do you respond to that assertion?

Mr. KADDEN. The fundamental issue here is a contractual agreement, relationship between families who purchased insurance and

the companies or their successors. In the large scale of things, collective compensation has had a place. But insurance was probably the most widespread form of family asset that was systematically looted by the Nazis.

Not everyone had Swiss bank accounts, but just about everybody had some kind of insurance, modest as it was, and it meant something to them, as we heard.

That was the basis of the original agreement between the company and the families. That should be the basis of the solution. Families should benefit. The children of survivors who are with us today should personally benefit during their lifetimes and have the satisfaction to close the book.

Other forms of creative compensation may be useful in other venues, but not in this. I think insurance is a very personal issue, and I don't think there is any way around that.

Mr. WAXMAN. Do you think that the U.S. policy should continue to be to advocate dismissal of lawsuits against German and Austrian insurance companies regarding Holocaust-era insurance claims?

Mr. KADDEN. As I said, I think I can speak for survivors on this most comfortably. There is a reaction of being dumbfounded by putting literally the cart before the horse. Fix the problem with unpaid claims before you close out people's options to pursue justice in our American court system.

Now, again, I can't address the complex legal issues, but I know from a moral point of view and from the point of view of survivors, it makes no sense whatsoever that their options are closed to them in the interests of economic policy and world trade.

That may be an argument that some can have on governing levels, but for the survivors in the street, so to speak, there is no understanding whatsoever of this. We see people today who are really exceptions. They have had the courage to step forward and speak out, to allow themselves to continue to pursue these claims for 50 years. Most give up. Most haven't made it to this point.

I think I speak for them when I say they don't understand how the policy of legal peace can be put before resolution of the choice, or at least a process that gives them a fair shake.

Mr. WAXMAN. So it is your position that we not have the current deadline, and that the deadline should be tied to the publishing of the lists, and separately we not have any kind of efforts by the U.S. Government to stop lawsuits until we have got this whole system worked out?

Mr. KADDEN. Well, if the deadline is extended, I think the same argument can be used to apply to other actions which affect the claims process on behalf of individuals.

And I think there would be strong support for tying kind of suspension of all of the doors closing until we see some movement on getting claims paid and think there is a relationship there that can be extended not just to the claims line, but also to allowing people to at least walk their way through our American justice system in order to get some sort of justice.

Mr. WAXMAN. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS. I am going to recognize Ms. Ros-Lehtinen in just 1 second. I would like, Dr. Brauns, for you to hold up a document that is priceless.

Mr. BRAUNS. It bothers me that ICHEIC has interpreted——

Mr. SHAYS. Hold on 1 second. We have one problem. We have someone that has to translate.

Mr. BRAUNS. It is in English.

Mr. SHAYS. No, the reporter. You just left the mic. I want you to go back to that mic, and I want you to hold those documents up for me to see, sitting down right over there. Bring both documents there. And I would like you to hold those documents up so Mr. Waxman and the rest can see that. I want you to describe to me what that document is.

Mr. BRAUNS. Well, there are two documents. One is the Regal Union Insurance Co. And then I have a reinsurance from Assicurazioni Generali. And it is written here, $2000 and then in dollars—it is printed out in dollars, $2000, New York Bank, to be paid or something like that. So it is documented, and that is why we need a court.

Mr. SHAYS. Compounding $2,000, it would become a noticeable amount of money.

Mr. BRAUNS. It was interpreted that it is worth nothing.

Mr. SHAYS. I understand probably more than the money, obviously more than the money is the principle of the thing.

Mr. BRAUNS. The principle. It was a trust that many people, not just my father, my father was a very well-known physician. But there were other people that were not. My father was a pioneer in doing it. What the community was doing to provide for their children like anybody here is providing for their children, education somehow, some way, and in the proper circumstances that was the only circumstance we could provide, because money in the bank meant nothing. And the houses meant nothing for education, because the war was already—it was 1930. I was 6 years old. It is tragic, because I feel—the organization like ICHEIC, and I have nothing. I mean you cannot call them. They don't answer.

Mr. SHAYS. We get the point very clearly. I will be leaving, and I just want to thank each one of the witnesses for their participation. I thought we had a problem with overseas banks and investment houses, and the stealing of money. We know that we have slave labor, but I have never really given the kind of focus on this issue. It just blows me away.

At this time I recognize Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you very much, Mr. Chairman. I appreciate the time, and I am also very surprised by the testimony here today. We thank each and every one of you for coming today and sharing your story.

I would like to ask about the secrecy and the transparency of the ICHEIC meetings.

Are ICHEIC meetings open to the public? Are ICHEIC meetings open to representatives of grass roots Holocaust survivor organizations? Does ICHEIC disseminate publicly the transcripts of its meetings? And how are survivors supposed to find out about ICHEIC proceedings?

And anyone may answer. Mr. Kadden.

Mr. KADDEN. The answers to your questions are: No, no, no, and no. I had the opportunity to attend ICHEIC plenary meetings on an extraordinary basis through the permission of the chairman as a representative of one of the State regulators. There are formal members of the Commission who are State regulators, elected officials and appointed officials of State governments, and also the State Department is represented in an observer capacity.

But, in terms of their interaction with the public, it is unfortunately a series of no answers. There are no records of the meetings available to the public. From time to time I am aware of groups asking for some sort of explanation, and these are generally not available as far as I have been told. There are groups that have asked to attend just as an observer status. I believe these have been unfortunately turned down.

Ms. ROS-LEHTINEN. They have been turned down. What reasons have they been given for being turned down?

Mr. KADDEN. I am not certain what the specific reasons were, except that the ICHEIC meetings are conducted on sensitive matters and that some of the members of the Commission would be uncomfortable with members of the public being there.

Ms. ROS-LEHTINEN. Would any other panelists care to answer that?

Mr. BRAUNS. As far as I know, I could never get in touch, and I tried to see Eagleburger and Eizenstat and I couldn't get through to them.

Ms. ROS-LEHTINEN. They would not respond to your requests?

Mr. BRAUNS. No.

Ms. ROS-LEHTINEN. Thank you.

Are there any representatives of survivors or claimants who have a vote on ICHEIC? Is the claims conference what you would call a Holocaust survivor organization? Is it really fair to have a commission where the companies have half of the votes and the claimants have no votes? What would you say about a structure that would apply for any other subject matter?

Mr. KADDEN. Well, such a structure was the result of intense negotiations by a very small number of people trying to create a forum where the various parties could participate with some comfort level. There is indirect representatives of survivors on the ICHEIC through an appointed representative, as you will hear later, of the claims conference.

Also the State of Israel has a very active role on the Commission and uses it vigorously at times to advocate for survivors and claimants. However, my own observations, being at the meetings, are that because ICHEIC operates on a strict consensus basis where one party can actually effectively block decisions being made, there are no votes. I have never seen a vote being counted at ICHEIC, in the Commission proceedings.

Ms. ROS-LEHTINEN. Have you ever seen a vote conducted?

Mr. KADDEN. I don't believe a counted vote is part of their procedures. And so there is a lot of talk and survivors' concerns are laid on the table from time to time and heard by the others and make it into the record of the meeting somehow. But this is not really reflected in any kind of formal vote. If so, they would be heavily outnumbered, as you suggest.

Ms. ROS-LEHTINEN. Let me followup with something that was brought up before. Do you believe that we should create an express right of action in U.S. Courts for Holocaust victims and heirs to recover those policies?

Mr. BRAUNS. I tell from you experience, and I mentioned to Mr. Kadden before, we had a commissioner in California, you know his name, Quackenbush. And he was very strong in stopping the insurance companies doing business in California.

As soon as they found out about it, there was a big turmoil and they even—my letter—not my letter it was decided—I mean an answer to my questions of course, and other people I know responded to it. I think the same companies like the German company now there does a lot of business in California. They have just went to the schools and offering for a few dollars insurance for the children, school insurance, and getting out and pushing out of the business the American companies. So they are very active. A little threat to them is very effective. A threat to them is very effective. But who will do the threat? I don't know.

Ms. ROS-LEHTINEN. Does anyone else care to comment?

Mr. ARBEITER. I was looking for a document. In which year—I believe it was in 1997, the Commonwealth of Massachusetts established a commission to handle claims, insurance claims from Holocaust survivors, and they got involved. But the State Department interfered with it and I think ordered that there should be no claims brought forward.

You see, I am the president of the Association of Holocaust Survivors of Greater Boston. I have a very difficult time explaining to my fellow survivors that the U.S. Government is preventing their citizens from claiming something which belongs to us, which is legally taken away from us. Why the U.S. Government, the State Department is not allowing the States to do what we think would be the appropriate thing, to be able to say to the insurance companies: If you don't settle the claims, all of those that belong in the legal claims with Holocaust survivors, you will not be allowed to do business in these Commonwealths.

And this was the proposal in Massachusetts, and I understand it is the same thing in other States, except that we understand the State Department came in and interfered and is blocking that effort.

Ms. ROS-LEHTINEN. Thank you. Madame chairman, if I can maybe just ask one more question as sort of a wrap-up of what we have been talking about.

Would it be a good idea to try to strengthen ICHEIC for claimants who don't want to go to court, but also guarantee a viable right to go to court for claimants who want to have a real judge and a real jury consider their claims?

Mr. BRAUNS. Can I answer it? The question is every American citizen in this great country of the United States has the right of protesting through court.

A certain amount of Americans have been deprived of suing any pretense. How can the American—how can we sue Generali? It will interfere in commerce—can you explain it to me? Maybe I am not intelligent enough to understand it—in the commerce between the

United States and Italy. This is the answer. Because when you put pressure, you will get an answer.

It is beautiful that you take the people and you get the settlement, but it belongs to the people who paid the money. They saved the money. They paid premiums. My father, for example, gets a special dispensation of the government to pay in dollars. He wanted me to get an education.

And this is a question of trust that has been broken. Not only by my father, there were thousands of other people. One asks, how do you provide for your son? Oh, I took Generali. That is why it was popular. It was not popular because they just advertized in the newspaper. It is word by word. And then for them to deny the list. In my family alone, I know they had insurance. I cannot prove it. When I am gone, and I am now in my late 70's, and they are free. They have won. They have won the battle.

Thank you. Thank you very much, all of you, to listen, because this is the issue.

I think that American courts most of the time are just. Sometimes some things happen, but basically it is just. And this is the big privilege of American citizens to sue and recover what is owed them. And why is it taken away from the people who paid the moneys in?

If anything is fraudulent, the courts will find out. We have witnesses. We have things. But I have here original documents. They didn't read my documents. And made a judgment—they made a judgment without looking at my documents.

Ms. ROS-LEHTINEN. Any others?

Mr. KADDEN. Representative Ros-Lehtinen, if you surveyed survivors individually, I believe that they would strongly favor what you are suggesting.

In fact, some of the State laws that have been passed that mainly focus on the publications of names do have an extension of the statute of limitations for private actions. Those laws are somewhat up in the air at this point. But the principle is recognized by a number of State legislatures in this particular regard.

And I believe they would support such a right as intrinsic. A lot of them may not take advantage of it, because that is not their cup of tea. They don't want to engage in contention that way, but the right to do it is very important. Plus there is a very savvy recognition that when there are active lawsuits, it is a form of pressure that gets a message across in a forum that individuals sometimes can't.

Ms. ROS-LEHTINEN. Of course. Well, I thank you very much for your testimony. Thank you, Ms. Chairwoman.

Mrs. MORELLA [presiding]. Thank you, Ms. Ros-Lehtinen. I know that we have had you here a long time. I know Ms. Schakowsky would probably like to ask a question.

Just picking up on what was already discussed—let me just simply ask you, Mr. Brauns, did Generali ever explain how they came up with that $5,000 figure?

Mr. BRAUNS. They didn't. They decided, Assicurazioni Generali did. They said $2,000 50 years later would be worth $5,000, which is not true. You go to any bank you find—but they—the letter that I got, that Rabbi Cooper got, they didn't even communicate with

me because he was the last one to see them, was written that the policy is worth nothing, because lots and lists don't exist any more.

This is a pity, because read the policy. It is right here. I mean, written in numbers. And this is what upsets me, because it was easy. Maybe a clerk saw it there and decided to write, OK, we decide that it is worth nothing, but we will give you $5,000. The tragedy is another one.

I lived in Italy. I went to school there.

I met and I am very close friends with top people in Italy. And I found out that all the records are there. They are in Trieste. Nothing is lost. And the reason they don't even want the lawsuit is because they applied and have gotten from the Italian Government the privilege of handling all of the retirement funds or something like that, and they got it.

If I would have applied the lawsuit at the time, they would have given anything to me just to get rid of me. But they didn't have to.

Mrs. MORELLA. Thank you very much. I want to recognize Ms. Schakowsky if she has any questions to ask.

Ms. SCHAKOWSKY. I can't hardly articulate my frustration after listening to you and having dealt with this for a couple of years now myself, and it is remarkable. Danny, you told me that Representative Holmes-Norton was saying essentially in light of the September 11 terrorist attacks, where frustration is already being expressed, criticizing that for the lack of speed to compensate the people who were killed, injured, etc., in that incident. Here we are talking about half a century later.

And we still can't get any small modicum of retribution and are running into all of this continuing red tape. What I think we need to do is just to stop talking about this and figure out what the plan that needs to be implemented, what do we need to do regarding lawsuits? Is it a matter of ICHEIC oversight? What do we do about the publications of lists and in that context what does this Congress do?

I think we need some help from those of you who have dealt with this issue personally and professionally now to give us very concrete guidance, at least your suggestions. I mean, we will do with it what we can. What are the next steps now?

I don't think we need to accuse anybody of ill will, but I think we need finally to say this is it. You know, we have tried this. It hasn't worked. This is the better way to go. And so what I am really asking for is a blueprint, a set of concrete proposals that we can be considering. There were some suggestions. I heard what you said about the lawsuits. But maybe we could even just make a wish list of things that we can then proceed from.

If any of you on the panel want to respond with concrete suggestions, then we would be happy to hear it.

Mr. BRAUNS. You know, insurance companies base everything on money. If you write a letter—Congress write a letter that everything will be terminated. Any business in the States of the United States, if a list is not provided, you will have the list within a week. I can guarantee that. We had a similar thing in California. Suddenly they changed everything for a week or two until unfortu-

nately our insurance commissioner had to leave, for a reason that is not for me to judge.

But what I am saying, insurance companies appreciate money. I was in a meeting with Governor Davis one day, and there was the representative who had—you probably know who I am talking about. I don't know his name. He is the representative of the Jewish Agency for Davis. But anyhow he had a collection—I don't know how many apartment buildings. He wrote a letter to the German insurance company that he is canceling all of the insurance with them. Within 1 week the President flew down to California to talk to him and see how can we remedy that, and how can we do whatever. Insurance companies understand money and a threat.

And if a threat—I do it in a threat, they laugh about it. If a threat comes from Congress, they will listen.

Ms. SCHAKOWSKY. Along with that, we would have to extend the deadline, don't you agree?

Mr. BRAUNS. Whatever. They would not be able to work here, to sell.

Ms. SCHAKOWSKY. For claims to be made.

Mr. BRAUNS. Forget about the claims. If you talk about the list, to get the list, you say if you don't provide the list in 2 months you will stop—revoke all of the licenses to work in the United States, you will have it within a week. There is no question about it, because that is their business.

Am I correct?

Mr. ARBEITER. Yes, of course you are.

I believe that the list is of greater, utmost importance, because we don't even know who is on the list and who isn't. In any case, I cannot get an answer whether the name of my parents, my father is on that list or isn't.

Ms. SCHAKOWSKY. How long have you been waiting for a response? Even though they said 90 days or a little longer, how long have you been waiting?

Mr. ARBEITER. Since December of the year 2000.

Ms. SCHAKOWSKY. So it is almost a full year?

Mr. ARBEITER. A year, yeah. But I get the same answer every time. Just wait another 90 days? We don't know. I don't even know whether they stuck it to the insurance companies or they didn't. I just get the same answer. We didn't get an answer yet. We don't know. I don't know whether it wouldn't be better and more important that we deal directly with the insurance companies. And if we don't get the right answer, as U.S. citizens we should have the right to sue the insurance companies. And I fully agree with my friend here, that if we would tell the insurance companies you cannot keep the money which is illegally yours, there is—what I understand 2 million policies outstanding, and the money is not theirs. The policies were paid for by our parents, by our grandparents. Why should the insurance companies be allowed to keep that money?

We were—our properties, our freedom, our lives were taken by the Nazis. And what is difficult, very difficult for me, and again for my fellow survivors, to understand is why the U.S. Government, instead of helping their citizens, which we all are citizens of the

United States for the past 50 years, instead they prevent us from claiming that which belongs to us.

We all think that this is a very great disservice to the U.S. citizens. And again, I say, if we put to the insurance company the same thing that was handled in the case of Swiss banks, you settle those claims. You look into this case and settle it to the best satisfaction possible or you don't do business in these Commonwealths. There is many States in the United States that they are willing to do that. But the U.S. Government is interfering with it, is not allowing the lawsuits to go forward.

Ms. SCHAKOWSKY. Mr. Kadden.

Mr. KADDEN. Those of us on the advocacy side have constantly tried to figure out what practical solutions are available to us.

It is a quandary. I will say again, the issue of lists is the linchpin. I believe many survivors will feel that the process has been mainly fair and successful if comprehensive lists are disgorged.

Who can compel the European companies to do that other than a fit of conscience or processes within these countries which we are not really directly related to?

The regulators, the State legislatures have in some States attempted to address this by putting forward—or legislatures have passed legislation. It is another conversation, I think, to kind of summarize what we may hear from Director Shapo later about where that is at. It has been a frustrating legal process. If Congress can help to clarify and strengthen if necessary, States' right to regulate on this specific matter, it would be an enormous help.

The idea here is to disgorge the names, serve the public interest, and to show what companies are responsible for in this economy, in this society that operates in our country.

Short of that, I think for Congress to take an interest in how ICHEIC is operating, to try to streamline the claims process, would go a long way toward making survivors feel that they are at least getting a fair shake.

Ms. SCHAKOWSKY. Before my time totally expires, does everyone agree that this deadline that is rapidly approaching has got to be pushed back? Is there anyone who disagrees with that?

Mr. BRAUNS. I want you to understand. I filed the lawsuit in California against Generali. Do you know what the government did with my lawsuit? They transferred it to New York. And in New York the judge said, well, we will interfere. I don't know who told them. Was it ICHEIC who was responsible for it or was it some other person? But it was transferred to New York. All of the suits that Generali had are now in New York. They are cold.

Ms. SCHAKOWSKY. Mr. Kadden, I interrupted you with a remaining couple of seconds. Go ahead.

Mr. KADDEN. The deadline, as I said, is linked intrinsically to the lists. Fix the process before you close it. Give the tools to the public to take advantage of the process. There is a fear among some that publishing names will create a cascade of improper claims that will flood in and be impossible to handle.

I don't share that concern. I think a claims process has to be a claims process. It has to be accountable, successful and has to work for people. Because of the special nature here, the only way we can

do that is through lists. And for that reason alone, I think there is very strong support for extending the deadline. That is also contingent on ICHEIC fixing its process.

And particularly I want to note, not just the personal experiences of people with silences and lack of responses, but the way that the claims are handled, the way that they are judged and decided yea or nay, or forced to be put on hold because there is no place to direct them because ICHEIC doesn't have that kind of spread, has to be addressed, the way the criteria are put into effect by the companies and interpreted. But without the list this whole thing is really an exercise in rejecting 95 percent of the claims of the people who have the gumption to come forward. There are many who don't because they are confused or they simply don't trust us.

Mrs. MORELLA. Thank you, Ms. Schakowsky.

I am now going to, Mr. Falk had a brief statement.

Mr. FALK. I believe the names are important. But, the claims process is unfair because the companies control it.

The ICHEIC appeal and having to give up your right to sue in the U.S. court is totally unacceptable. Just because they did it to close out the bank deal, they want to push it on the insurance people, the same kind of situation.

We didn't have in this process at all the niceties that the banking committee had where they send in their accountant to look over the bank accounts. We didn't have anything like that. Who was judge and jury on this thing? Only the committee. What is the committee? ICHEIC. That is all.

It is ridiculous, this whole process is ridiculous.

Mrs. MORELLA. The information you have given us has been very valuable, and as you know, in our next panel we will have ICHEIC here, and you have fortified us with background to try to correct this historically inequitable situation. Final word?

Mr. BRAUNS. Final word. The tragedy is that ICHEIC is funded by the insurance companies completely. Not 50 percent, not 80 percent, 100 percent. Now, they can do anything they want with ICHEIC. They are funded. Thank you.

Mrs. MORELLA. Well, we will get to the root of that with the next panel, too. I just want to give the final word to Mr. Waxman.

Mr. WAXMAN. Thank you very much. You have been a terrific panel. I think you have set the issue clearly before us. Each one of you is so much more sophisticated, and you are able to articulate your frustration and show how unjust the situation is in each of your cases, and I know there must be so many others who don't have the ability that you have to come forward.

And so we are not only going to fight for you, but we are going to fight for them as well and try to figure out how to make this whole process work.

I am looking forward to the next panel and hearing their testimony and seeing if we can make some progress in this whole area.

Mrs. MORELLA. I also want to thank the panel.

Mr. BRAUNS. We need you very much, and thank you.

Mrs. MORELLA. Mr. Waxman has been terrific. Thank you, Dr. Brauns, thank you Mr. Arbeiter, thank you Mr. Kadden, and thank you Mr. Falk. Thank you very much. We are really going to try to

remedy the historically long problem that we have faced that has been so unjust, inhumane. Thank you very much.

The committee is going to recess now until 1:15, give you all a chance to move around a bit.

[Whereupon, at 12:40 p.m., the committee was recessed, to reconvene at 1:15 p.m., this same day.]

Mrs. MORELLA. I'm going to reconvene the Government Reform Committee on the status of insurance restitution for the Holocaust victims and their heirs. I want to thank you all for being so patient on this second panel, as we are all in congressional session. I think you heard all those bells and knew that we had two consecutive votes, and so I appreciate your being here, and in the interest of the policy of the Government Reform Committee and all its subcommittees, I will ask the panelists if they would stand and raise their right hands so I may swear you in.

Secretary Eagleburger, that's terrible to give you so little space there, too.

Mr. EAGLEBURGER. That's OK.

[Witnesses sworn.]

Mrs. MORELLA. The record will indicate the affirmative response. So I'm really pleased to have the Honorable Lawrence Eagleburger, Ambassador J.D. Bindenagel, Peter Lefkin, Nathaniel Shapo, Gideon Taylor, and Roman Kent. Thank you very much. I'm going to have your entire testimony included in the record and you may certainly give a synopsis of it. We'd like to ask you if you could try to keep your comments to about 5 minutes so that we'll have an opportunity for questions.

Again, I thank you for your patience. I thank you for being here for this very important hearing. So Secretary Eagleburger, I will start off with you then, sir, and again, I particularly want to thank you again for coming. I know you had an operation not too long ago and it was a real sacrifice to be here, but it's your sense of commitment. So you may proceed when you want.

STATEMENTS OF LAWRENCE EAGLEBURGER, CHAIRMAN OF ICHEIC, FORMER U.S. SECRETARY OF STATE; AMBASSADOR J.D. BINDENAGEL, U.S. STATE DEPARTMENT SPECIAL ENVOY FOR HOLOCAUST ISSUES, U.S. TRUSTEE FOR THE GERMAN FOUNDATION, AND U.S. OBSERVER TO ICHEIC; PETER LEFKIN, SENIOR VICE PRESIDENT, GOVERNMENT AND INDUSTRY AFFAIRS, FIREMAN'S FUND INSURANCE CO., ALLIANZ GROUP; NATHANIEL SHAPO, CHAIRMAN OF THE INTERNATIONAL HOLOCAUST COMMISSION TASK FORCE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, NAIC REPRESENTATIVE TO ICHEIC; GIDEON TAYLOR, EXECUTIVE VICE PRESIDENT OF THE CONFERENCE ON MATERIAL CLAIMS AGAINST GERMANY, ACCOMPANIED BY ISRAEL SINGER, VICE PRESIDENT OF THE CLAIMS CONFERENCE, CHAIRMAN OF NEGOTIATING COMMITTEE; AND ROMAN KENT, CHAIRMAN OF THE AMERICAN GATHERING OF HOLOCAUST SURVIVORS AND ICHEIC MEMBERS

Mr. EAGLEBURGER. I thank you for the comments, Mrs. Chairman. When I was in the government, when I had to testify before Congress, I studiously avoided coming to a committee hearing and

saying how much I appreciated being there. I did not think it was wise to lie to the committee before I ever even got to the testimony. So I will leave it at that. But I will try to be very brief and then we can go into questions later, obviously.

I think in looking back on my own experience with the ICHEIC issues and ICHEIC—you need to understand ICHEIC had been created before they came to me and asked me to chair it. So I really was getting into something that was already in existence, but I think it's important for this committee to recognize that we started from whole cloth, we started from scratch. There was no experience like this about this kind of a subject, and therefore a great deal of the early times, at least for experimentation, and there is no question we made some mistakes, and I will talk about those in a minute.

But please do try to understand this, that there was not some pattern out there that we could follow. It's taken too long and it's cost too much. I don't argue that. But again, another thing that needs to be remembered is that there were two fundamental, I think, weaknesses in this whole concept, and we have, I think, by and large, managed to work through them, but you need to understand that when this issue was first developed, when the Commission was first developed—how do I put this nicely? The companies that joined, joined because they knew that if they did not, there would be consequences for their business activities in the United States. So there was no question there was resentment on the part of the companies for the fact that they were brought to this commission the way they were.

The second issue that has, I think, plagued us, and me particularly, is that the concept of the ICHEIC was that decisions would be made by consensus, and I have to tell you, particularly if you start by understanding that there were these differences between the parties in terms of their willingness to join and willingness to be involved with the State insurance regulators and the Jewish groups obviously, clearly in favor of the process, and the companies, shall we say, to put it mildly less than enthusiastic, that it was almost inevitable that if you had to make decisions by consensus it was going to take a very long time to get decisions on tough issues where there was a real difference between the parties so that for about the first year, I guess, I tried to live with consensus and did live with it.

But at some point after a great deal of frustration, I finally decided and told the companies that we were going to have to make some decisions on the basis of the chairman's decisions, that I would try to make those decisions after having heard all of the parties and trying to think through what would be fair, but that we could go on no longer with this issue of trying to decide everything by consensus.

Again, the companies particularly thought this was a terrible idea, but then they have thought most of my ideas were terrible, so it didn't surprise me much. But having said that, I do think it has moved things along a good bit faster, but at the same time it has also meant that when it comes to implementing those decisions, I can't be sure with what enthusiasm the companies will implement them.

So, let me just give you a couple of examples of what I mean, because we've done a little checking on the policies that have been put forward in which the companies have tried to reply. Claimant lived in Hungary and died in July 1944. The evidence of a $1,500 policy with Ross included a receipt confirming a deposit of the policy at the savings bank, so forth and so on, on May 10, 1944, which included the policy number, premium receipts and the sum insured. The receipt of quarterly premium payments of $45.45 was for the period starting on March 16, 1944, and thus this insured person paid his premiums through July 1944 when he died.

In denying the claim, Ross told the claimant that no evidence of a contractual relationship with the company could be found. Now, I have several others. I won't waste your time with them now, but thanks to some serious detective work on the part of some sincerely productive people in ICHEIC, we have discovered that there are a number of these cases, which doesn't surprise me. As a consequence, one of the things I have decided to do which also will not—the enthusiasm of the companies in this regard won't be great either, is that I'm going to put together what I would describe in more positive terms than I should, but perhaps as a policing team of some sort that can, on a basis of, if nothing else, dipping into files, can check to see how well the companies are doing in terms of keeping to the decisions that I've made and how policies should be valued, what kind of evidence is necessary to make—to pay the policy and so forth.

So we're going to start that early next year, and I would suspect that we will find that there are any number of these cases where there is a disparity company to company on how they have determined the chairman's decisions. Some of that may be legitimate, but I suspect some of that is less than that.

Now, let me just very briefly go on for just another minute or two. There's no other way for me to start this than this way. For the last 40 years of my professional life, I have felt very strongly when I was in the State Department and so forth that the U.S. Government, in the period of the Holocaust, had performed abysmally, that we ourselves deserved some substantial criticism for the way we had conducted ourselves.

And I decided long ago that to the degree I was able to do anything to make up for that, I was going to try to do it. And I would think most people would say that—who have seen me in the State Department and so forth, would say that I have tried. And I viewed this ICHEIC request that I become chairman, I viewed this as maybe the last opportunity I'd have to do that sort of thing.

So I took it. I must say, I learned, as after I took it that it was not the bed of roses that I might have thought it might be. In fact, it's been a monumental pain in the neck for the last 2 years. That's a diplomatic way of saying I didn't like it much, Mrs. Chairman.

But having said that and with all of the things that can be said against ICHEIC and the way it's worked, I would say to you and to all of those who say it's been a failure, I'd say two things: First of all, you tell me since we have laid out somewhere around or made offers on somewhere around—not we, but the companies, somewhere around $20 million, paid out something like $12 million or whatever that is. That's $12 million more than was the case 2

years ago when ICHEIC first began, and I consider that success, not failure. And I cannot tell you the degree to which I find it frustrating that the very people that this process has been trying to accommodate, the very people that know that these are claims that ought to be paid, spend their time knocking us around the head all the time.

That is not to say we don't deserve criticism. I'm not arguing that at all, but I will say this to you. First of all, what we have accomplished is a lot more than people will give us credit for. We have spent a lot of money, but the majority of that money spent has been spent to establish a means of getting to the world Jewish community the fact that this commission exists, and that here's how you go about making a claim, and it is as well moneys hard—very definitely spent to some degree, I think, more than probably, I think in retrospect, we should have spent, but spent on paying an organization in the United Kingdom to deal with handing the claims out to whatever company they ought to be the recipients, and something to everybody when they don't know which company it should be.

And I need to say at probably the end of this set of comments that a thing that needs to be understood as well and something that the evidence over time is, I think, made clear is that the expectations at the beginning of this process as to how many claimants there would be and how much money would be paid and so forth were probably exaggerated.

First of all, 25 percent of the—I'll call them claims sent to the ICHEIC don't relate to ICHEIC at all; 80 percent don't name the companies because the claimant probably doesn't know which company it should be sent to if any. So we're dealing with a situation, one, where you tell me trying to make this kind of a process work before where we were starting from scratch and with all the best will, in the world, were dealing in a structure which had two fundamental limitations.

As I said, this question of resistance on the part of the companies and the issue of consensus, this doesn't even get me to the point of talking about the Foundation, which is purportedly what these hearings are about. I will only say to you we are in negotiations with the Foundation now. We have been for some time on all of the same critical questions that have concerned the Jewish community for—in dealing with ICHEIC as such—lists, audits, appeals, decisions of the chairman, how the claims will be paid and so forth.

Those are all issues that we're trying to deal with the Foundation, and I must tell you, in my judgment, and I need to start by saying that the gentleman who is representing the Foundation in our negotiations, Ambassador Bräutigam, is one of the finest, most serious diplomats and negotiators I have ever run into. So this is not criticism at all of him, but I will tell you, from starting below him and I know Ambassador Bindenagel is going to have a heart attack when I say this, but better he than me, that the Germans have been—some of them in high places—have been totally unprepared to be cooperative.

There is an institution in the German Government called the BAV, which is in essence the—it's a regulator of what, the insur-

ance companies? And the deputy there, he ought to be encouraged to be a little bit more careful about the things he says in letters.

And I want to end by just quoting from one those letters, if I can find it, just to tell you—give us, again, a sense of what we're dealing with in Berlin, and it's not that he's representative of the total attitude of the German Government. He's certainly not. But he is in a position where he can and has slowed things down substantially. Let me just read you part of a letter that he wrote. Wait a second, I will find it here. "I would like to point out that in connection to reflections made in their preliminary remarks on compensation for interest and loss due to inflation, Mr. Sunbar and Mrs. Saunbladoff"—this is a paper they wrote which talked about valuing German policies.

But anyway "here a grave mistake becomes obvious. It was the Nazi regime that robbed the Holocaust victims of all their property and assets, including their life insurance contracts. The Nazi regime was the culprit, and also the only one gaining by this crime, not the insurers. They did not benefit from it. They do not bear the responsibility for it. After the liberation of Germany from the Nazi regime, it was the German Federal Republic, which as an adequate response, took over the responsibility for compensation and restitution so——

Mrs. MORELLA. Secretary Eagleburger, may we include that the record?

Mr. EAGLEBURGER. You certainly may, since it's public.

Mrs. MORELLA. Thank you.

Mr. EAGLEBURGER. But my point here is the mindset that this demonstrates, and please don't misunderstand me. I am not saying that across the board, the problem is within the German Government or anything of the sort, but I am saying there is enough resentment, there is enough antagonism to this process that I cannot tell you with absolute certainty that we will succeed in the negotiations with the German Foundation. There are a series of issues, some of which—well, you know them all.

As I said, lists and so forth. Some of them we can probably—well, almost certainly succeed and Ambassador Bindenagel will tell you, in fact, he's totally confident we can succeed, but that's because he doesn't have to do the negotiating. But if this kind of an attitude of this gentleman sits astride one of the bureaucratic institutions that can block this whole thing, and with this kind of attitude, I have to tell you we'll never get an agreement on audits, which are absolutely critical to the Jewish community.

I have wandered on too long and I will stop. I will only say to you one more time, by no means have we been perfect, but I would suggest to you all that we have been substantially better than I gather was the characterization this morning, and some of it from some of the testimony I heard, some of these people were just confused about some things. For example, someone who contended that ICHEIC sent a letter refusing to pay a policy is incorrect, because ICHEIC doesn't send those letters. The insurance company did I'm sure. But not ICHEIC. We don't get into that business.

But again, to close, there is a lot yet to be done. There's a lot yet to be cleaned up. And let me answer the question before you ask it. Assuming we succeed in getting more names, the lists, I see

no possibility personally that ICHEIC could terminate its existence without first accommodating and extending its existence to give fair time for those new potential claimants to make their claims.

Now it's not a decision for me to take alone. I have to discuss it with the whole ICHEIC, and there will be some disagreements, I'm sure, but I think I can say to you all fairly confidently that we will extend if we get agreement, and we will extend a fair amount of time so that people can have that chance to make their claims. I cannot tell you we're going to get an agreement, and until that is settled, I'm less than confident of what we will do.

I want to end by saying there are two companies that—I have been less harsh on the companies in general than I would be if I weren't in a good mood, but there are two that I want to highlight as having been cooperative, and they deserve, in my judgment, some praise for that. The first is Generali who is a target of many, I know, but who, after a while, being very difficult finally realized that if they were ever going to get out from under this business, which I wish the other companies had recognized early on, they recognized that the only way to get this settled was to settle it.

And so we—the Jewish groups Generali and ICHEIC made an agreement with them and things have been moving along. They have paid a substantial amount of money. There are a number of cases where I'm not happy with some of their rejections, but we'll go back and look at those. The other place I would like to be complimentary is that the Dutch Insurance Federation, which joined ICHEIC rather than a single Dutch company, has also been very cooperative and very supportive, and in fact, without them, we would have run out of money a long time ago. And during the question and answer period, I'd be happy to talk some more about the fact that the companies, all of the companies, MOU companies, seem to have lost the key to their bank balances. And I have had a terrible time with them for the last 6 months trying to get more money out of them to continue this process, and so far without success, but here's the last point I want to make, which is, please understand that if we extend the life of ICHEIC, it's going to cost more money, and as of this stage, I can't tell you with any confidence that I can squeeze that money out of the company.

Thank you, Chairman.

Mrs. MORELLA. Secretary Eagleburger, you have been very candid in your comments and have anticipated a few of the questions we'll be posing to you.

I am now pleased to recognize Ambassador Bindenagel.

Mr. BINDENAGEL. Thank you, Madame Chairman and Representative Waxman and members of the committee. I will say that as a member of the State Department, I do believe what I'm about to say, despite what the good former Secretary had to say, I appreciate the opportunity to appear before you today to discuss policy concerning——

Mr. EAGLEBURGER. Only in the State Department are they that wimpy.

Mr. BINDENAGEL. We live up to our reputation. We're dealing here with unpaid Holocaust insurance claims, ICHEIC, and as they are included in the bilateral agreements with Germany and Austria. Of course, the U.S. Government recognizes the importance

that unpaid insurance policies issued in Europe during the Holocaust era are honored, and honored expeditiously.

At the outset, I'd like to say that given the commentary this morning, we have not waived the rights of American citizens to sue. Rather, we have sought to create a new and effective remedy for those who wish not to sue. In the spring of 1998, the U.S. State Insurance Commissioners and the Holocaust Survivor Organizations invited the U.S. Government 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 and to become an ICHEIC observer although not a member.

The initiators of this effort were Neil Levin, at that time the supervisory authority in the State of New York, and the vice chairman of the National Association of Insurance Commissioners and North Dakota Commissioner Glen Pomeroy. They met with Holocaust survivors as you did this morning, who also told their stories of purchasing insurance policies as part of their dreams of future, of deaths to family members, of their own survival, and of their unsuccessful attempts to receive just compensation under those policies.

Mr. Levin once described a theme of the effort to establish ICHEIC as "voluntary action based on a moral foundation." Although Neil Levin died in the September 11 attack on the World Trade Center, his respect for human dignity through this historic effort continues to inspire us to finish his work. Our support for his vision to resolve these issues amicably and cooperatively is one in which we remain firmly committed. The policy of the U.S. Government with regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is motivated by the twin concerns of justice and urgency.

And as Mr. Shays stated on behalf of Mr. Burton this morning, our support too for ICHEIC is based on U.S. interest in obtaining a measure of justice for victims, including many U.S. citizens who are Holocaust survivors and also to enhance our political and economic relations with European friends and allies as well as with the state of Israel.

We've done several things to support ICHEIC. In August 1998, after the MOU was signed and the International Commission was begun, the State Department organized a seminar in Prague to help spur international cooperative efforts to translate these international communities interest in research and historical acts into action. The U.S. Government publicly supported this new International Commission in 1998 at a meeting of the National Association of Insurance Commissioners in New York City. The State Department organized that the Washington conference in Holocaust-era assets held in November and December 1998, the proceedings of which were published and are here for the committee, if they would like.

The participants urged the resolution of insurance issues, but they also noted historically important German Governments efforts to compensate the victims of Nazi persecution with payments amounting to some 100 billion marks. These were talked about in this morning's panel several times in reference to the so-called

BEG, or the German Federal compensation programs. These compensation programs also included some compensation for some confiscated insurance policies. The U.S. Government has actively encouraged other governments to seek observer status in ICHEIC and as a result the governments of Belgium, the Czech Republic, France, Germany, Italy, and Poland became ICHEIC observers and joined this international effort.

The U.S. Government strongly encouraged all insurance companies that issued policies during the Holocaust era to join ICHEIC and participate fully in this program. We worked with representatives of the Dutch Government, insurance industry, and survivor organizations to incorporate the Dutch companies, as Mr. Eagleburger said, into ICHEIC. And through these agreements that we made with Austria and Germany, the United States brought the entire German and Austrian insurance industries into the process through international agreements.

This came about because in the fall of 1998 the German Government and German industry turned to us, the Federal Government, 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 force laborers, to resolve property and insurance issues, and we agreed to work with them. After 18 months of a very difficult negotiation on July 17 last year, the United States and the Federal Republic of Germany signed an executive agreement which committed Germany to operate a foundation under the principles to which the parties in the negotiations had agreed, and at the same time, committed the United States to take certain steps to assist German companies in achieving legal peace in the United States.

Victims' interests were broadly and vigorously represented throughout the negotiations, and in the end, all the parties accepted the Foundation "Remembrance, Responsibility and the Future" as a worthy result. The U.S. Government has filed interest—statements of interest recommending dismissal on any valid legal ground in court cases brought against German companies for wrongs committed during the Nazi era and its commitment to do so in future cases that would be covered by the Foundation agreement.

However, as I said at the outset, the United States has not extinguished the claims of its nationals or of anyone else. This 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 the German industry providing another 5 billion marks, plus 100 million marks in interest. A board of trustees oversees the Foundation's operations which are managed by a three-member board of directors.

The 26 members on the board of trustees include representatives of the German Government, the U.S. Government, the State of Israel, German companies, but also victims' organizations and plaintiffs' attorneys. The Foundation is subject to legal oversight by the German Government and is audited by two agencies of the German Government. If you look at the U.S./German executive agreement of July 17, 2000, you'll find that it provides a framework for the treatment of claims made against German insurance companies

but with the details of implementation left to the responsible parties.

I'd like to emphasize that the executive agreement provides that insurance claims that come within the scope of the claims handling process of ICHEIC adopted as of July 17, 2000, and are made against German insurance companies, shall be processed by the companies and the German Insurance Association on the basis of procedures and on the basis of such procedure, agreed procedures, and on the basis of any additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Association.

It is that portion of the agreement that we're now talking about. The additional claims handling procedures are under negotiation by the parties and the parties have—and the government—I must say, are the Government of the United States and the Federal Republic of Germany are not part of those negotiations. We do not advocate positions of any one side, but have rather taken a position to facilitate and encourage all sides to come together to resolve——

Mrs. MORELLA. Ambassador Bindenagel, I'm going to ask you if you could try to wrap up.

Mr. BINDENAGEL. Yes.

Mrs. MORELLA. Thank you.

Mr. BINDENAGEL. I will be delighted to do that. Let me just turn to a closing remark, if I may. These negotiations need to be brought to conclusion, and given the advanced age of Holocaust survivors and the need for them to receive a measure of justice in their lifetimes, the U.S. Government is concerned that the provisions for insurance under the German Foundation are not yet operational.

It is distressing that more than a year after the law creating the German Foundation took effect, and some 5 months after the Bundestag declared adequate legal certainty had been achieved for German companies operating in the United States, thus allowing payments to force the slave laborers, the insurance negotiations on additional procedures, have not been completed. We would like to call on the German Foundation, the German Insurance Association, and all the parties of ICHEIC, those represented here, the insurance companies, the representatives of the Jewish organizations, and the U.S. and State insurance regulators, to come together in the spirit of cooperation that was envisioned by the initiators of this worthwhile effort, and reach agreement now on these outstanding issues.

Holocaust survivors and their families deserve at least some measure of justice that's been too long denied, and only by bringing the aspects of this Remembrance, Responsibility and the Future Foundation into full operation, can this be achieved. Madame Chairman, thank you very much.

Mrs. MORELLA. Thank you, Ambassador Bindenagel.

[The prepared statement of Mr. Bindenagel follows:]

Statement to the House Government Reform Committee
Concerning Holocaust-Era Insurance Issues
by
Ambassador J.D. Bindenagel, Special Envoy for Holocaust Issues
U.S. Department of State
November 8, 2001

Mr. Chairman, Representative Waxman, Members of the Committee,

I appreciate the opportunity to appear before you today to discuss U.S. policy concerning unpaid Holocaust-era insurance claims included in bilateral agreements with Germany and Austria. The United States Government recognizes the importance of ensuring that unpaid insurance policies, issued in Europe during the Holocaust era, are honored and that related issues are resolved expeditiously.

In the spring of 1998, U.S. state insurance commissioners and Holocaust survivor organizations invited the United States Government to consider supporting their efforts to establish an international commission to resolve unpaid Holocaust-era claims. This request came after several months of groundwork by the National Association of Insurance Commissioners (NAIC), in cooperation with survivor and other Jewish organizations, to determine the dimensions of the issue and possible mechanisms to address it. In October 1998, the NAIC, in cooperation with representatives of several Jewish organizations, the State of Israel, European insurance companies and European regulators, established the International Commission on Holocaust Era Insurance Claims (ICHEIC). They did so with the encouragement and public support of the U.S. Government.

I have the deepest respect for the two initiators of this effort, Neil Levin – then the Superintendent of Insurance for the State of New York and Vice Chair of the NAIC International Holocaust Commission Task Force – and Glenn Pomeroy, then the President of the NAIC and North Dakota Insurance Commissioner. These two men took the lead to seek a measure of justice for Holocaust victims. They met with Holocaust survivors, who told their stories: of

purchasing insurance policies as part of their dreams for the future; of the deaths of family members; of their own survival; and of their unsuccessful attempts to receive just compensation under those policies. Mr. Pomeroy and Mr. Levin worked to obtain cooperation from insurance companies that were willing to accept moral responsibility in recognition of the suffering endured by victims of the National Socialist regime. Mr. Levin once described the theme of these efforts to establish the ICHEIC as "voluntary action based on a moral foundation." He and Mr. Pomeroy approached this very complex and important issue in the spirit of justice and reconciliation and urged that all involved should use cooperation, rather than confrontation, as the best means to achieve their goals.

Neil Levin died in the September 11 attack on the World Trade Center. His respect for human dignity continues to inspire us to seek justice. He recognized the great responsibility facing all of us to achieve a measure of justice for Holocaust victims and their families and the tremendous opportunity to resolve these issues by working together, with cooperation as the cornerstone. Our support for his vision – to resolve these issues amicably and cooperatively – is one to which we remain firmly committed.

U.S. Policy on Holocaust Claims

The policy of the United States Government with regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is motivated by the twin concerns of justice and urgency. No price can be put on the suffering that the victims of Nazi-era atrocities endured, but the moral imperative remains to provide some measure of justice to these victims, and to do so in their remaining lifetimes. Today, more than a half century later, the survivors are elderly and dying at an accelerated rate. The United States believes, therefore, that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation and cooperation rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation.

The United States saw renewed opportunities to seek justice for victims of National Socialism when the events of the late 1980s and early 1990s unleashed the forces that led to the fall of the Berlin Wall, the unification of Germany, and the end of the Soviet Union. These events also made it possible to reach out to the "double victims" of Nazism and Communism, those who had been trapped behind the Iron Curtain and previously had been unable to benefit from the German government's comprehensive postwar compensation and restitution programs. Other factors that spurred the United States to play a role in seeking justice include the increased public awareness of the extent of Nazi-era plunder, the realization that postwar compensation and restitution programs were incomplete, the knowledge that Nazi-era victims were rapidly aging and that many were in desperate need, and that symbolically, the international community needed to address unresolved issues from the 20th century before a new century could begin.

The United States took on the renewed opportunity to seek justice for victims of the Nazi era because we recognized that we could advance the interests of many U.S. citizens who were also Holocaust survivors. However, these issues go beyond a single nation's responsibility, and international efforts to try to right past injustices could demonstrate that the international community will hold those who do wrong accountable. We also saw the chance to engage Central and Eastern European countries in a dialogue that would not only benefit their individual citizens, but also demonstrate in tangible ways that Western democracies have, at their core, fundamental moral precepts, most especially the sanctity of human dignity. Further, we sought to support the relationship between Germany and the newly independent and democratic nations of Central and Eastern Europe at a time when old wounds could complicate their political relations.

Efforts to Resolve Unpaid Holocaust-Era Insurance Claims

The specific issue of unpaid insurance policies from the Holocaust era began to draw national and international attention in 1997. U.S. state insurance regulators undertook efforts to examine the issues and to identify the appropriate role for the states in the search for justice by helping Holocaust survivors and their heirs resolve claims stemming from policies sold during the Holocaust era. After meeting with leaders of Jewish and survivor organizations and

conducting several hearings throughout the country, the NAIC established a Task Force in the spring of 1998 that was headed by Glenn Pomeroy and Neil Levin. The Task Force's goal was to work toward the establishment of an international commission to resolve unpaid Holocaust-era claims. They approached the United States Government with a request to support their work and facilitate the establishment of such a commission through diplomatic efforts in order to bring affected European governments and companies into the process.

We considered this appeal to support the efforts of U.S. state insurance regulators to establish a mechanism to address outstanding Nazi era insurance issues to be consistent with the goals of the U.S. Government and agreed to support the effort as an "observer," not a member. Over the past fifty years, it has been an important policy objective of the United States to help provide some measure of justice to Holocaust survivors and other victims of the National Socialist regime as an expression of our country's commitment to human rights and human dignity. As noted, we continued to support and encourage interested parties foreign governments and non-governmental organizations to resolve Holocaust-era restitution and compensation issues through cooperative means. Therefore, we responded favorably to the NAIC's invitation to support their efforts.

Throughout the summer of 1998, as the Department of State and United States Holocaust Memorial Museum worked to prepare for the Washington Conference on Holocaust-Era Assets later that year, the NAIC Task Force continued the efforts to set up an international commission. In August 1998, several European insurance companies, U.S. state insurance regulators, and representatives of Holocaust survivor and other Jewish organizations signed a Memorandum of Understanding (MOU), creating the International Commission on Holocaust Era Insurance Claims (ICHEIC). Provisions were made to allow for observers from the United States and other governments, as well as for representatives of additional non-governmental organizations.

U.S. Efforts to Support ICHEIC

The Department of State organized a seminar in Prague in preparation for the Washington Conference to help spur international cooperative efforts to create a fact-based

history of the very complex issues relating to insurance policy assets seized and otherwise affected by the Nazi regime, as well as to translate the international community's research into action. Held September 4, 1998, the seminar's central purpose was to share historical research on wartime confiscation, postwar compensation programs and nationalization of the insurance sector in the late 1940s and 1950s. We brought together insurance regulators from the United States, Poland, Hungary, Czech Republic and Slovakia, as well as other government representatives from those countries and from Germany, representatives from European insurance companies and Holocaust survivor and other Jewish organizations. The seminar resulted in a constructive dialogue and helped strengthen international cooperative efforts to move forward and resolve these issues.

Throughout the fall of 1998, the United States continued to encourage support for the cooperative efforts among U.S. insurance regulators, survivor organizations, European regulators, insurance companies, and governments. The U.S. Government publicly endorsed this new international commission at a September 14 meeting of the NAIC in New York City. When ICHEIC held its first meeting in October 1998, the State Department Spokesman issued a public statement of support, noting that the commission brought together many of the interested parties, including important survivor organizations, in a cooperative, non-confrontational process and would work to foster a fact-based effort to resolve claims fairly and promptly, as well as to seek practical solutions to the issue of heirless insurance assets.

The Washington Conference on Holocaust-Era Assets, held November 30 through December 3, 1998, was co-hosted by the Department of State and United States Holocaust Memorial Museum and brought together 57 delegations from 44 nations and 13 non-governmental organizations to examine the historical record and consider how governments and other entities can cooperate to redress injustices that remain from the Holocaust era. The Washington Conference brought unprecedented international focus on the wrenching history of Holocaust insurance claims. Experts and delegates discussed how, through direct and indirect means, the Nazi regime deliberately sought to confiscate the insurance assets of Jewish victims. The Conference noted the German government's efforts to compensate the victims of Nazi persecution in recognition of this massive loss and injustice through postwar compensation

programs, with payments amounting to more than DM 102 billion. Part of these payments was for confiscated insurance policies. Other delegates indicated the need to address claims arising from assets and liabilities that were nationalized by former communist regimes in Central and Eastern Europe.

Delegates at the Washington Conference expressed the view that a positive, cooperative approach to deal with Holocaust insurance issues could help avoid transatlantic tensions of the kind that have at times arisen on other Holocaust-era issues. Delegates representing survivor organizations and American insurance commissioners thanked those on the International Commission for addressing their concerns. Many delegates responded favorably to ICHEIC's proposed humanitarian relief fund. Many delegates called for other companies and countries to join the International Commission. ICHEIC Chairman and former Secretary of State Lawrence S. Eagleburger assured the Conference that he would move quickly to press for expanded membership, an audit to identify unpaid Holocaust-era insurance claims, and an expeditious adjudication of claims, using relaxed standards of proof.

Following the Washington Conference, and as the parties in ICHEIC worked to set up a worldwide claims process, the U.S. Government continued to support Chairman Eagleburger's efforts to bring others into the process. In its capacity as an ICHEIC observer, the Department of State worked with Chairman Eagleburger, survivor organizations and U.S. state insurance commissioners to expand participation in ICHEIC. The U.S. Government actively encouraged other governments to seek observer status with ICHEIC. These efforts resulted in the governments of Belgium, Czech Republic, France, Germany, Italy, and Poland becoming ICHEIC observers and joining this international cooperative effort to resolve unpaid Holocaust-era insurance claims.

The U.S. Government strongly encouraged all insurance companies that issued policies during the Holocaust era to join ICHEIC and participate fully in its programs. We emphasized that participation in ICHEIC provides the best means of ensuring that valid claims are paid and resolving international moral and humanitarian responsibilities for heirless and nationalized claims or those against companies no longer in existence. When the Dutch government

approached us with a request for assistance to offset calls for boycotts against Dutch products, we worked together with representatives of the Dutch government, insurance industry and survivor organizations to incorporate Dutch companies into the ICHEIC process. In the spring of 2000, the Association of Insurers in the Netherlands joined ICHEIC on behalf of the entire Dutch insurance industry and has since concluded an agreement that links the work of the Dutch Sjoa Foundation with ICHEIC.

Our support for ICHEIC is based on U.S. interests in obtaining a measure of justice for victims, while preserving and protecting our political and economic relations with our European friends and allies and the State of Israel. ICHEIC is recognized as an institution charged with establishing a just and fair process that will honor unpaid Holocaust-era insurance policies. Through cooperative means, ICHEIC has successfully established common standards and procedures by working together with victims' organizations, state insurance regulators and participating French, German, Italian, Dutch and Swiss companies.

The United States also brought the entire German and Austrian insurance industries into the process through agreements signed in July 2000 and January 2001. We were able to find creative ways to address German and Austrian concerns while at the same time protecting the interests of U.S. citizens and other claimants, by getting the Austrian and German governments to ensure that ICHEIC standards and procedures would be used in paying all unpaid Holocaust-era insurance claims.

Negotiations Leading to the Creation of the German Foundation

Increasing public awareness and pressure prompted further action to provide a measure of justice to other victims of the Holocaust, especially those who had been compelled to perform slave and forced labor and those who had been deprived of their property. Beginning in 1998, attorneys representing these victims filed class action suits against German industry in U.S. courts. In the fall of 1998, the Federal Republic of Germany turned to the United States Government for help in facilitating resolution of the class action lawsuits. Faced with the prospect of years of lawsuits, leaders of German industry proposed the creation of a foundation

to make dignified payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era. Because of our strong interest in obtaining a measure of justice for victims of the Nazi era and in preserving and protecting transatlantic political and economic relations, the United States agreed to work with the German government and companies, as well as victims' representatives, to facilitate resolution of the lawsuits in such a way that would provide benefits to the broadest possible number of survivors.

In early 1999, the U.S. and German governments began a series of formal and informal discussions on the proposed foundation initiative that involved representatives of German companies, victims' groups, the governments of Belarus, the Czech Republic, Poland, Russia, and Ukraine, as well as the State of Israel, and class action lawyers. Stuart E. Eizenstat, then Under Secretary of State for Economic, Business and Agricultural Affairs and later Treasury Deputy Secretary, led U.S. Government efforts. The German government was led initially by Bodo Hombach, and later by Dr. Otto Graf Lambsdorff, Special Representative of the Federal Chancellor for the Foundation Initiative.

In December 1999, following the personal involvement of the President of the United States and of Chancellor Schroeder, the parties agreed on the amount of DM 10 billion to fund the proposed foundation that would make payments to those who suffered at the hands of German companies during the Nazi era. Negotiations continued through early 2000, and on March 23, 2000, agreement was reached on the allocation of the DM 10 billion.

During the course of the negotiations, the President concluded that it would be in the United States' foreign policy interests for the Foundation to be the exclusive forum and remedy for the resolution of all claims against German companies arising out of the Nazi era and the Second World War.

On July 17, 2000, the United States and the Federal Republic of Germany signed an Executive agreement which committed Germany to operate the Foundation under the principles to which the parties to the negotiations had agreed, and committed the United States to take certain steps to assist German companies in achieving "legal peace" in the United States for

claims arising out of the National Socialist era and World War II. These principles were incorporated into the law creating the Foundation that was passed by the Bundestag, or German Parliament, in July 2000.

Victims' interests were broadly and vigorously represented throughout the negotiations, and all parties accepted the Foundation, "Remembrance, Responsibility and the Future" as a worthy result. On July 17, 2000, all parties to the negotiations signed a Joint Statement expressing their support for the Foundation. The class action lawyers who participated in the negotiations agreed to dismiss any Nazi era lawsuits against German companies. The United States agreed to support this effort by filing a statement of interest indicating its foreign policy interests in seeing the claims dismissed. The U.S. Government has filed statements of interest recommending dismissal on any valid legal ground in court cases brought against German companies for wrongs committed during the Nazi era and committed to do so in future cases that would be covered by the Foundation agreement. (However, the United States has not extinguished the claims of its nationals or anyone else.)

The Foundation "Remembrance, Responsibility and the Future"

The Foundation is capitalized with DM 10 billion, German industry and the German government each providing DM 5 billion. Approximately DM 8.1 billion was allocated for payments for former slave and forced laborers. DM 200 million was set aside for pro-rata payments for property claims, with an additional DM 300 million in a humanitarian fund for individuals unable to document specific claims. DM 150 million, plus an additional DM 50 million from interest, is for the payment of insurance claims and ICHEIC administrative costs, and an additional DM 350 million is for the ICHEIC humanitarian fund. DM 700 million will go to a Future Fund, which will promote tolerance and education about the Holocaust. DM 200 will be used for administration and attorneys' fees.

A Board of Trustees oversees the Foundation's operations, which are guided by a three-member Board of Directors. The 26 members on the Board of Trustees include representatives of the German government, the U.S. Government, the State of Israel, German companies,

victims' organizations and plaintiffs' attorneys. The Foundation is subject to legal oversight by the German Government and audited by two agencies of the German Government.

Provisions for Insurance under the German Foundation

Because the Foundation would cover Nazi-era insurance claims, the United States Government consulted regularly with ICHEIC throughout the negotiations leading to the establishment of the Foundation. Following the March 23, 2000 agreement on allocation of the Foundation's DM 10 billion capital, the U.S. Government confirmed to ICHEIC Chairman Eagleburger the amounts allocated for insurance as well as the relevant provisions in draft German Foundation legislation, seeking and receiving his agreement to link ICHEIC with the Foundation.

The U.S.-German Executive Agreement of July 17, 2000 provides the framework for the treatment of claims made against German insurance companies, with details of implementation left to the responsible parties. The Executive Agreement provides that insurance claims that come within the scope of the claims handling procedures adopted as of July 17, 2000, by the International Commission on Holocaust Era Insurance Claims (ICHEIC) and are made against German insurance companies shall be processed by the companies and the German Insurance Association (GDV) on the basis of such procedures and on the basis of any additional claims handling procedures that may be agreed among the Foundation, ICHEIC and the German Insurance Association.

Reflecting the allocation agreed to among the parties during the German Foundation negotiations, the July 2000 German law establishing the Foundation provides DM 200 million for the settlement of unpaid insurance policies issued by German insurance companies, their foreign portfolios and subsidiaries that are claimed through the ICHEIC, as well as for the associated costs, as well as DM 350 million for the ICHEIC humanitarian fund. A reserve amount of additional DM 100 million can be made available for the payment of claims from the Foundation's Future Fund, should the DM 200 million prove insufficient.

Implementation of the Insurance Provisions under the German Foundation

Negotiations to implement the provisions for insurance under the German Foundation are ongoing and are the responsibility of the parties involved, namely the ICHEIC, the German Foundation, and the GDV. The governments of the United States and the Federal Republic of Germany are not a part of the ongoing negotiations, and Chairman Eagleburger has made it clear that the parties themselves must reach satisfactory agreements, without intervention from governments on either side of the Atlantic. Although ICHEIC, the Foundation and the GDV are not obligated under the Executive Agreement to reach agreement on any specific additional procedures, the U.S. Government has maintained that, as a practical matter, it remains essential that agreement be reached on additional procedures in order to ensure the support of ICHEIC and state and local regulators for the process to honor unpaid German insurance policies.

Although the United States is not a party to the negotiations to implement the insurance provisions of the German Foundation, we nonetheless have continued to work actively, under the leadership of Deputy Secretary of State Richard L. Armitage, to create an environment conducive to successful negotiations and to support efforts to reach agreement quickly on outstanding issues. The Deputy Secretary has on several occasions urged all parties to demonstrate flexibility and work towards early agreement. Our strategy is to encourage the parties to put proposals on the table. We do not advocate positions of any one side but rather encourage them to come together to resolve the issues and reach agreement by consensus.

Acting under the Deputy Secretary of State's direction, over the last several months I have engaged separately with all parties to the negotiations in meetings in Washington, New York, Berlin, London, Paris, and Zurich, as well as through countless telephone and conference calls, to work towards rapid conclusion of the negotiations. In my discussions with officials from ICHEIC, German and non-German ICHEIC member companies, Jewish organizations, the Foundation and the GDV, as well as U.S. state insurance regulators, I have urged them to be willing to compromise, to demonstrate flexibility, to put practical solutions on the table and to resolve outstanding issues so as not to allow these matters to undermine the interests of Holocaust survivors and broader issues of international cooperation.

Given the advanced age of Holocaust survivors and the need for them to receive a measure of justice in their lifetimes, the U.S. Government is concerned that the provisions for insurance under the German Foundation are not yet operational. It is distressing that, more than one year after the law creating the German Foundation took effect, and some five months after the Bundestag declared that "adequate legal certainty" had been achieved for German companies operating in the United States, thus allowing for payments to begin to surviving slave and forced laborers, the insurance negotiations have not yet been completed. The United States Government calls on the German Foundation, the German Insurance Association, and all parties within ICHEIC – the insurance companies, representatives of Jewish organizations, and the U.S. state insurance regulators – to come together in the spirit of cooperation that was envisioned by the initiators of this worthwhile effort, and reach agreement now on all outstanding issues. Holocaust survivors and their families deserve at least some measure of justice that has been too long denied, and only by bringing all aspects of the "Remembrance, Responsibility and the Future" Foundation into full operation can this be achieved.

Austria

An effort similar to that under the German Foundation – to address Nazi-era property issues, including those related to unpaid insurance policies, on the territory of present-day Austria – was concluded in January 2001. In addition to the $150 million Austria agreed to provide to Holocaust survivors for confiscated apartment and small business leases and the contents of these apartments and businesses, Austria and Austrian companies agreed to contribute $210 million to fund the General Settlement Fund, which will address all remaining Nazi era property issues. The United States facilitated these negotiations involving the Austrian government, Austrian companies, and a wide array of victims' representatives. The United States has undertaken similar commitments with respect to the Austrian Fund as it has undertaken concerning the German Foundation. Under this agreement, Austria agreed that the General Settlement Fund would provide for $25 million to cover claims against those Austrian insurance companies that are not already covered through ICHEIC or the German Foundation,

and that claims will be processed using ICHEIC claims-handling procedures, including valuation, standards of proof and relevant decisions by the chairperson.

Conclusion

The Administration of President George W. Bush has affirmed its commitment to seeking justice for Holocaust victims, survivors, and their families through support for the agreements reached in 2000 and 2001. Deputy Secretary Armitage restated our policy at the annual meeting of the Conference on Jewish Material Claims on July 18, 2001, stressing that the U.S. Government has supported ICHEIC since its founding three years ago. He affirmed in June 2001 to ICHEIC Chairman Eagleburger that we continue to believe the ICHEIC should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II. He also stated that we support the efforts of all parties to resolve these issues in a cooperative and in a non-confrontational manner outside of litigation.

Mr. Chairman, Representative Waxman, you have my sincere thanks for the opportunity to appear before you and the Committee to discuss the importance of resolving Holocaust-era insurance issues.

Mrs. MORELLA. Mr. Shapo.

Mr. SHAPO. Good afternoon, Madame Chair. I'd like to thank you, Representative Waxman, and your committee for your interest in this very important matter. I'd be remiss if I didn't also say hello to my Congresswoman Representative Schakowsky. She and I are both from Evanston, IL which is right next door to Skokie, a community with one of the highest per capita concentrations of Holocaust survivors in the United States. She's a tireless advocate for these constituents, and I'm lucky to work with her to that end.

I'd also like to reiterate comments by others about my friend, Neil Levin, who died in the World Trade Center while displaying the same commitment to public service, that was also at the heart of his work in establishing ICHEIC while he was the New York superintendent of insurance.

Time is short in this hearing, and I have previously submitted lengthy written testimony. I'll briefly describe the involvement of the National Association of Insurance Commissioners in these proceedings and also give my views on the ongoing German Foundation negotiations. I have a fundamental interest in this matter, the fulfillment of the insurer's obligation to its consumers who entered into a contract, paid premiums and expected themselves or their beneficiaries to receive the benefit in the case of an insured event.

What we are talking about today is not really reparations, as I understand it, but rather the long, overdue, simple fulfillment of a contract which is, of course, a core regulatory goal. State insurance commissioners thus take great interest in this matter, particularly because many consumers who had Holocaust-era policies now live in the United States, and many of the insurance companies have American subsidiaries or corporate relatives. State regulators were leaders in the effort to identify and insure payment of Holocaust-era policies. NAIC formed a Holocaust working group and held extensive hearings throughout the country in 1997 and 1998.

Following these hearings, State regulators helped persuade several European insurers to sign the memorandum of understanding that formed the International Commission on Holocaust Era Insurance Claims in August 1998. Five insurance commissioners are currently ICHEIC participants: California Commissioner Harry Low, Florida Commissioner Tom Gallagher, New York Superintendent Greg Serio, Pennsylvania Commissioner Diane Koken, and for the last year, myself. I chair the NAIC's Holocaust task force, and I represent the regulators in ICHEIC's negotiations with the German Foundation. I'd like to go right ahead and talk about the German Foundation initiative, which contains at least 550 million Deutsche marks for insurance purposes, 200 million for claims, and 350 million for humanitarian aid. The U.S./German executive agreement calls for the Foundation to come to an agreement with ICHEIC on the disbursement of funds in accordance with ICHEIC standards. The Foundation agreement covers the whole German market, including those companies who are not members of ICHEIC to the payment of claims and humanitarian aid. The Foundation negotiations have dominated ICHEIC activities during the last year and a half, diverting attention and resources from the Commission's basic task of implementing the MOU. This has delayed many important aspects of ICHEIC business, including the development of

a mechanism to process the so called 8a1 claims, which refers to the specific humanitarian Section of the MOU that calls for relief for those with claims that either cannot be attributed to a particular insurance company, or are attributed to a particular company no longer in existence.

Since over 80 percent of ICHEIC claims do not name a specific company, I pushed repeatedly for the adoption an 8a1 process, but the difficulties posed by the German Foundation negotiations have been the main roadblock to substantial progress on this matter. Major points of the Foundation negotiation are the publication of lists, audits of company records and processes, appeals of adverse decisions and reimbursement of company costs from foundation funds.

The executive agreement was signed 16 months ago, July 17, 2000. In my opinion, ICHEIC should have an agreement with the Foundation by now. Funds should already be flowing to aging claimants. Survivors like the heroic Erna Ganz, who Representative Schakowsky mentioned earlier, have died in the meantime.

While ICHEIC is probably not blameless in these lengthy yet unsuccessful negotiations, I believe that the German companies, both the original ICHEIC companies and those now brought into the process by the Foundation, have been primarily responsible for the delay. The affected companies have a heavy and affirmative burden to meet basic ICHEIC standards, because these processes bring legitimacy to our endeavor. The executive agreement specifically calls for the Foundation's cooperation with ICHEIC, and upon its signing, Secretary Eizenstat stressed that "it is critically important that all German insurance companies cooperate with the process established by ICHEIC. This includes publishing lists of unpaid insurance policies and subjecting themselves to audit. Unless German insurance companies make these lists available through ICHEIC, potential claimants cannot know their eligibility, and the insurance companies will have failed to assume their moral responsibility."

I will not comment on the details of the negotiations over lists, audits, and appeals as they were ongoing. I will, however, stress the basic characteristics of ICHEIC methods must be incorporated into any agreement with the Foundation. Public confidence in our work rests on the integrity of these processes. Although progress on these issues has been slow and disappointing, recent negotiations have been more productive, as Dr. Hans Otto Bräutigam has taken over for the Foundation. As Chairman Eagleburger mentioned, Dr. Bräutigam is a straightforward and experienced diplomat. His professional manner is reflected in his substantive approach to disputed issues.

He has put forth proposals on lists, audits, and appeals that while not yet agreeable to ICHEIC, serve as the basis for reasonable negotiations. We can resolve these claims-related issues in the next several weeks if the companies make the necessary final basic concessions in the interest of justice and fair play. Unfortunately, we are much further away from a common understanding on costs and company reimbursements. No final agreement between ICHEIC and the Foundation can be reached until the Foundation drops its plan to reimburse tens of millions of dollars out of founda-

tion funds to ICHEIC companies for their previous payments to ICHEIC. The NAIC has unanimously adopted a resolution, which I authored, objecting to the size and scope of these diversions of foundation assets. I'll provide a copy of this resolution for the record should it please the Chair.

Mrs. MORELLA. Without objection, so ordered.

Mr. SHAPO. The Foundation proposal presented in June calls for a total of $76 million in payments and expenses to be covered out of Foundation insurance funds, $51 million from the claims money and $25 million from humanitarian. These reimbursements would swallow up over half the 200 million Deutsche mark claims fund. Furthermore, $36 million of these reimbursements are retroactive payments to the original ICHEIC companies for their past ICHEIC assessments.

The largest recipient of retroactive relief would be the German insurer Allianz, the corporate parent of Fireman's Fund, which stands to gain well over $10 million from this plan. The companies argue that these payments are required, every dollar and Deutsche mark, by the German law that sets up the Foundation. I disagree. I believe that while there is a legal basis for a much more modest prospective cost plan, the Foundation's current proposal is unacceptable legally, politically, and morally.

My written testimony details at length how the company's plan is contrary to the U.S. German executive agreement and a reasonable interpretation of the German law. In the interest of time I will not recite these details, but will rather simply state that the NAIC will never stand for a $76 million diversion of funds from survivors and claimants to insurance companies which would violate the letter and spirit of the controlling laws. It would also be a moral affront to every Holocaust survivor.

I'd like to conclude by saying that I welcome your interest in these issues. Congress has a legitimate and necessary oversight role to prod all of us involved in seeking justice in Holocaust matters to keep the interest of survivors front and center in our work. The German people and the post war German Governments have repeatedly shown a genuine commitment to make amends for the horrific crimes committed by that country during the National Socialist era. Well over $50 billion in restitution has been paid over the years. The current foundation effort, whereby German industry for the first time acknowledges and offers recompense for its untoward gains during the Holocaust, is a necessary step in providing a modicum of justice for those who survive and for honoring the memories of those who perished. It is my high personal priority to make sure that State insurance commissioners are doing everything reasonably within our power to aid this process.

I, therefore, thank you, Madame Chair, for the opportunity to share my views with you today.

Mrs. MORELLA. Thank you, Mr. Shapo.

[The prepared statement of Mr. Shapo follows:]

Testimony of the
National Association of Insurance Commissioners

Before the
Committee on Government Reform
United States House of Representatives

Regarding:
Insurance Restitution for Holocaust Victims

November 8, 2001

Nathaniel S. Shapo
Director of Insurance
Illinois

Testimony of Nathaniel S. Shapo, Director, Illinois Department of Insurance, House Committee on Government Reform, November 8, 2001

Good morning, Mr. Chairman. As the chair of the National Association of Insurance Commissioners (NAIC) Holocaust Task Force, I'd like to thank you, Representative Waxman, and your committee for your interest in this very important matter. I'd also like to say that as an American, I thank you for continuing the people's business in the House and its committees even as the very buildings you work in have literally become the targets of enemies of the United States. One of the reasons I feel so strongly about how important it is to have this hearing despite the roadblocks caused by terrorism is that my friend Neil Levin was killed in the World Trade Center on September 11th. Before he became Executive Director of the Port Authority of New York/New Jersey last spring, Neil was the Superintendent of Insurance in New York State for four years, where he was a national leader in advocating for the rights of Holocaust victims and their heirs with respect to unpaid insurance benefits. Thus I am eager to press forward with the important work that was started by Neil and others.

I'll start by describing the role of insurance commissioners in the International Commission on Holocaust Era Insurance Claims (ICHEIC). The NAIC and its members were the driving force that brought European insurers to the table in order to create a mechanism for identifying and paying Holocaust era claims. Several commissioners, including Superintendent Levin and former commissioners Deborah Senn of Washington and Jay Angoff of Missouri, raised the issue in the organization and convinced their fellow commissioners that the issue must be addressed in order to meet an essential end of insurance regulation – the fulfillment of the insurer's obligation to those who entered a contract, paid premiums, and expected themselves or their beneficiaries to receive a benefit in the case of an insured event. Obviously, the question of the jurisdiction of American regulators over contracts issued in Europe over 60 years ago is a tricky one. It has been the position of NAIC members that it is indeed our business to seek to protect consumers affected by this matter, and much of the success we have had probably relates to the fact that we regulate the subsidiaries or corporate relatives of many of the affected European companies. My view is that our involvement is most appropriate because the issue here is not one of reparations in the normal usage of the word; rather, the issue is making sure that contractually owed benefits are fully, if belatedly, paid out, which is of course a core regulatory principle.

The details of the NAIC's involvement in Holocaust insurance claims are as follows. At its 1997 fall meeting in Washington, D.C., the NAIC held its first informational meeting on Holocaust issues and received testimony from survivors and their heirs. The interest at the commissioner level was extraordinary. As a result of this landmark meeting, the NAIC formed the Holocaust Insurance Issues Working Group, drawing membership from 25 states.

Following the formation of the working group, the NAIC held informational hearings across the country between September, 1997, and February 1998, in the District of Columbia; Skokie, Illinois; Miami; Seattle; Miami Beach; San Francisco; Los Angeles; Philadelphia; and New York City. (An NAIC representative also testified before a House Banking Committee hearing on Holocaust issues on February 12, 1998.) At the NAIC hearings, survivors and their heirs provided compelling testimony of unpaid claims and lost policies from nearly all lines of insurance, including life insurance; property and casualty coverage for homes and businesses; and dowry insurance, an annuity-type product purchased on the birth of a daughter that matures at the age or majority. Commissioners also questioned and took testimony from representatives of several of the largest European insurance companies that have been identified in this matter. Representatives of Assicurazioni Generali, the Allianz Group, the Winterthur Group, and Zurich Insurance Company, among others, appeared or submitted written statements.

On March 16, 1998, the working group adopted the following mission: "To pursue justice on behalf of both victims and survivors of the Holocaust and their heirs, consisting of a full accounting by insurance companies that sold policies to Holocaust victims and survivors, and by fully recovering the insurance policy benefits owed to them. The working group recognizes that injustice has gone unanswered for more than a half century. Thus, action must be taken as quickly as possible. This requires careful coordination and strong cooperation among all state insurance departments to accomplish this mission."

State insurance commissioners agreed with the witnesses at NAIC hearings who called for a thorough accounting of insurance company actions during the Holocaust period and the honoring of valid life and property claims submitted by survivors and their families. Many survivors brought actual pre-war policies to the hearings and provided evidence of past denials of claims by leading insurers in Europe. These disclosures, and the resulting pressure on the companies coming from consumers and regulators, led to the creation of ICHEIC in August, 1998 and the signing of the Memorandum of Understanding (MOU) that effectively acts as the organization's charter. ICHEIC is a private, non-profit association established to resolve unpaid Holocaust-era insurance claims. Charter members include American and European insurance regulators; Jewish representatives; and five major European insurers: Allianz, Generali, AXA, Winterthur, and Zurich, all of which have affiliates with major stakes in the U.S. insurance market (the Swiss company Basler was an original MOU signatory but pulled out of ICHEIC shortly after its inception). Since then, the Dutch Association of Insurers joined ICHEIC, and the German Insurance Association is currently negotiating with ICHEIC the terms of its members' participation in resolving Holocaust issues per the U.S.-German Executive Agreement calling for the creation of the German Foundation, Remembrance, Responsibility, and the Future. ICHEIC is ably chaired by former U.S. Secretary of State Lawrence Eagleburger. The current American regulators who are participants in ICHEIC

are California Commissioner Harry Low, Florida Commissioner Tom Gallagher, New York Superintendent Greg Serio, Pennsylvania Commissioner Diane Koken, and myself. State commissioners have sought to act collectively through the NAIC and ICHEIC in order to seek uniform solutions to the problems presented by Holocaust era insurance issues. It is in everyone's best interest – regulators, claimants and companies – to have these issues handled for the most part uniformly. Thus ICHEIC provides stability in concept to its participants and all their constituencies.

My own participation in Holocaust insurance issues is as follows. I was appointed Director of Insurance by Governor George Ryan in January, 1999. Soon thereafter, I became aware of this issue and immediately began asking NAIC leadership for a role in Holocaust matters and ICHEIC. I told NAIC officers that as a Jewish commissioner who grew up in Evanston, Illinois, right next door to Skokie, which has one of the highest per capita concentrations of Holocaust survivors in the country, I had a particular interest in this matter. (I might point out that this area is in the 9th Congressional District, represented by Congresswoman Schakowsky, who has been a tireless advocate for survivors and their heirs as long as she has held elected office.) Because of concerns about making the ICHEIC process too unwieldy, I was told that commissioner attendance would be limited to five states at ICHEIC meetings but I was encouraged to participate at the NAIC through the workings of its Holocaust Task Force. I became vice chair of that task force in 2000 and was allowed by Chairman Eagleburger to observe ICHEIC meetings in that capacity. My main involvement during that year was to help encourage the American affiliates of Dutch insurers to persuade the Dutch Association of Insurers to join ICHEIC. I did not really become a full and active participant in ICHEIC until this year, when I became the chair of the NAIC task force and became one of the five American regulators on ICHEIC. In September, I was named by Chairman Eagleburger as the regulators' representative on a small group that has been negotiating with the German Foundation in his absence as he recuperates from a recent health problem.

I expect that much of this hearing will be concerned with frustrations about the process expressed by members of the committee, survivors, companies, and even the ICHEIC chairman. I share much of the frustration that has surfaced from time to time in the press (particularly with respect to the companies' reluctance to give claimants the benefit of the doubt when they have produced plausible evidence of a valid claim) and I will elaborate on some of my concerns. But first I would like to point out the context that I try to remember as I evaluate the successes and failures of ICHEIC's endeavor to achieve a measure of justice for Holocaust insurance claimants.

- ICHEIC is the first and only organization of its kind formed to serve as a mechanism for resolving unpaid Holocaust era insurance benefits. This means the commission has, starting from scratch, addressed thorny

issues such as evaluating claims -- standards of proof, valuation, etc.; production of lists, audits, and appeals of adverse decisions; dealing with claimants who speak a variety of languages; publicity and outreach; and nationalized policies and blocked accounts, for starters.

- All of the issues I just mentioned are framed by the fact that we are talking about events that happened 60 years ago in the context of the most traumatic event in human history that was a part of the most destructive war in human history.
- ICHEIC has made the conscious and affirmative decision to encourage survivors and heirs to make inquiries through filing claim forms. By erring on the side of too many claims rather than too few, the number of claims paid will increase, but the number of denied claims and frustrated expectations will be higher as well.
- ICHEIC is not unique in the spectrum of programs recently set up to seek restitution and justice for Holocaust survivors in that the level of frustration felt by many with these projects, which aim to right wrongs 60 years after a terrible crime against humanity, is high.

This context makes Chairman Eagleburger's job difficult if not thankless. Against this backdrop, the state regulators involved in ICHEIC have attempted to try and support his efforts to prod the commission to resolve issues quickly and to give claimants the benefit of the doubt. I have held regular conference calls among regulators this year to try to identify and reach consensus amongst ourselves on issues of concern. In turn, I have requested opportunities for myself and other regulators to speak with Chairman Eagleburger, Vice Chairman Geoffrey Fitchew, and Chief of Staff Neal Sher on a regular basis. ICHEIC is not a public body, most of its key operations are located overseas, and it has been criticized for its budget and expenditures. As public officials, we regulators are thus dealing with an operation that, for a variety of reasons, has been set up much differently than our agencies and is run in ways that are unnatural to us. (For instance, ICHEIC's budget is not appropriated through the government as our agencies' are. Also, ICHEIC is not subject to open meetings and open records laws.) We therefore see regular calls as a modest way for regulators to express concern about ICHEIC's operation and budget. However, regulators are obviously not in a position to micro-manage ICHEIC operations. That must be done by ICHEIC and its committees. For instance, recognizing that the commission had grown quickly without commensurate oversight, ICHEIC developed a means for addressing concerns regarding budget and accountability by establishing the Financial Administrative Advisory Committee (FAAC). FAAC is chaired by Pennsylvania Insurance Commissioner Diane Koken. FAAC was established in the fall of 2000 to "monitor the financial performance of the ICHEIC operation.... FAAC will provide oversight for the creation of appropriate financial and reporting relationships with ...partner organizations.... FAAC will recognize the importance of effective cost controls while meeting the overall mission of ICHEIC." (FAAC purpose statement.)

I should say that the Chairman has welcomed and encouraged FAAC's development and also a continuing dialog with the regulators. As the process moves forward and the claims deadline approaches, he has been forced to issue chairman's decisions to resolve key issues where consensus is impossible to reach. I admire him for his leadership in these situations because all too often it has been impossible to resolve matters by consensus as called for by the ICHEIC MOU.

Unfortunately, the difficult tasks faced by ICHEIC have been exacerbated for the better part of two years by the slow progress of the German Foundation negotiations. Because my involvement in ICHEIC has been the heaviest in the past six months or so, and because Chairman Eagleburger asked me to join the ICHEIC negotiating team, the Foundation is the aspect of this hearing of which I have the most direct knowledge. Therefore, I will focus the rest of my remarks on this subject.

The German Foundation, "Remembrance, Responsibility and the Future," was created as a result of an Executive Agreement signed by representatives of the United States government, the German government and German industry, and other interested parties including plaintiffs' attorneys and Jewish groups. The foundation will distribute DM 10 billion, half from the German government and half from German industry, to Holocaust survivors and the heirs of Holocaust victims. Postwar German governments have made nearly $50 billion in restitution for the crimes committed by their country during the World War II era, but the Foundation represents the first time that German industry has directly participated in postwar reparations. German industry stands to gain legal peace from this endeavor, as plaintiff's lawyers have sought dismissal and the U.S. government has filed commensurate statements of interest in these cases.

The vast majority of Foundation money will go to victims of slave and forced labor, but DM 1 billion is allocated for property losses, including DM 200 million for insurance claims, DM 100 million for insurance claims reserves, and DM 350 million for insurance humanitarian purposes. The Executive Agreement thus calls for at least DM 550 million in insurance monies to be processed according to ICHEIC standards. Participants in the process of establishing the Foundation have repeatedly acknowledged that the insurance aspects of this project should be administered by ICHEIC. A recent such example is Deputy Secretary of State Armitage's statement that "affirm[s] that the United States government continues to support ICHEIC and believes it should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II." (Letter to Chairman Eagleburger, June 18, 2001.) Per the Executive Agreement, the Foundation and ICHEIC have been attempting to reach agreement on the allocation of the insurance money since last year.

The Foundation negotiations have dominated ICHEIC activities during the last year and a half. The Chairman and the commission have been forced to divert

attention and resources from our basic task of implementing the MOU as we negotiate with the Foundation. This has delayed many important aspects of the ICHEIC's business, including the development of a mechanism for handling so-called 8a1 claims, which refers to the "Specific Humanitarian Section" of the ICHEIC Memorandum of Understanding that calls for "relief for claimants who seek relief under policies that cannot be attributed to a particular insurance company as well as to claimants who seek relief under policies issued by companies no longer in existence." Since over 80% of the claims filed with ICHEIC do not name a specific company, this is a crucial matter that must be brought to a conclusion. On behalf of the regulators, I have pressed repeatedly for an 8a1 procedure to be developed and adopted, but many factors, most prominently the difficulties posed by the German Foundation negotiations, have prevented substantial progress on this matter.

Major points of the Foundation negotiations have centered on publication of lists of policyholders by companies; audits of company records and processes; appeals of adverse decisions; and reimbursement of company costs from Foundation funds allocated for insurance purposes. In my opinion, negotiations should not have taken so long and we should have had an agreement by now. This is most unfortunate, because, even though slave and forced labor payments have begun, deserving and long-suffering insurance claimants have had to wait because no claims or humanitarian aid have been processed. This is particularly distressing as the affected population continues to age and survivors die at an increasing pace. I can only speak of direct knowledge of the negotiations since summer, and I acknowledge that ICHEIC is probably not without blame of its own in these lengthy and as yet unsuccessful negotiations, but I still feel comfortable expressing the view that the German insurance companies and the ICHEIC companies have been primarily responsible for the problems we have encountered. I also believe, however, that in recent weeks, the Foundation, through the capable leadership of its lead negotiator, Dr. Hans Otto Brautigam, has made significant and good faith efforts to bridge the gap between the sides.

The legal framework surrounding these negotiations places a heavy and affirmative burden on German industry to cooperate with ICHEIC and to meet basic standards developed by ICHEIC that are designed to bring legitimacy to the process. This duty on the companies is established in the Executive Agreement that the German government and German industry signed in order "for the Foundation to be the exclusive remedy and forum for the resolution of all claims that have been made or may be asserted against German companies arising from the National Socialist era and World War II" (Article 1, Paragraph 1). The Executive Agreement specifically calls for the Foundation's cooperation with ICHEIC: "The Federal Republic of Germany agrees that the insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission on Holocaust Insurance Claims ("ICHEIC") and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such

proceedings and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association" (Article 1, Paragraph 4). Upon the signing of the executive Agreement on July 17, 2000, Deputy Secretary Eizenstat elaborated on the importance of core ICHEIC processes to fulfill both the letter and the spirit of the Executive Agreement: "It is critically important that all German insurance companies cooperate with the process established by the International Commission on Holocaust Era Insurance Claims, or ICHEIC. This includes publishing lists of unpaid insurance policies and subjecting themselves to audit. Unless German insurance companies make these lists available through ICHEIC, potential claimants cannot know their eligibility, and the insurance companies will have failed to assume their moral responsibility."

I will not comment on the details of negotiations over lists, audits, and appeals, as they are ongoing and it would not be appropriate to get into a high level of specificity. I will, however, stress that it is essential that the basic characteristics of ICHEIC methods be incorporated into any agreement with the Foundation. Public confidence in our work rests on the integrity of these processes. Lists must be produced so that potential claimants who lack documentation and may have only the slimmest memories can be alerted of their rights. Audits with a stamp of independence are necessary to confirm to the public that all company representations have been verified. And reasonable and fair appeals procedures give legitimacy and acceptance to disappointed claimants. I will generally comment that, while until recent months, progress on these issues was slow and disappointing, recent negotiations have been much more productive. Dr. Brautigam is a straightforward and experienced diplomat whose professional manner is reflected in his substantive approach to disputed issues. He has put forth proposals on lists, audits, and appeals that serve as the basis for reasonable negotiations. I believe that he acts in good faith and I am optimistic that we can resolve the open claims related issues in the next several, if not the next few, weeks.

Unfortunately, similar progress has not been made on the issue of costs and company reimbursements. No final agreement between ICHEIC and the Foundation can be completed until the Foundation drops its plan to reimburse tens of millions of dollars, out of Foundation funds, to ICHEIC companies for their previous payments to the commission. I will comment on this issue at length because the details of the dispute have been previously reported in the press and because the NAIC has passed a resolution, which I authored, which expresses strong views on this subject.

The Foundation in June presented ICHEIC with a proposal regarding the recoupment of company expenses. It called for a total of $76 million in "payments and expenses to be covered" out of the two Foundation funds dedicated to insurance - $51 million from the DM 200 million claims fund and $25 million from the DM 350 million humanitarian fund. The reimbursements from the

claims money amount to well over half the amount in that fund, based on today's exchange rates. Furthermore, at least $36 million of the reimbursements ($21 million from claims and $15 million from humanitarian) are retroactive payments to the original ICHEIC companies for amounts they previously paid into the commission. The largest recipient of these repayments would be the German insurer Allianz, the corporate parent of the American concern Firemen's Fund, which would receive well in excess of $10 million from this plan. The companies argue that this proposal must be understood as a virtual fait accompli because it is mandated by the German law that sets up the Foundation. I disagree. I believe, and the NAIC's resolution is predicated on the notion, that the Foundation's proposal is unacceptable legally, politically, and morally.

Most of the discussion of the plan has centered on the legal issues surrounding company reimbursements. The U.S.-German Executive Agreement does contemplate that some expenses will be paid for out of Foundation money in some fashion. The basis for this is found in Annex B to the Joint Statement accompanying the signing of the Executive Agreement. Annex B describes an allocation of DM 200 million (150 million originally and 50 million in interest) for "Insurance Claims" and DM 350 million for "Insurance Humanitarian/ICHEIC." There is a footnote on the claims money that reads "Includes ICHEIC administrative expenses." There is no such footnote on the humanitarian money.

The Foundation and the companies argue that language in Section 3 of the German Law requires their proposed reimbursements. This part of the law describes DM 5 billion that "German industry have agreed to make available, including the payments that German insurance companies have provided to the International Commission on Holocaust Era Insurance Claims or will provide in the future" (German Law, Section 3, Paragraph 1, Subsection 1). However, their argument is unsupportable because the provision they have cited, or at least their interpretation of it, is inconsistent with the U.S.-German Executive Agreement. Furthermore, the Foundation's argument is inconsistent with the German Law's specific provisions that deal with insurance.

The Foundation and the companies' argument about the German Law is directly contrary to the U.S.-German Executive Agreement. The provisions from the Annex to the Joint Statement that I quoted above ("Includes ICHEIC administrative expenses") are very simply written, are not in the past tense, and say nothing about retroactive reimbursements. It is nonsensical under all traditional notions of contractual interpretation and statutory construction to read into these words an intended retroactivity. Since the Executive Agreement and its accompanying documents are the sole reflection of the will of all parties to this process, it is unacceptable to me as an American public official for the companies to argue that I should defer to any interpretation of the German Law that is inconsistent with the Executive Agreement.

Even if, for the sake or argument, I thought ICHEIC should ignore the clear language of the Executive Agreement and its accompanying documents and follow only the German Law, the Foundation reimbursement plan is still incongruous. Despite the language the companies rely on in Section 3, "Donors and the Foundation's Capital Assets," Section 9, "Use of Foundation Resources" is more directly relevant. Unlike Section 3, which provides details on how the money is to be raised, and essentially describes the relationship between the Foundation and German industry, Section 9 provides the details of how the money is actually to be allocated. Thus Section 3 governs the relationship between the companies and the Foundation, but only Section 9 could possibly control the relationship between the Foundation and ICHEIC (and of course, the claimants). Paragraph 4 of Section 9 describes the DM 1 billion "intended for payments to persons who suffered property loss." The third provision of this paragraph is for insurance claims, "including the costs incurred in this connection." This section has a reasonable basis in the Executive Agreement as it closely tracks the language in the footnote of Annex B to the Joint Statement – both contain no retroactive language. Furthermore, the fifth provision of Paragraph 4 provides further evidence that the true intent of the Executive Agreement is to provide for the payment of future costs only, and only from the DM 200 million claims funds. The fifth provision allocates DM 350 million for insurance humanitarian uses and makes no mention at all of cost reimbursements from this fund. This again tracks the footnote in Annex B to the Joint Statement: the footnote references costs, but not retroactive, and not from the humanitarian monies. Thus I believe that a proper understanding of the German Law goes beyond the companies' misleading citation to Section 3. In the context of Section 9's interaction with the Executive Agreement and its accompanying documents, the Foundation's proposal to divert so much money from claimants to the companies is baseless. Suffice it to say that the NAIC will never stand for such a result, which, besides being unfaithful to the Executive Agreement (and, in point of fact, the German Law), would be a moral affront to every Holocaust survivor.

I would like to conclude by saying that I welcome Congress's interest in this very difficult and complicated matter. Congress has a legitimate and necessary oversight role to play as it prods all of us involved in Holocaust matters to see that the best interests of survivors are kept front and center. The German people and the postwar German governments have repeatedly shown a genuine commitment to making amends for the horrific crimes committed by that country during the National Socialist era. The current Foundation effort, whereby German industry for the first time acknowledges and offers recompense for its untoward gains during the Holocaust, is a necessary step to providing an appropriate level of justice for those who survived and for honoring the memories of those who perished. It is my high personal priority to make sure that state insurance regulators are doing everything reasonably within our power to aid this process, and I am gratified by the committee's commitment to this effort. I

therefore thank you, Mr. Chairman, for the opportunity to share my views with you today.

National Association of Insurance Commissioners NAIC

Holocaust Resolution

Whereas a significant and unknown number of legitimate insurance policies from the Holocaust era are as yet unpaid;

Whereas many of those unpaid insurance policies result from policies written by or assumed by European insurance companies that have affiliates doing business in the United States;

Whereas the issue of unpaid insurance policies is one of primary importance under the insurance codes of all U.S. states and territories;

Whereas this issue is of significant importance to the National Association of Insurance Commissioners (NAIC);

Whereas the NAIC has formed a Holocaust Task Force;

Whereas the NAIC and its members were instrumental in the formation of the International Commission on Holocaust Era Insurance Claims (ICHEIC) as a mechanism for resolving unpaid Holocaust-era insurance claims;

Whereas companies that have joined and are operating in good faith in ICHEIC have received "safe harbor" from heightened regulatory scrutiny under the statutes and administrative practices of many states;

Whereas the NAIC, through hearings and the operations of its Holocaust Task Force, continues to monitor the progress of this issue;

Whereas the Holocaust Task Force has reported that the progress made on paying claims submitted through ICHEIC has been disappointing;

Whereas the Holocaust Task Force has reported that some companies are not cooperating in supplying policyholder lists;

Whereas the German Foundation, "Remembrance, Responsibility, and the Future," which resulted from an Executive Agreement between many parties, including the governments of the United States and Germany and German industry, created funds to pay Holocaust-era insurance claims;

Whereas the main tangible benefit to be gained by German industry as a result of its participation in the Foundation is "legal peace" in the judicial processes of the United States;

Whereas the U.S.-German Executive Agreement calls for ICHEIC to administer the payment of DM 200 million for claims; DM 100 million for claims reserves; and DM 350 million for humanitarian purposes;

Whereas the U.S.-German Executive Agreement and accompanying documents call for the German Foundation and the German Insurance Association to work with ICHEIC and to follow core ICHEIC standards;

Whereas the Foundation and ICHEIC have negotiated for over a year on how the German companies will implement these core ICHEIC standards and the Foundation presently has not agreed to ICHEIC standards with respect to the publication of policyholder lists; transparent audits of company records and procedures; and the establishment of an accountable appeals process for denied claims;

Whereas the Foundation has presented the ICHEIC with a proposal that calls for the reimbursement of $76 million in Foundation funds to German companies for processing Holocaust-era claims and making humanitarian payments – thus diverting to the companies over one half of the claims money and a retroactive $36 million reimbursement of past company payments to ICHEIC;

Whereas the state insurance regulators on the ICHEIC have objected to this proposal;

Whereas slave and forced labor payments by the Foundation have already commenced but insurance claims and humanitarian payments have not and will not be made until the issues involving costs, publication of lists, audits, and appeals are resolved;

Whereas the ICHEIC-Foundation negotiations are ongoing and a full ICHEIC meeting is scheduled for October 16, 2001;

Whereas the two year period for filing insurance claims with ICHEIC is due to end February 15, 2002;

IT IS HEREBY RESOLVED:

That the NAIC, collectively and through its individual members, deems the problems that are impeding the implementation of the German Foundation's insurance provisions to be a matter of the utmost public importance;

That the Foundation must come to agreement with ICHEIC on standards that are consistent with ICHEIC's rules regarding publication of lists, audits of company records, and appeals of adverse company decisions;

That the Foundation's proposal to allow the companies to recoup $76 million intended to benefit Holocaust survivors and their heirs is unacceptable;

That the NAIC's Holocaust Task Force is instructed to closely monitor the progress of the ongoing Foundation negotiations and regularly report back to the NAIC national officers and the NAIC membership;

That until this matter is resolved, individual states should, as appropriate, take any or all of the following steps as allowed by law: reevaluate the formal or informal "safe harbor" provisions given to affected insurers; hold hearings about the German Foundation-ICHEIC negotiations and also about the progress made by ICHEIC member companies in processing and paying legitimate claims; and make filings in relevant court cases involving the matter of unpaid Holocaust-era insurance claims; and

That nothing in this resolution is intended to affect or question the legality or enforceability of any state law relating to Holocaust era insurance.

Mrs. MORELLA. Mr. Taylor, we've been generous with the time. I'm going have you kind of look at our color coding here; otherwise we'll be here all evening.

Mr. TAYLOR. Thank you, Madame Chairwoman. We appreciate the fact that the committee is holding this hearing, and I would also like to acknowledge the tremendous role of Chairman Eagleburger in addressing these issues. In addition, the constituents and——

Mrs. MORELLA. Would you press your mic.

Mr. TAYLOR. I would also like to acknowledge Ambassador Bindenagel and his staff for their most important work in the field of Holocaust-era insurance and other forms of restitution. The statement is made on behalf of myself, Gideon Taylor, and Israel Singer, vice president of the Claims Conference and chairman of the negotiating committee. To quote Elie Wiesel at the opening of the Washington Conference on Holocaust Assets in November 1998, he said as follows: "Thus it is really a matter not of money but of moral demand and of commitment to conscience and memory. Memory is our shield, memory is our fortune, our only fortune; so let us remember not only the big fortunes, palaces and our treasures, let us remember also the less wealthy families, the small merchants, the cobblers, the peddlers, the school teachers, the water carriers, the beggars. The enemy robbed them of their poverty."

The Claims Conference was one of the negotiating partners in the establishment of the German Foundation and was the primary negotiating partner with German insurance and negotiated the funds to be allocated to the insurance component of the German Foundation. The Claims Conference is one of the member organizations of ICHEIC together with the State of Israel, the World Jewish Restitution Organization, the insurance companies who are signatories to the MOU, and the National Association of Insurance Commissioners in the United States.

The issue of the administrative procedures of ICHEIC has been raised by a number of individuals. It has been the experience with the Swiss banks and other programs, the cost of carrying out outreach to find claimants, operating call centers and handling applications is expensive. We and other members of ICHEIC are working with the staff of ICHEIC in an effort to reduce these expenses to the greatest extent possible. Regarding the claims process in our view, it is the responsibility of ICHEIC to the claimants to ensure that every appropriate step is taken to inform potential claimants of the process by undertaking outreach, to inform potential claimants of the existence of unpaid policies through the publication of lists, to require to companies to assume responsibility for their policies, including nationalized policies and confiscated policies and policies that were issued by their branches and subsidiaries, to process those policies in a transparent manner that recognizes the suffering and destruction of the Holocaust in the passage of time and to ensure that the costs of the claims process are borne appropriately.

While some progress has been made, we must unfortunately conclude that we have not yet achieved the success we would have desired. Prior to the signing of the German Foundation agreement,

we hoped that the process would work as smoothly. Deputy Secretary Eizenstat, as we noted, said it is critically important that all German insurance companies established by the International Commission on Holocaust Era Insurance, and in his speech to the Claims Conference Board of Directors on July 18 this year, Deputy Secretary Richard Armitage, on behalf of the new administration, reaffirmed the importance of dealing with these critical issues.

After over 15 months of negotiations with German industry and then the German foundations, the current state of affairs is not at the moment encouraging. The German insurance companies are yet to agree in principle to implement some of the ICHEIC standards, and in cases where companies have agreed in principle, we are not yet confident that the interpretation of these standards always meets the spirit that lies behind them. Regarding claims processing, firstly, it was our clear understanding that the claims processing by Germany would comply with the standards and burdens of proof, evaluation, and decisions of the chairman of ICHEIC, cases have been highlighted to this committee, which illustrate the problematic manner in which some of these cases have been handled. We believe that in order for the claims processing to be successful, a systematic monitoring of offers and rejections is most important.

In addition, we believe that a system of valuation of insurance claims to bring the value of policies to today's value is critical. We await confirmation by the companies, the decision of the chairman of ICHEIC in this regard will be implemented. Regarding lists, there is not yet an agreement on the question of a comprehensive publication of lists of policyholders' unpaid policies. We believe that the process to identify such policies must be one that will be as flexible as possible to enable the lists to be complete. Regarding audits, an audit of the claims process is, in our view, most important to enable claimants to have confidence in the process. And Mr. Shapo has addressed very clearly the issue of the costs in his remarks. We too are disappointed with the proposal made by the German Foundation.

Concerning Austrian insurance policies, the agreement in January 2001, provides for $25 million of the Austrian agreement to cover insurance policies not covered by the German Foundation and ICHEIC. It was the intention that the sum of $25 million to be provided by the Austrian Government and industry would pay for policies issued by Phoenix, Der Anker, and other companies. It's our understanding after some discussion that the Austrian companies that issued the policies will assume full responsibility for the period irrespective of the ownership of the company and/or its assets during the Nazi period.

In conclusion, we believe that it should not go unrecorded that the German Foundation has had some major achievements. As the partner organization responsible for making payments from the funds of the German Foundation to most Jewish former slave and forced laborers, we are pleased to report that the Claims Conference has already distributed some 434 million Deutsche marks equal to $202 million to 43,423 Holocaust survivors in 47 countries. The German Foundation has succeeded in bringing together the parties and in implementing a speedy and effective way to make payments to former slave and forced laborers.

We hope and believe that this success can be replicated in the area of Holocaust-era insurance. With some showing of flexibility, this can be achieved. We must resolve these outstanding matters immediately. As Deputy Secretary Eizenstat stated last July, we all now bear a heavy responsibility to implement this historic agreements. The victims have waited 55 years for this day. We cannot let them wait longer. Thank you.

Mrs. MORELLA. Thank you very much, Mr. Taylor.

[The prepared statement of Mr. Taylor follows:]

COMMENTS TO THE COMMITTEE ON GOVERNMENT REFORM OF THE UNITED STATES HOUSE OF REPRESENTATIVES

8 November 2001

Gideon Taylor

Conference on Jewish Material Claims Against Germany

Thank you very much Madame Chairwoman, Representative Waxman for holding this hearing to address these very important issues. This statement is made by me, Gideon Taylor, on behalf of Israel Singer, Vice President of the Claims Conference and Chairman of our Negotiating Committee and myself. I would also like to acknowledge the tremendous role of Chairman Eagleburger in pressing these issues. In addition, the U.S. insurance regulators have been a constant and critical presence in this effort. I would also like to acknowledge Ambassador J.D. Bindenagel and his staff for their most important work in the field of Holocaust restitution.

As we stand here on the 63rd year after Krystalnacht, it is important to remember not only that on that night Jewish men were rounded up from their homes, many never to be seen again, and that thousands of synagogues and Jewish businesses were destroyed but also that the trust of German Jews in German society dissolved completely and utterly.

However, after 60 years, through the efforts of the International Commission of Holocaust Era Insurance Claims (ICHEIC) and the German Foundation "Remembrance, Responsibility and the Future", we are attempting to secure a measure of justice for a small group of victims and heirs - those persons whose insurance policies were left unpaid for over half a century. Our central premise has been, and continues to be, that this is not an issue of money but of morality.

As Elie Wiesel stated at the opening of the Washington Conference on Holocaust Assets in November 1998:

> "Thus, it is really a matter not of money but of moral demand and of commitment to conscience and memory. Memory is our shield. Memory is our fortune, our only fortune. So, let us remember not only the big fortunes as, palaces and art treasures. Let us remember also the less wealthy families: the small merchants, the cobblers, the peddlers, the school teachers, the water carriers, the beggars. The enemy robbed them of their poverty."

Insurance was the way that an ordinary Jew in Europe sought to provide a little security for his family for the future.

The Claims Conference was one of the negotiating partners in the establishment of the German Foundation and was the primary negotiating partner with German insurance and negotiated the funds to be allocated to the insurance component of the German Foundation. The agreement establishing the Foundation provided that DM 200 million is set aside for payment of insurance claims together with a reserve of an additional DM 100 million. In addition, DM 350 million is set aside for the ICHEIC humanitarian fund.

The Claims Conference is one of the member organizations of ICHEIC together with the State of Israel, the World Jewish Restitution Organization, the insurance companies who are signatories to the Memorandum of Understanding of August 1998 that established ICHEIC and the US National Association of Insurance Commissioners.

The issue of the administrative procedures of ICHEIC have been raised by a number of individuals. As has been the experience with the Swiss banks and other programs, the cost of carrying out outreach to find claimants, operating call centers and handling applications is expensive. We and the other members of ICHEIC are working with the staff of ICHEIC in an effort to reduce these expenses to the greatest extent possible

Regarding the claims process, in our view, it is the responsibility of ICHEIC to the claimants to ensure that every appropriate step is taken to:

a) inform potential claimants of this process by undertaking outreach;

b) inform potential claimants of the existence of unpaid policies through the publication of lists;
c) require insurance companies to assume responsibility for all policies (including nationalized policies, confiscated policies – directly confiscated or confiscated indirectly through blocked accounts) that were issued by the companies directly or by their branches and/or subsidiaries;
d) process those policies in a transparent manner that recognizes the suffering and destruction of the Holocaust and the passage of time and inspires the trust of the claimants; and
e) ensure that the costs of the claims process are borne appropriately.

While some progress has been made we must unfortunately conclude that we have not yet achieved the success that we would have desired. Prior to and at the signing of the German Foundation agreement we hoped that the process described by former Deputy Secretary Eizenstat would be implemented quickly.

At the signing ceremony in Berlin on July 2000 Deputy Secretary Eizenstat stated

> "It is critically important that all German insurance companies cooperate with the process established by the International Commission on Holocaust Era Insurance Claims. This includes publishing lists of unpaid insurance policies and subjecting themselves to audit."

In his speech to the Claims Conference Board of Directors on July 18, 2001, Deputy Secretary Richard Armitage on behalf of the new Administration reaffirmed the importance of dealing with the critical issue of Holocaust era insurance.

After over 15 months of negotiations with the German Insurance Industry and then the German Foundation, the current state of affairs is not at the moment encouraging. The German insurance companies are yet to agree in principle to implement some of the ICHEIC standards and in cases where a company has agreed in principle, we are not yet confident that the interpretation of these standards meets the spirit that lies behind them.

Claims Processing: It was our clear understanding that the claims processing by German companies would comply with the standards and burdens of proof, valuation and decisions of the Chairman of ICHEIC.

A few cases have been drawn to our attention that illustrate the problematic manner in which the cases are being processed, particularly by German companies and their subsidiaries.

For example: There have been a number of cases where the claimant has proof that the company issued the policy (policy document, premium receipt) but the company rejects the policy as "no proof of existence of a policy" . Such a response is in breach of the claims processing procedures which state that once the claimant proves the existence of a policy, the burden shifts to the company to show that the policy was paid to the beneficiary.

We believe that in order for the claims processing to be successful a systematic monitoring of offers and rejections is most important.

In addition, we believe that a system of valuation of insurance claims to bring the value of policies to today's value is critical. We await confirmation by the companies that the decision of the Chairman of ICHEIC in this regard will be implemented.

Lists: There is not yet an agreement on the question of a comprehensive publication of lists of policyholders of unpaid policies. We believe that the process to identify such policies must be one that will be as flexible as possible to enable the lists to be complete.

Audit: An audit of the claims process is in our view most important to enable claimants to have confidence in the claims process. We await confirmation of the proposal. that an audit based upon ICHEIC standards, be jointly performed by the German Insurance

Regulator (the BAV) and independent participants appointed by certain ICHEIC members and that the results be made fully available.

Costs: Mr. Shapo has addressed very clearly the issue of the administrative costs of ICHEIC in his remarks. We too are most disappointed with the proposal made by the German Foundation that we believe sought to include costs that were not intended to be covered by the agreement.

Concerning Austrian insurance policies, the agreement in January 2001 provides for $25 million of the Austrian Agreement to cover insurance policies not covered by the German Foundation and ICHEIC. It was the intention that the sum of $25 million to be provided by Austrian Government and Industry would pay for policies issued by Phoenix (now owned by OVAG), Der Anker etc. It is our understanding that the Austrian companies that issued the policies will assume full responsibility for the policy, irrespective of the ownership of the company and/or its assets during the Nazi period.

We believe that it should not go unrecorded that the German Foundation has had some major achievements. As the partner organizations responsible for making payments from the funds of the German Foundation to most Jewish former slave and forced laborers we are pleased to report that the Claims Conference has already distributed some DM 434 million (equal to $202 million) to 43,423 Holocaust survivors in 47 countries. Significant sums have also been distributed to non-Jewish laborers in other countries by the various partner organizations.

The German Foundation has succeeded in bringing together the parties and in implementing a speedy and effective way to make payments to former slave and forced laborers. We hope and believe that this success can be replicated in the area of Holocaust era insurance. Ambassador Hans Otto Brautigam has acted in an honorable manner in these negotiations. With some showing of flexibility on the part of the German insurance companies this can be achieved.

We must resolve these outstanding matters immediately. As Deputy Secretary Eizenstat stated last July " We now all bear a heavy responsibility to implement this historic agreement, the victims have waited 55 years for this day. We cannot let them wait longer."

Mrs. MORELLA. I'm pleased now to recognize Mr. Lefkin.

Mr. LEFKIN. I thank you Congresswoman Morella, and thank you Congresswoman Schakowsky. My name is Peter Lefkin, and I serve as senior vice president for Government and Industry Affairs for the Fireman's Fund Insurance Companies. Our company, which is headquartered in Marin County, CA, about 20 miles north of the Golden Gate Bridge, has been in business for about 135 years. Since 1991, it has been owned by Allianz AG, a major financial services company headquartered in Munich, Germany. I am here today in response to a letter of invitation from the committee. I have to state at the outset that my own expertise is somewhat limited, since the German and American executive agreement and the German Foundation law were concluded about a year ago. In addition, Allianz also has had nothing to do with the Austrian agreement. Therefore, I may have to refer some of your questions back to my colleagues in Germany for more detailed responses.

I'd like to say at the outset it's a particular honor for me to be on the same panel with Secretary Eagleburger, who chairs the International Commission. He has made a significant contribution in this and so many other areas of our public life, and he has assured that his work has resulted in the fairly and timely resolution of a significant number of unclaimed insurance policies. The ICHEIC has established relaxed standards of proof for the processing of claims. This acknowledges the passage of time and the practical difficulties that people confront in locating relevant documents. The ICHEIC has also performed valuable work on the difficult issue of policies which may have remained unpaid as a result of communist nationalization in Eastern Europe.

Now, before I comment on the creation of ICHEIC and Allianz's role, I should comment on the history of the German restitution process. After the war and with the encouragement of the Allied governments, the Federal Republic of Germany established a comprehensive restitution program, and this program included insurance policies. More than 100 billion Deutsche marks has been paid in compensation to the victims ask of Nazi persecution. In today's value, this is far in excess of over $100 billion.

These payments took into account all elements of properties that were seized by the Nazis, including insurance. As a result of restitution, the number of unclaimed insurance policy Holocaust victims that arise from Germany is relatively small, and, in fact, it is my understanding that in the German Foundation negotiation, that ICHEIC stated the total amount to be less than $30 million. In the opinion of the German Insurance Association, this appears to be somewhat high, but nonetheless this is a benchmark that they established.

In 1997, Allianz on its own established a 24-hour help line to field inquiries throughout the world in which individuals could attempt to ascertain whether or not they or one of their relatives had a policy which may have gone uncollected. Allianz has really always sought to be open and transparent. Beginning in 1997, public hearings were conducted throughout the United States by the National Association of Insurance Commissioners. Allianz testified in most of those proceedings. They also appeared before the House

Banking Committee in 1998, and we learned a lot from these hearings.

First thing we learned was that the history of insurance during the Holocaust era was indeed complex. Laws, as a practice, varied among the nations of Europe. In Germany, for example, the majority of policies held by the German Jewish population were surrendered before World War II began. During the war many more were confiscated by the Nazi regime and only a small amount went unpaid.

The hearings also revealed what former Deputy Treasury Secretary Eizenstat has called the "double victims of history." These are people who purchased insurance policies before World War II in Eastern Europe, and we heard from some of those people today. The Communist regimes which came into power after the war nationalized the companies. They seized the assets and records and also assumed the obligations to make payments.

While claims practices varied among governments, as a general rule payments were denied to those who emigrated. This effectively foreclosed indemnification to those who moved to Israel, the United States, Canada, or any other nation where the remnants of the Eastern European Jewish population fled.

Very early on Allianz recognized that it was important to work with other people of good will to formulate a humanitarian solution to benefit the elderly Holocaust victims. Among those with whom Allianz met was former superintendent Neil Levin, who died so tragically on September 11th. Working with Mr. Levin and other insurance regulators, Allianz was proud to be a charter member of the international commission, representing RAS and all other of its affiliates.

Allianz remains steadfastly committed to justice for victims of the Holocaust. It complies with the memorandum of understanding, researches every inquiry it receives, and settles all eligible claims. Over 200 claims have been settled by RAS alone, and another 20 from other affiliates. Allianz has also provided over 140,000 names to ICHEIC of Holocaust-era policyholders for processing at Yad Vashem in Israel.

Now, Allianz is mindful that ICHEIC, which represents only about 25 percent of the pre-war European marketplace, might be inadequate to the task at hand. After all, about 75 percent of all inquiries and claims were likely to emanate from policies on companies that did not belong to ICHEIC. Allianz, therefore, became a founding member and leader of the German Foundation Initiative.

The initiative and the Government of Germany in July 2000 produced a historic agreement to fund a German public foundation to provide the final capstone to all labor, insurance and all other issues arising from this most tragic period. The Foundation was created with the approval of the Governments of the United States and Israel, several major Jewish organizations representing Holocaust victims throughout the world, and five Eastern European governments. The German Government and German industry pledged 10 billion Deutsche marks. The overwhelming amount was directed toward compensating people who suffered as slave and forced laborers during World War II.

Over the last year there have been ongoing negotiations between the Foundation and ICHEIC led by the former German ambassador to the United Nations Dr. Bräutigam and Chairman Eagleburger, and I would venture to say that no one is satisfied by the pace of progress. And although I understand that the ICHEIC and Foundation negotiators do have disagreements, I still remain hopeful that they will be settled soon.

In closing, I would like to thank you for this opportunity to testify and for the fair treatment accorded to me by the members of the committee. Thank you very much.

Mrs. MORELLA. Thank you, Mr. Lefkin.

[The prepared statement of Mr. Lefkin follows:]

STATEMENT OF PETER A. LEFKIN

SENIOR VICE PRESIDENT

FIREMAN'S FUND INSURANCE COMPANY

BEFORE

THE COMMITTEE ON GOVERNMENT REFORM

ON ISSUES RELATING TO THE IMPLEMENTATION

OF THE GERMAN AND AUSTRIAN AGREEMENTS

NOVEMBER 7, 2001

Good Morning Mr. Chairman, Congressman Waxman and other distinguished Members of the Committee. My name is Peter Lefkin, and I serve as Senior Vice President for Government and Industry Affairs for Fireman's Fund Insurance Company. Our company, which is headquartered in Marin County California, some 20 miles from the Golden Gate Bridge has been in business for over 135 years. Since 1991, it has been owned by Allianz AG, a major German financial services company that is headquartered in Munich, Germany.

I am here to contribute to your investigation and will answer your questions as well as I can. I am here today in response to a letter of invitation from the committee, however, I will have to state at the outset that my own expertise is limited since it was the American and the German Government which negotiated the Executive Agreement and it was they also jointly drafted the language of the German Foundation Law. I have no personal knowledge about the agreements between the US and Austria nor is Allianz involved in the negotiations taking place between ICHEIC and the Foundation. I may have to refer some of your questions back to the parties involved in those negotiations for detailed responses.

It is a particular honor to be on the same panel with Secretary Eagleburger, who Chairs the International Commission on Holocaust Era Insurance Claims. While progress was probably slower than all of us, particularly Secretary Eagleburger, would have wanted, much has been achieved. The ICHEIC has established relaxed standards of proof for the processing of claims which serves to acknowledge the passage of the time and the practical difficulties of the survivors, their beneficiaries and heirs in locating relevant documents as well as valuation guidelines. Following these claims handling procedures, Allianz and all other ICHEIC member companies are settling eligible claims.

ICHEIC has also performed valuable work on the difficult issue of policies which may have remained unpaid as a result of Communist nationalization in Eastern Europe.

The issue of individually unpaid insurance policies is one which Allianz takes most seriously. The goal of the company has been to be as open and transparent as possible.

Before I comment on the creation of ICHEIC and Allianz's role, I should comment on the history of the German restitution process.

After the war and with the encouragement of the Allied governments, the Federal Republic of Germany established a comprehensive restitution program which included insurance policies. More than DM 100 billion has been paid in compensation to the victims of Nazi persecution, which in today's value would amount to the equivalent of several hundred billion US Dollars.

Along with individual payments, the process for restitution and reparations included agreements with the State of Israel and the Conference on Jewish Material Claims Against Germany – the legal heir to all Jewish property in Germany – to specifically address those policies where a claimant did not or could not come forward during the almost 25 year period the German compensation programs were in place, or where the policy remained heirless.

These payments and programs took into account all elements of property taken by the Nazis, including insurance. As a result of restitution and these comprehensive proceedings, the number of unpaid insurance policies of Holocaust victims that arise from German portfolios is very small. They generally relate to very specific circumstances that prevent individual persecutees from filing their applications with the compensation authorities in Germany. It is my understanding that in their negotiations with the German Foundation the ICHEIC stated the total amount of unsettled policies to be less than $ 30 million. In the experience of German companies and considering how comprehensive the compensation proceedings were, the estimate appears to be somewhat high.

In 1997, Allianz on its own, had established a 24 hour helpline to field inquiries throughout the world in which individuals could attempt to ascertain whether or not they or one of their relatives had a policy which may have gone uncollected.

Beginning in late 1997 public hearings were conducted throughout the United States by insurance regulators in several states as well as the National Association of Insurance Commissioners. In Congress, the House Banking Committee held hearings in February 1998. Allianz made every effort to testify in these proceedings.

One thing that was learned from these hearings was that the history of insurance during the most terrible period of the Holocaust was a very complex one with noticeable differences from country to country. The majority of policies held by the German Jewish population were surrendered before World War II began and only very few remained unpaid or were confiscated by the Nazi regime. As mentioned earlier, these policyholders were included in the post-war restitution program. This confirmed previous research which had been conducted by Allianz and the German Federal Insurance Commissioner.

We also learned in these most important hearings in 1997 and 1998 about what former Deputy Treasury Secretary Eizenstat has called the "double victims of history." These are people who were issued insurance policies before World War II in countries that located in Eastern Europe. Communist regimes, which were established after the war, seized the policyholder assets as well as the records of the insurance companies. In taking such action, they also assumed the obligation to make payments. While claims payment practices varied among governments, as a general rule they appeared to be limited to only those people living in the country at that time. This effectively foreclosed indemnification to people who may have emigrated to Israel, United States, Canada or any other nation where the remnants of the Eastern European Jewish population fled.

Allianz recognized very early on that it was important to work with other people of good will to formulate, in the absence of a legal obligation, a humanitarian solution to benefit

the elderly Holocaust victims. It worked quite closely with Neil Levin, the former Superintendent of Insurance of New York, who died tragically in the World Trade Center on September 11th and other insurance regulators to establish an International Commission composed of insurance regulators, representatives of Jewish organizations in the United States and Israel along with European insurance companies. Mr. Levin was a leading and effective advocate for Holocaust victims. He is greatly missed by all of us.

In September 1998, when the ICHEIC was established, Allianz joined as one of the founding members on behalf of the entire Allianz Group of companies. This includes RAS and other Allianz affiliates whose markets are outside of Germany.

The creation of the ICHEIC, was meant to look at the entirety of the European market, with a strong emphasis on the market outside of Germany. Therefore, I am surprised that no other ICHEIC member company was invited to testify today.

Prior to the creation of the International Commission and the German Foundation, Allianz had been reviewing and paying claims that were submitted after the expiration of the governmental compensation process.

Allianz remains steadfastly committed to justice for the victims of the Holocaust. It has taken a series of affirmative steps over the years to ensure that this occurs. It has provided over 140,000 names to ICHEIC of Holocaust-era policyholders for processing at Yad Vashem in Israel. It has been a leader in establishing ICHEIC and completed all requirements of the Memorandum of Understanding. Under the ICHEIC process it is actively researching every inquiry it receives and settling all eligible claims.

Through its own internal process and the ICHEIC claims procedures, Allianz has settled over 220 claims.

Allianz was mindful that ICHEIC with its few participating insurance companies could be inadequate in resolving all these cases due to its limited scope. The companies which

comprised ICHEIC constituted only about 25 percent of the prewar European and German marketplace. Therefore the majority of inquiries and claims received by ICHEIC would probably not be satisfied due to lack of marketwide access.

By the end of October Allianz has received either from ICHEIC or directly over 13,000 search inquiries which list Germany as the country of policy origin. Research is still ongoing in about 1700 cases. For more than 10,400 cases our research established that no connection to any of our German life insurance companies had existed. We hope ICHEIC will turn those names over to the German Insurance Association so that further research will be possible. So far in only slightly more than 1000 cases could we establish that a life insurance policy was applied for with any of our German companies.

Aware of the inherent limitations of the ICHEIC, whose membership represented 25% of the pre war European market, Allianz became a founding member and leader of the German Economy Foundation Initiative. The Initiative and the Government of Germany, in July 2000 established a historic agreement to create and fund a German public foundation to provide the final capstone to all labor, insurance and other issues arising from this most terrible period of German history.

The Foundation was created with the full cooperation of the governments of the United States and Israel, several major Jewish organizations representing Holocaust victims throughout the world, and five Eastern European governments. The German government and German industry pledged some DM 10 billion, the overwhelming amount of which was directed towards compensating people who suffered as slave and forced laborers during World War II. Some DM 550 million was allocated to cover the insurance sector.

Germany and the United States and all other parties also agreed that the claims procedures should be those that were already promulgated by ICHEIC as of July 2000. Negotiations were to take place between the International Commission, the German Insurance Association and the Foundation to adopt these procedures and to discuss ICHEIC funding.

Over the last year, there have been ongoing negotiations between the Foundation and ICHEIC led by the former German Ambassador to the United Nations, Dr. Hans Otto Braeutigam and Chairman Eagleburger. On a personal note, I probably find myself agreeing with everyone on this panel in saying too much time has passed and that an agreement is needed soon.

I would hope that the Committee and the public recognize that it always takes at least two parties to make an agreement, and in this case several. Public confrontations whether made here or in other forums will only set back and not advance the process. All sides have a moral obligation to work together in good faith. Although I understand that the ICHEIC and Foundation negotiators have disagreements, I also understand that there is progress being made, and am hopeful a full agreement can be reached shortly.

Ultimately, I believe that too much good work has been done by too many outstanding people to let it fail.

I would also encourage all of the parties to reduce the level of rhetoric. We are after all sharing a common mission. Far too often "inquiries" which do not even mention a company are converted in public parlance to "claims". This only serves to inflame the dimensions of the problem and exacerbate tensions.

The architecture for addressing the outstanding issues is in place, and what remains to be done is to put in place a marketwide solution which builds on that already established at ICHEIC.

I am very hopeful that this will be achieved shortly. But at this stage, I have to remind you that even though I have been asked to testify, Allianz is not an active party to the ongoing negotiations.

In closing, Mr. Chairman, I am reminded of testimony given by Glenn Pomeroy, then Insurance Commissioner from North Dakota and former President of the National Association of Insurance Commissioners, at the Washington Conference on Holocaust Assets in December 1998. He praised the President of the World Jewish Congress, Rabbi Israel Singer for his statement urging the parties to work together. "Let cooperation be our cornerstone and not confrontation because if confrontation is the chosen path, no one will win and everyone will lose."

These words apply today to all of the parties to the discussions to take their responsibilities seriously.

I thank you again Chairman Burton for this opportunity to testify and the fair treatment afforded to me by you and the other Members of the Committee.

Mrs. MORELLA. Now I am pleased to recognize Mr. Kent.

Mr. KENT. Thank you, Madame Chairwoman. Thank you, Members of Congress, for inviting me to testify.

I am in a difficult situation today because I heard a lot of testimony, and instead of reading a statement, I would like to share my thoughts with you.

I have a request to ask you, since I appear here maybe in a triple type of a position—No. 1, I am a survivor that went through the war in the ghetto and Auschwitz; No. 2, I am a member of the ICHEIC Commission; and then No. 3, I am a member of the negotiating committee of the slave and forced labor. And there were many statements and misstatements made here which I would like to share with you and give you my thoughts. So with your permission, please indulge me with the extra time. Thank you.

Mrs. MORELLA. We will see how long it takes.

Mr. KENT. Look, I waited 60 years for this opportunity, so I will wait another few minutes. What can I tell you?

When I heard the morning session and so on, I almost came to the conclusion when I heard the statement—the adage which says, "My mind is made up, so why do you confuse me with facts?"

There were two main questions which I heard: Why does it take so long, and why is so little paid out? And then, of course, was the question of ICHEIC. And let me make a flat statement, and I know, Congressman Waxman, I heard you a number of times on the television. You made sometimes very blunt and proper statements, and I would like to make a statement here, too. ICHEIC is not the criminal. It is the insurance companies and the German Foundation that are the criminals. They are the ones that are delaying the process.

So let me just give you a little elaboration why. If you are going to compare ICHEIC, compare it to construction of a building. When you want to construct a building, you don't see anything. You don't see the building. First you have to buy the land, then you have to make the blueprints, then you have to lay the foundation, and then after a while you can see the real structure of the building.

Here in ICHEIC, the situation was more complicated than in building the building, because you were dealing with five companies, right now actually we have six, because you have the Netherlands. But you were dealing with five companies. All of them had diverse interests except for one interest which they had in common: None of them wanted to pay anything out.

The rest of the issues were diverse. For example, it was a question of the market share. It was the question of the currency evaluation of policy then and right now. There were the lists of unpaid policies. There was the appeal process. There was the audit process. There was the expenses.

And in all of these things, I would say the biggest criminal was Allianz and the German Foundation, because when we are talking right now about the German Foundation and the so-called cooperation or noncooperation or the negotiation with ICHEIC or not ICHEIC, it has no relevance at all. The German Foundation should not, cannot, be a part of any negotiation with ICHEIC. They either belong and adhere to the rules of ICHEIC or they don't.

The insurance issue was forced on us. To use plain language, I am not a politician, I would say it was a blackmail. It was a blackmail by Mr. Lambsdorff who said openly, if the insurance companies are not included in it, we have no deal on the German Foundation.

The issue came to a head even when the Under Secretary, Deputy Secretary Eizenstat, said, "you don't want to scuttle the German Foundation," to which I know I replied to him, "no, we don't, but we don't want to scuttle ICHEIC." And the agreement was that the insurance companies would be subject to ICHEIC rules. The money which they are going to put to the Foundation will be a pass-through, nothing more, nothing less.

And I don't want to hear—and I expressed myself this to Mr. Hansmeyer and everybody else, I am sick and tired of the negotiation about the Foundation. They have no place, they should not be taking place, because they are outside of the German agreement.

Now, maybe by coincidence 2 days or 3 days ago I met Mr. Geier, who is the Minister of the lower department. He told me a very funny story. He asked me if I am going to be at the hearing, and I said yes. And I asked him, will you be there? And he said no. And I said, why not? Oh, because we don't consider Congress to be part of the government. This was news to me, that Congress is not part of the government. But if he said so, OK, it is a free country. He can say what he wants. So then he tells me, and after all, the agreement is between the two governments so that they are subject to the rules. So I said, if this is the case, if you say the agreement is between the governments and Allianz should obey the rule of the agreement, why didn't they pay the next 850,000 Deutsche marks which they were supposed to pay? After all, if they are subject to the agreement, and if they broke the agreement the next day, what would they fall back for the agreement?

So what is the sense of talking about the expenses? The expenses are subject to the MOU. Allianz signed the MOU. They are responsible for the MOU. They are not responsible for any executive agreement which was made between our government and the German Government, which, by the way, specified that the insurance issues are subject to ICHEIC.

So to negotiate for a year and a half, 2 years, when we are asking why does it take too long, if somebody will put an 800-pound gorilla in front of me and ask me to move it, it will take me 10 years to push it. So this is one reason why.

Now, and the same problem is with the so-called GVD, they want their own rules. ICHEIC is handling six different insurance companies, all different countries. And to give to Germans a different negotiating point, it would be criminal. As a matter of fact, I wrote to Judge McCasey. I wrote to him on December 6th, and I will quote you part of it. And the question of insurance and how it fits into the overall picture of the settlement under the German Foundation agreement must be clarified; otherwise justice and survivors' interests will not be properly served.

And I must bring to your attention that ICHEIC was established to resolve insurance issues in general and the German insurance companies in particular. It is important to note that ICHEIC was established approximately 2 years prior to the German Foundation.

Therefore, to include the German insurance company in its present form in the framework of the German Foundation agreement would benefit the insurance companies to the detriment of the victims that they are supposed to compensate. This is particularly true of the GDV, since GDV has not yet signed it.

If the terms of the German Foundation agreement pertaining to insurance are to be considered, then all of the conditions of the MOU agreement with ICHEIC must be included. There should be no exception to the German insurance agreement.

And I expressed this thought a few times to our meetings of ICHEIC, and I have told them that I want to have the issues settled as fast as possible while I am still alive. You, ladies and gentlemen, heard the statement by the few survivors. We are not youngsters, so that there is no question that a lot of insurance companies were out again, they are out again, and unless we are going to put some brakes on them, they will not back down.

There was a mention here by Mr. Hansmeyer and his quotes in the Forbes Magazine. I must tell you that since the time of the Forbes Magazine, Mr. Hansmeyer did not show up on any of our meetings, otherwise he was there all of the time. And I must tell you that after the statement was made, I have here a letter of May 18 which I wrote to Mr. Eagleburger pertaining to these remarks, and let me just read you a couple of sentences.

If the statement made by Herbert Hansmeyer in Forbes was not enough, the remarks by Hans Sauering, representing Allianz, substituting for Hansmeyer, made on Thursday, May 10th added insult to injury when he quoted Mr. Hansmeyer and said that Allianz would be happy to approve payments for all insurance claims where the individuals can present them with the policies involved.

I don't know whether or not you were present in the room at the time, but my reply to him, which still rings in my ears, was, how dare you make such a statement in this room when you know perfectly well that those who survived Auschwitz or any other concentration camp left with absolutely nothing. Only a few percent actually left with their lives instead of as corpses.

I could speak on and on, but I——

Mrs. MORELLA. I bet you could.

Mr. KENT. I tell you, I want just to end up one thing. That the statement made by the survivors before, and I accept them as facts, but ICHEIC to me was more than just individual cases, because you see those people that were here, first of all they were lucky enough that they survived. Few of us survived. But the second thing was very lucky that they had proper documentation.

But ICHEIC is also working and trying to compensate people that don't have the proper documentation. How many of us could have it? And, therefore, the list of the people, the list of the names which we are fighting from the very beginning, and that was easy for the companies to do, only if they wished, only if they wanted to, because when we are talking about the date, what is the date? What meaning has the date of filing the claims if we don't have the list? So unless they will give us the list, there is no sense even talking about the date, because it is meaningless. If I postpone the date another 4 months, and I will get the list 8 months from now,

the date is meaningless. And this is what they are doing to companies.

And that is why I made this statement at the beginning: ICHEIC is not the criminal. The companies, the German Foundation, they are the criminals.

Thank you. I am sorry if I took too long.

Mrs. MORELLA. Thank you, Mr. Kent. We appreciate your passion and indeed your directness.

I just want to mention and acknowledge that we have sitting there at the table, too, Israel Singer, vice president of the claims conference and chairman of the negotiating committee. I know, we hadn't planned that you were going to speak. If you—you are here for answering questions, Mr. Singer, right?

Mr. SINGER. That is fine.

Mrs. MORELLA. I know that Mr. Taylor gave comments on your behalf.

Mr. SINGER. He represented both of us. I just wanted to add one word.

Mrs. MORELLA. Yes.

Mr. SINGER. Mr. Kent spoke with great passion. He did so because he sat for hundreds of hours, volunteer hours, during ICHEIC. We listened to Chairman Eagleburger make many decisions. I negotiated the original settlement with the chairman of German industry Dr. Genz and Mr. Hansmeyer. I flew at my expense by Concorde back and forth the day before this almost became the deal-breaker.

The terms for that agreement were made by the three of us. The terms are included in the GDV. Those terms are not being listened to because Eagleburger isn't being listened to, because those terms included the chairman's decisions.

We are making Eagleburger's job impossible. And they agreed to make that difference. I think what we are doing now is we are dragging our feet on something that has already been agreed to that should be said here. It should be said again and again, and it should be said by everyone to anyone who will listen.

There is 550 million Deutsche marks available to settle claims. It is unacceptable to hear that out of 15,000 claims that were made to a German company, only 4 were settled when the money is available.

I would like at this time to say, but also suggest, that there are some companies like Generali, that was said before by the chairman, that paid 548 through offers that were made. And I would like to include in the record the fact that they have paid close to $12 million. That is not enough, but it is a lot. They have their representatives, director, advocate Barak who is sitting here today. We need more cooperation from them, but more like the kind that they have given us so far. Thank you.

Mrs. MORELLA. Thank you, Mr. Singer.

I guess I will start off the questioning. We will probably get to some of the questions that you have been posing in your declarative statements to Secretary Eagleburger.

I understand that only five insurance companies have joined the Commission. Allianz is the only German company, and they only represent about 15 percent of the German market. Do you think

you are making any progress in getting the other German companies to commit to this process?

Mr. EAGLEBURGER. If you mean are we making any progress in getting the other German companies to join ICHEIC, no. They have made it very clear that they don't want to join. They won't join. The concept of the Foundation is in essence if that works, if that agreement works, then the non-MOU German companies are brought into the process through the Foundation.

And then we would—for example, if ICHEIC—we have to work out the details yet, but ICHEIC—I am about to be corrected. We would have to work out the details, but then ICHEIC would be responsible for seeing that the claims against those non-MOU German companies were paid. So then ICHEIC would be in the process, but never will they join ICHEIC as such.

And as I have been reminded by my good friend to my rear here, the MOU companies, you should remember, also have their German subsidiaries, and they are involved, but that is all.

Mrs. MORELLA. Do you think the German Government is doing enough to help in the negotiations? Then I am going ask you about Congress' role.

Mr. EAGLEBURGER. That is a good question. I guess, Mrs. Chairman, I would say—the trouble, as I see it, this is only my own prejudiced view, but, as I see it, the introduction of the German Government into this process and indeed the introduction of the U.S. Government into this process has in one way at least complicated things.

And is the German Government doing enough? The answer is they are doing all I think we can expect them to do. But it is not enough. In fact, to a degree, and again I know that the Ambassador to my left won't necessarily agree with this, but to a degree I think the rigidity that we have seen on the German side in these negotiations on the Foundation is to some degree a creation of the fact that the Foundation is created by German law.

There are certain things laid out in the law that they must do, so that in effect, to some degree, I am negotiating with somebody who is bound by German law to which I am not bound. But how do you get a negotiator to change a position if, in fact, he is told by the legislature to do it? So there is no answer to your question.

Mrs. MORELLA. Well, actually it is. But if you can go a little further about what role do you see that we in Congress can play to help you in your efforts to try to convince the German insurance companies to participate in ICHEIC?

Mr. EAGLEBURGER. That is the one question, Chairwoman, I wish you never asked me, because it is a tough one for me to deal with. I devoutly believe and have from the beginning that with all of the difficulties that have been dealt on this morning and I am sure will be this afternoon, with all of the weaknesses and imperfections of ICHEIC, I have always believed that if the governments would just stay out of it, in the end we would do better.

And let me give you an example of what I mean, at least a partial example. Before the German Foundation, before the American Government and the German Government put their heads together and came up with this Foundation, within ICHEIC we were dealing with the problems of the five companies. And it is easy for me

to say it now, but I will tell you that I happen to believe that if it had stayed this way, and the Foundation had not become an issue, we would probably be pretty well through most of this now.

What has happened is because of the involvement of this German federation is that we have not only bifurcated, we have trifurcated—if there is such a word—the negotiations. We have to carry on. One, we have got the Foundation. Two, we have got the non-German MOU companies like Generali, where we made an agreement, again, much because of Mr. Singer over there. And then third, I have got three companies that haven't yet come to grips with the fact that they better settle some one way or another. That is XSA, Winterthur, and Zurich. So at one point we were going to be dealing with all of the companies. We would have one set of rules for everybody. Now, because of the Foundation, we have one set of rules for the Germans, for those German companies. We have got another set of rules for Generali. We are going to have a third set with AXA, Winterthur, and Zurich at some point, and, therefore, in my judgment, my job at least would have been a good bit easier if we hadn't had the involvement of the U.S.-German agreement.

But I must say, on the other side of that argument, if this negotiation with the Foundation succeeds, we will have brought into the process a number of German companies that otherwise would not have been involved. So that is the payoff. And I suppose, in that sense, the Foundation is a good idea. It has made my life more complicated. That is not necessarily a particularly important question. And it is a long answer to—attempt at an answer to your question.

I must say to you I still believe that we would be better off if ICHEIC—and I know a number of you here think that ICHEIC is a total failure. Well, I can't argue with you other than to say what can you do to substitute for that failure I have yet to see.

Chairwoman, I haven't given you an answer, but I would prefer that government stay out of it.

Mrs. MORELLA. I think that is a good answer. You reached that point to—you were giving us some of the complexities.

I note I have a copy of an AP report of the speech that you made, and you were asked the question about Allianz. You didn't really refer to them that much in your response to the question, the large German insurance company, of failing to compensate a single claim of the 4,800 claims submitted by the International Commission, and when you were asked that, how much have they paid by July 3rd, you said, "A big fat zero," zero. And I found that to be kind of interesting.

Mr. EAGLEBURGER. So did Allianz.

Mrs. MORELLA. I know my time has just about expired. I will just try, in response to that same question, to give Ambassador Bindenagel—it seems like the German Government should be able to exert some pressure on the German Insurance Association to join ICHEIC. Has the German Government done so?

Mr. BINDENAGEL. Madame Chairwoman, in fact, before I get to that direct answer, I would like to say that the purpose of the two governments dealing with the insurance was in the context of dealing with all of the claims that were arising out of the Nazi era and

World War II. So from the beginning, part of the discussion, when ICHEIC was approved at the very early part, we asked them to become part of this process of negotiation because the beneficiaries of ICHEIC and those who were not in ICHEIC would really be the same. We wanted the victims to be treated the same in fairness.

We also had the view that insurance companies shouldn't have to pay twice. So underlying that, we felt it was very important that we continue the support that we had for ICHEIC from 1998 through the agreement in July 2000, and to incorporate the most difficult issue that Mr. Eagleburger has already pointed out: How do you get the 300 or 400 other companies in Germany that may have had policies during this period to be part of the process?

The idea would be have them all join ICHEIC. They would not do that. The governments were very active in making—putting pressure. If you were putting the issue to the German Insurance Association that they should join with those German companies subsidiaries, as Mr. Eagleburger has pointed out, plus Allianz to join this process, it was a compromise. It was not easy. It is difficult, as we can see; is today still. They have not come together to deal with the additional claims-handling procedures to free the 550 million marks.

Now, for the next phase indeed the government has been very active in encouraging the companies to be forthcoming in these negotiations. Both governments have tried to ensure that negotiators are focused on the issues and deal with the issues of appeals, audits, lists, and ultimately the issues of cost. Both governments are very engaged, but we are not the actual negotiators themselves. We leave that to Mr. Eagleburger and ICHEIC itself to deal with the negotiator Mr. Bräutigam.

Mrs. MORELLA. Is the State Department doing anything to try to get an agreement for the insurance negotiation?

Mr. BINDENAGEL. Yes. The State Department, under the direction of Deputy Secretary Armitage, has been very, very actively engaged with the German Government throughout the last 15 months, particularly since the change of administration. Mr. Armitage has been very active in dealing with Count Lambsdorff and has instructed me to be actively engaged. I have met with all of the parties repeatedly. I have been on the phone with them in conference calls. I have met with them here in Washington and in Europe, and we have tried very hard to ensure that the parties are focused, moving forward on the issues, and being helpful whenever we can as governments to try to resolve issues that the governments can resolve. But, again, the negotiators themselves are the ones that need to come to the answers that are necessary to get this money freed up for ICHEIC.

Mr. EAGLEBURGER. Madame Chairman?

Mrs. MORELLA. Yes.

Mr. EAGLEBURGER. It occurred to me as I was listening here, a specific answer to your question would be, yes, the German Government, particularly with regard to its own entities, like the BAV, the institution that handles the insurance, that when those institutions become excessively negative, as this one is, it would be a wonderful idea if the German Government could tell them to straighten up and fly right.

Mrs. MORELLA. My time has expired, and the Chair will now be—Mr. LaTourette will take my place.

I am very pleased to recognize Mr. Waxman for his questioning. As you all know, Mr. Waxman has been the leader in this entire issue.

Sir.

Mr. WAXMAN. Thank you very much. And I appreciate the testimony of all of our witnesses today to help us try to understand how we have gotten into the situation we are in and how we can move forward in a constructive way.

ICHEIC was established to facilitate compensation of individuals for their Holocaust-era insurance policies, and these are people who have not yet been paid. So I want to start my questions by examining whether ICHEIC has succeeded in meeting this goal.

Mr. Eagleburger, according to the data you provided in your November 7, 2001, letter to the committee, to date 77,800 claims have been received by ICHEIC, yet member insurance companies have made offers on only 758 claims. That is a minuscule compensation rate of less than 1 percent.

And I would like to have you take a look at that chart. It breaks down the statistics by each member company. Allianz, the German insurance company, has been sent 15,000 claims and made 4 offers. Allianz's subsidiary, RAS, has been sent over 25,000 claims and made 183 offers. AXA of France has been sent 16,000 claims, and has made 13 offers. Generali of Italy has been sent over 40,000 claims and has made 548 offers. The Swiss company Winterthur has been sent 6,500 claims and made zero offers. And the Swiss company Zurich has been sent 9,000 claims and made 10 offers.

Mr. Eagleburger, would you say that this rate of claims approval is satisfactory?

Mr. EAGLEBURGER. Of course not, Mr. Waxman. But I would also say, don't get trapped by the figures too much here in the sense that, as I tried to indicate, in terms of the number of claims that are made, where you can clearly identify a company, it is substantially less than the numbers we are now talking about.

Having said all of that, there is no question it is not satisfactory. I would only say to you this. Those 500 and whatever that have been paid by Generali or whatever, that is 500 and some more than were paid in the preceding period, but it is not satisfactory.

Mr. WAXMAN. Well, I would like to have a second chart put up, because according to the data you provided the committee, even if you look at only the claims that named companies, the member companies have approved less than 10 percent of those claims.

Now, Dr. Brauns testified earlier today, and he highlighted this issue. He said in the few cases where offers have been made, not all claimants have found the offers acceptable. Dr. Brauns had a situation where he had a policy with Generali. He had a copy of the policy, and it took him decades before anything was acknowledged. And then when they acknowledged it, after 50 years of pursuing the claim, he was offered $5,000. That doesn't really seem like a very sincere approach from a company that has been held up to date by a number of witnesses as one of the best.

Mr. EAGLEBURGER. Several points I would make there, Mr. Chairman. Again, I am not going to get into the business of defend-

ing the companies for things I think they have done wrong. But having said that, and you said it yourself, after 50 years you finally at least got an offer. It is inadequate, I assume. I don't know enough about the case, but it is inadequate. But at least ICHEIC has forced attention on the case. He has a right of appeal.

In the specific case, I can't judge, nor I suspect, sir, can you, the merits of the case until I look through the entire file. I will tell you that I think, and I tried to indicate that much earlier—I think the companies, some more than others, are, in fact, playing fast and loose with the decisions I have made on how the claims ought to be treated.

I can only tell you this, and I recognize the question of time and age, but I can only tell you this game isn't over until—if you don't mind my saying—until I say it is over. And I mean by that if I have to get somebody to go back six times on a meritorious case to get the companies to recognize their responsibility, I will do it. Now——

Mr. WAXMAN. Well, let me interrupt you.

Mr. EAGLEBURGER. I can't get into all of these cases.

Mr. WAXMAN. Well, you can't get into them, but we can see the results. I know you are saying that if it weren't for ICHEIC, there wouldn't have been some successes, but it doesn't look like there are very many successes.

Let me give you another case from a constituent of mine, Mrs. Judith Steiner. She had her claim rejected by RAS, which is a subsidiary of Allianz, and she filed her claim with a copy of the receipt for the last premium payment her grandfather paid before the family was taken from Hungary and sent to the concentration camp. The company's insignia was on the receipt, yet RAS responded that her claim was denied because the existence of the policy could not be corroborated in the company's files. So what would you do about that if she came to you, and she probably has?

Mr. EAGLEBURGER. She has not, not as far as I know. But I suspect that is, in fact, the case I just mentioned earlier.

Let me just finish. The fact of the matter is in that case, and in any number of these other cases, as we find them, we are going to go back to the companies again, and we are going to tell them we want an explanation of why the decision was made this way. And if I have to go back to them 16 times, I will do it.

Now, the problem here is that this takes time, I know that. That is awkward. The other side of the problem is that, as I indicated to you, I am going to put together a policing team that will try on a basis of sampling at least to keep checking on how well the companies are doing.

The best I can tell you, Mr. Waxman, is that we will do what we can to force those companies to perform as they are supposed to on the treatment of these claims.

Mr. WAXMAN. Mr. Eagleburger, I know you will do what you can. It may be that you don't have the authority to tell these companies what to do. That is a fundamental problem. But what we have are people who have clear documentation, and they can't get any satisfactory results.

Mr. EAGLEBURGER. So far.

Mr. WAXMAN. Well, this is 50 years.

Mr. EAGLEBURGER. I can't be responsible for that.

Mr. WAXMAN. ICHEIC has been in operation for 3 years, and you spent approximately $40 million, yet despite spending $40 million, ICHEIC has resolved only 758 claims out of 77,800. This seems like an extraordinary expenditure of funds for a very meager result.

One of the main functions of ICHEIC is to publish the names of Holocaust-era insurance policyholders so that individuals can learn whether they or their family may have a claim. And according to data provided to the committee by ICHEIC, the insurance companies provided only the names of 9,000 policyholders to ICHEIC.

Mr. Eagleburger, after working with these companies for years, ICHEIC has been able to persuade—you have only been able to persuade them to list 9,000 eligible claimants. Is that a satisfactory result?

Mr. EAGLEBURGER. You know, having worked for them for years, 2 years is not a decade, it is 2 years of which a fair amount of time, at least in the beginning, was trying to get things structured. And, yes, it costs a lot of money.

In the process, however, we have, first of all, established a fairly substantial list, and I would say to you, no, it is not adequate. This is an ongoing process. This is not something that stops tomorrow morning. It is fairly clear that there is still a great deal that has to be done.

Having said that, I will come back to you one more time and say it is more than was done before, and I am not going to accept responsibility for the last 50 years. I am going to accept it for the last 2. And I would only say to you, sir, that while I have heard a great many complaints about what we have and haven't done, we are certainly not by any means perfect, I haven't heard anybody come up with any suggestions on how to do it better. And, in fact, I would point out to you that until ICHEIC was, in fact, established, nobody, including members of this committee, was out there talking about some system that would be put into place to accomplish what we are now trying to do.

So, we haven't done it perfectly, but we have done more than was done in the past by anybody.

Mr. KENT. Congressman, can I throw my 3 cents on that?

Mr. WAXMAN. No. Just a minute.

You say that progress is being made, but no names have been added since April to the list of people who have insurance claims. There is already——

Mr. EAGLEBURGER. What?

Mr. WAXMAN. No names have been added since April, I understand.

Mr. EAGLEBURGER. That is not true at all!

Mr. WAXMAN. They are not on the Web site. ICHEIC has had $40 million—Mr. Eagleburger.

Mr. EAGLEBURGER. Yeah, go ahead.

Mr. WAXMAN. You have had $40 million to spend money to tell the world, come to ICHEIC if you have got a claim. And you have translators and Web sites and radio stations and all sorts of expenditures. Then people call ICHEIC and they send in their claim, and then they never hear from anybody because you send it on to

the company, and then there is no response. And we don't even have the lists.

Now, it is not just your fault, but I can't say that this system is working for the people who are to be helped. And if the system is not working, we've got to try to make it work or change it and do something else, because time is running out for so many of those people.

Mr. EAGLEBURGER. The Congress of the United States, the U.S. Government, other than this exercise of Bindenagel, had nothing to do with the establishment of ICHEIC.

Now, if you people want to get into the middle of this thing, as you now sit here and sound as if this is something that you have been responsible for, or you are about to be responsible for, be my guest. If you want to pass laws and do all of that sort of thing, you go right ahead and do it, and then you see how successful you will be.

You won't be successful. We have been more successful than anybody in the last 60 years on this issue. And you expect in 2 years that we are supposed to make up for 60 years, and I am telling you that is nonsense.

We have not been—we are not perfect. We have spent a lot of money. I think the Jewish community would say to you that one of the reasons the money was spent was, in fact, so we could get to the Jewish community and tell them what the possibilities now were. But I am not going to argue that we have been greatly successful, but when you sit there and throw back at me the $40 million, and we have only produced so much in the way of results, No. 1, you don't understand what the $40 million was spent for, and No. 2, you expect that we are going to accomplish in 2 years what nobody, including this body, was able to accomplish in 60.

Mr. WAXMAN. Well, we have asked you in questions that we sent in advance of this hearing for how this money was spent. This $40 million on administrative expenses is twice as much as the money that has been offered to survivors under the process. And we asked you, for example, the level of ICHEIC's officials salaries and expenditures on international meetings.

For example, you are aware of this, I am sure, one article reported participants in ICHEIC conferences for the most part traveled in business class, stayed in hotels that cost over $500 a night, and under these circumstances, I think it is reasonable for Congress to ask for a precise accounting.

Mr. EAGLEBURGER. Why? What has that got to do with your oversight responsibilities on the Foundation? Not one thing, No. 1. No. 2, I will be happy to answer the questions, and, in fact, we gave you this because I am not trying to hide something. But I am not about to accept for 1 minute that this committee has oversight responsibility on what ICHEIC has done outside of the Foundation.

And if you want the figures, and want to do it in a way that doesn't ask me to produce 100 copies of something in 2 days with questions that are none of your business, I would be happy to do it. But I am not going to sit there and try to answer some of the questions you have asked, like how many meetings have there been? How much did they cost? I haven't even the vaguest idea on some of this. We would have to pull it together.

But I am prepared to tell you how much we spent. I told you a great deal about it here, but I am also not prepared to accept that I am going to have to sit there and defend to you when we have flown business class, what kind of hotels we have stayed in, and so forth. I will give you the figures, but I am not going to sit here and spend my time trying to tell you something that frankly is none of your business.

Mr. WAXMAN. Well, I thank you very much for telling me it is none of my business. I do want those figures. And we will insist that you send them to us.

Mr. EAGLEBURGER. Well, you don't insist to me. If you want to subpoena them, go ahead.

Mr. WAXMAN. We will insist that you give it to us. And let me tell you——

Mr. EAGLEBURGER. I am not going to do it!

Mr. WAXMAN. Let me tell you why I called you here. I have a constituent who has got a claim for 60 years. She has got the receipt from the insurance companies, and she goes to ICHEIC, and she gets a blank form letter, and you are out spending money telling her to come to you. And the companies don't care. And you tell us it is none of our business, and you talk——

Mr. EAGLEBURGER. No, no.

Mr. WAXMAN. Wait a second. I didn't interrupt you. When you had these panelists early this morning and you came in and you said these people this, these people that, you people this, you people that, those people that testified in the morning session lived through the Holocaust, had claims for insurance payments. They had pretty substantial claims. They have been ignored, and they have been lost in the process. You may think that they are mistaken in one place or another in the way that they have expressed themselves, but I think you are a little disdainful of them and us.

Mr. EAGLEBURGER. Oh, for heaven's sake! That is the dumbest thing that I have ever heard! I am disdainful of them? I have spent 2 years trying to get this thing to work, and I am disdainful? I may not have done it well, but don't you tell me for 1 minute that I am disdainful of these people who have suffered the way that they have. What do you think I tried to say today but that I am devoted to this?

Mr. KENT. Mr. Congressman, I have got to interrupt for a second, because I don't like what is going on. Sir, I have told you at the beginning of my remarks, ICHEIC is not the criminal. Larry Eagleburger is not the criminal. You have no right to talk to him like this! I was here during the meeting. He is for the survivors. He is fighting for them. You point your fingers at the companies. You point the finger to the German Foundation, just like I did. Then you will have the right to talk to Mr. Eagleburger the way you do.

You respect. I am telling it to you. $10 million was spent on this advertising. You know what, sir? If you would know about it, if these companies, Allianz and the others, would send you the list, then instead of $12 million, maybe $40, $50 million would be paid. So why don't you pass a law that they should be thrown out from the United States if they don't respect these policies.

This you can do, but don't come here, and I don't want to hear the way you talk to Mr. Eagleburger. I have too much respect for you, sir.

Mr. WAXMAN. Thank you.

Mr. KENT. I have respect for you, too.

Mr. WAXMAN. Then let's all respect each other and stop screaming at each other. And I apologize if my voice was raised, but I have a reaction to others who have raised their voice to me.

Mr. Lefkin, you are here representing one of the major companies, a company that is part of the ICHEIC funders, part of the ICHEIC process. And I made reference to a constituent. She has the receipt for a premium payment was made by her grandfather before the family was taken from Hungary to the concentration camps—this was to RAS, a subsidiary of Allianz—and the company just said no. They can't substantiate it. We hear other testimony that the companies—according to Mr. Kent and Mr. Eagleburger—the companies are not doing what they should be doing.

How do you respond to that?

Mr. KENT. Yes, I respond to that. Pass the law that they should respond.

Mr. WAXMAN. Thank you very much.

Mr. Lefkin.

Mr. LEFKIN. Well, thank you, Congressman Waxman. Two things. As it relates to that particular case, I will be delighted to review it, to make sure that it gets the appropriate review again and get a response back to you and to your constituent.

I would also like to put into perspective some of those numbers. We have heard large numbers bantered about, 13,000 claims submitted to Allianz. These are 13,000 inquiries, and they relate to the entire German marketplace. Allianz is the only German company that is a member of the international commission. And even the claims where they identify Allianz, a large percentage of them identify Allianz mostly because it is the most well known German company. They are not necessarily Allianz claimants or Allianz policyholders, and in most instances where they are Allianz policyholders, they have been paid in the past.

Mr. WAXMAN. Well, Mr. Lefkin, according to that chart that I put up, Allianz has received 15,000 claims and made 4 offers. How can you say that you are serious about paying reparations when you have recognized only 4 out of 15,000 claims as legitimate? You say that there are valid reasons for rejecting claims, but, again, it just seems to me a lack of sincerity on the part of the company or an eagerness on the part of the company not to pay anything if there are so few that have been acknowledged by Allianz.

Mr. LEFKIN. No. Again, the number I received is 13,000 inquiries that were submitted to Allianz, and we determined about 10,400 of those, our research indicated that there was no connection to any of the Allianz German insurance companies. Another 1,700 cases are being actively reviewed.

But, again, Congressman Waxman, what is being labeled a claim is more often an inquiry. This is merely anecdotal information, sort of anticipating, my father must have had an insurance policy with some German insurance carrier. Sometimes they mention a policy, it could have been Allianz because Allianz is a well-known com-

pany, but that doesn't necessarily mean it is a claim, but we take any inquiry and every claim quite seriously.

Mr. WAXMAN. I hope you will take a look at this one from Judith Steiner, because it seems to me a clear case where she has paid for a premium with RAS and has been quite ignored by the claimants.

Mr. Taylor, how do you respond? Are the companies doing what they should be doing?

Mr. TAYLOR. No. As I acknowledged in my testimony, I think there are some issues of principle where we have a difference of opinion in terms of what the rules should be. And we also have a feeling brought out by anecdotal and individual cases that we are seeing where we feel that the rules that are part of the ICHEIC process are not being applied in the spirit in which we feel that they should be applied.

And I wanted also to just come back to the earlier question. Again, there is no system that is perfect in the ICHEIC system. I think everyone agrees, including those individuals in ICHEIC, it is not a perfect system. At the moment we don't have an alternate system, and our view is that what we need to do is try and make the system work, make sure that we have lists, make sure that those claims that we have received are matched to lists that we will get, to make sure that the list is available so people will know whether they have policies or not, and to make sure that the system works.

I think, in my view, let's take the system, let's fix it, let's do the best that we can with it. We don't have an alternative at the moment.

Mr. WAXMAN. Mr. Lefkin, Allianz is the largest German insurance company, but you have informed the company that it provided only 308 names to ICHEIC for publication. How can you possibly explain publishing only 308 names?

Mr. LEFKIN. Congressman Waxman, Allianz did submit 140,000 names to ICHEIC last year, which were to be turned over to Yad Vashem for processing to cross-check, to find out which may have been victims of the Holocaust. It is my understanding that because of some difficulties experienced by Yad Vashem, that those names have not been processed.

Mr. WAXMAN. Somebody testified earlier that there is an objection from the companies for Yad Vashem to make those names available. Is that an accurate statement? Is Allianz or the other companies objecting to that?

Mr. LEFKIN. Well, we have always agreed, we issued an agreement Allianz, under the auspices of Chairman Eagleburger about a year and a half ago that we provide these names to Yad Vashem, they would be processed, and that they would try to ascertain which of those might belong to Jewish policyholders, people who were persecuted or subsequently lost their lives in the Holocaust. We refined those numbers further. We would investigate those. If there were unclaimed policies, those names would indeed be published.

Mr. KENT. I want to make one correction, that they gave us the name after 2½ years of fighting, I mean daily fighting. It is not

that they came in, opened their pocket and said, "Here you have the names." They did not. It was 2½ years of fighting.

And second, they have many more names in their data base which they are hiding, which they are not giving to us. So this reply is not a reply to me, because they are hiding what they have. And they didn't give it willingly, what they are appearing right now we gave that. They didn't give us. We fought for it for 2 years. That is a difference. Thank you.

Mr. WAXMAN. Mr. Singer, how do you respond to the failure of the companies to give out the names?

Mr. SINGER. Well, I think some of the responses that have been given have been partial truths. I think you have gotten the full list, that is true. There were 15,000 claims, not inquiries. Of those, there were, 8.8 percent of them, about 1,200 of them, that actually named Allianz, and of those 1,200 that named Allianz, in some cases with documentation, only 4 had offers made. That is, I think, not a good record. So let's just respond on that point.

But if you want to go through the list itself, I think, Congressman, you have made a point, and that point is a very, very clear point. But I think to take ICHEIC and make ICHEIC the whipping boy here today is an error. I say that again as the negotiator.

And I want to do what they taught me in law school. We have 500 million Deutsche marks available to be paid. There must be some objective reason why the companies are dragging their feet, and I would like to posit here at this committee, if you permit me for 1 minute, the reason. The reason for that is because they want to claim that they had to pay protection money. We take objection to that.

We feel that since the deal was cut, the money is there. This is not about the money, it is about the processing. The processing is not ICHEIC's fault, the processing is the companies' fault. The companies aren't doing this in a forthright manner. They have six guidelines with regard to how to do it, and they come back each time with three no's for you. It is Khartoum all over again.

You could do one thing. You could force them to try and be more responsive. It is not about the money. It is about getting your constituents the money which already exists. That is something which is inexplicable to me except for bad faith on their part. It is not ICHEIC's fault.

Mr. WAXMAN. Well, I have introduced a bill with Congressman Eliot Engel, H.R. 2693, the Holocaust Victims Insurance Relief Act, which would require all insurance companies operating in the United States—because those are the only ones we have a connection to—to publish basic policyholder information for all policies in effect in areas under Nazi control between 1933 and 1945. The information would be publicly disseminated through the National Archives. Companies that fail to comply would face financial penalties.

Do any of you disagree with that idea?

Mr. EAGLEBURGER. No.

Mr. WAXMAN. So, hearing no dissent.

Mr. Lefkin.

Mr. LEFKIN. I would have to sort of analyze the legislation. As you probably imagined, Congressman Waxman, there is a fairly

complex area relating to both European law, and Congressman Clay referenced earlier in his opening statement that oftentimes, you know, many of the European Governments, particularly Germany, have very strong privacy provisions. So the export of public information relating to insurance policies is oftentimes not possible to be transmitted outside of the country.

So I would have to reserve judgment on the legislation, but I do know that there were very strong practical difficulties in implementing it.

Mr. BINDENAGEL. Mr. Waxman, the State Department has also discussed with your staff some of the concerns that we have with this bill.

Mr. WAXMAN. What concerns are they?

Mr. BINDENAGEL. Some of those concerns are about extraterritoriality, application of U.S. law.

Mr. WAXMAN. I couldn't understand, Ambassador, your testimony when you said you are not interfering with people's rights to sue, yet you are—you urge in the courts that they not allow the lawsuits to go forward. Isn't that interfering with the right to sue?

Mr. BINDENAGEL. No. That is a very, very important question, Mr. Waxman. I am pleased that you are asking it. What we as a government did is agreed to the creation of the Foundation, which, as you have heard today, supports ICHEIC and has provided 550 million for the insurance, but 10 billion marks—rather 550 million marks and 10 billion marks over for slave and forced labor and other issues related to the Nazi era and German claims. In exchange for that, that is in part of the understanding and part of the agreement that we reached, the U.S. Government pledged, committing itself to filing statements of interest that this Foundation, which is supporting ICHEIC, would be, in our view, the best remedy for resolving these issues 50, 60 years after the fact, and that we would go to court and we would argue to the court that these cases brought before them should be dismissed on any valid legal ground.

That is to say, it is in our policy interest that this Foundation be successful, that they reach out to the million survivors who have not had compensation over the last 50, 60 years, and that we resolve banking and property issues, and we resolve insurance issues through this mechanism.

It allows, however, that if an individual claimant wishes not to participate, that is their right, and they may certainly sue in court.

Mr. WAXMAN. Now, you have already gone into court and made this representation which is adverse to the claimant's interest in the court case. Is that because you are satisfied that the agreement is being lived up to and that people are getting compensated through this Foundation that was negotiated? Do you feel that has been a success?

Mr. BINDENAGEL. We do. We have gone into court several times, and dealing with several statements of interest in 60 cases which we have asked and argued in——

Mr. WAXMAN. I know you are successful in stopping those lawsuits, but are you successful in getting people compensated through this agreement that the U.S. Government negotiated which would set up a fund to compensate them?

Mr. Singer points out that he thinks it is a failure because the companies haven't put up the money.

Mr. BINDENAGEL. We are very pleased that the German Foundation will reach out to some 600,000 former forced slave laborers and pay out 2½ billion marks by the end of this year.

As I said in my testimony, we are not pleased, we are disappointed, that on the insurance side that these issues, procedures, the processing of claims is not yet operational.

Mr. WAXMAN. Well, see, slave labor payments may be made. They didn't have to be tied together with the insurance limits, except for the fact that Germany and Austria wanted to end it all and say this would be the maximum liability. So on the insurance side of things, they are not getting the money for the insurance claims, and the U.S. Government is going into court and saying these people shouldn't be able to pursue this lawsuit because it is adverse to the interests of the United States that has negotiated a treaty.

Aren't you, in effect, doing your part of the bargain and the other side hasn't done their part of the bargain?

Mr. BINDENAGEL. Yes, sir. We are doing our part of the bargain. We have not been successful in making this operational. We have been working very actively in support of all of the people on this panel and the others on the German side to ensure that these issues are resolved. They have not done that yet. And we are continuing, and we appreciate the opportunity to raise and discuss these issues here. But, yes, sir, we are working very clearly to that end.

Now, with regard to the lawsuits themselves, those lawsuits were dismissed in the insurance cases, but they were dismissed also by all sides, but with the provision that if this doesn't work, then they can be reopened.

Mr. WAXMAN. Reopened where?

Mr. BINDENAGEL. In the same court under Federal Rules of Procedure.

Mr. WAXMAN. I want to pursue the question of the audit process. Mr. Eagleburger, I'm interested in gaining greater understanding of that audit process.

Mr. EAGLEBURGER. Yeah.

Mr. WAXMAN. Your November 7 letter says that a company can only issue a final decision on a claim after its compliance with ICHEIC standards is certified by audit. Is each specific claim reviewed by an auditor?

Mr. EAGLEBURGER. No.

Mr. WAXMAN. Are the audits conducted by independent auditors and who selects——

Mr. EAGLEBURGER. Yes. Yes, they are.

Mr. WAXMAN. Who selects them for each company?

Mr. EAGLEBURGER. They have been selected from within ICHEIC. We have an auditor from ICHEIC. They have an auditor and the two of them then select the third.

Mr. WAXMAN. Mr. Shapo, is the NAIC confident that the ICHEIC audits are independent and thorough?

Mr. SHAPO. They're still in progress, Congressman. I think that the framework of the audit process is a thoughtful one that provides accountability to the system.

Mr. WAXMAN. Mr. Eagleburger, could you describe the status for the required audits for each of the companies required by the MOU?

Mr. EAGLEBURGER. Would you say that again?

Mr. WAXMAN. The status, describe the status—I'm turning to the audits required by the MOU. Could you describe the status of the required audits for each of the companies?

Mr. EAGLEBURGER. Yes. I'll have to check with my friends here, but just a minute. AXA and Zurich have been completed. Winterthur will be completed next week. And what about the others? All of them will be done within the next month.

Mr. WAXMAN. Mr.——

Mr. EAGLEBURGER. And I don't know what they say at this stage.

Mr. WAXMAN. I'd like to have us be able to review copies of the audits of the member companies, and we'd like to ask you to submit those audits, provide for the committee the audit reports upon their completion, if you would.

Mr. EAGLEBURGER. Mr. Waxman, I will have to take that under advisement, but my concern is I think that those audits were all done on the basis of an agreed confidentiality. But let me check it.

Mr. WAXMAN. Mr. Lefkin, in our letter to Allianz, Chairman Burton and I requested a copy of the audits of Allianz referred to in a July 2001 Los Angeles Times report. The article stated, "Officials at Allianz say they had launched an internal audit of their prewar policies even before the International Commission was formed. The audit of a sample of policies revealed very few that were unpaid and showed that offers had been made on those," said Allaener, the company spokesman. He added that "Arthur Andersen, the large public accounting firm that did the audit in 1998, concluded that completely reviewing the company's files would have taken 1,529 person years."

Allianz's response to my request for this audit, however, stated that this report about this audit "did not come from Allianz nor our auditors and we cannot comment on it." I found this strange since the article is directly quoting the Allianz spokesperson. Can you commit to providing the committee with a copy of the audit referred to in this article?

Mr. LEFKIN. I'd be delighted to, Mr. Chairman. I think we have provided to a number of regulators, including Commissioner Reson and Commissioner Bernstein in Minnesota, on a confidential basis the methodology that was used in that audit, and I'd be delighted to share that with you and your staff.

Mr. WAXMAN. OK. Now I want to go into the question of the nonmember insurance companies, most of the German insurance companies are not currently participating in the ICHEIC process. This is putting the survivors and their families in an impossible situation. They can't file effective claims without knowing which company held the policy of their families or whether their families had a policy at all unless the companies come forward and identify their policyholders. I understand that there are ongoing negotiations between ICHEIC, the German Foundation, and the German

Insurance Association in an attempt to get non-ICHEIC insurance companies that issued Holocaust-era policies to join ICHEIC. In fact, I believe one negotiation session occurred——

Mr. EAGLEBURGER. No.

Mr. WAXMAN [continuing]. Yesterday in London.

Mr. Shapo, I understand that you flew in from that session to attend this hearing. Could you give us an update on the negotiations and what are the major sticking points?

Mr. SHAPO. I covered this to an extent in my testimony, and I'm uncomfortable giving a high level of detail about my negotiations as they're ongoing negotiations. Right now we're working on the—what I would call the claims-related issues—list, audits, and appeals. I do think, as I said earlier, that Ambassador Bräutigam has put substantial proposals on the table. I do not think that they are completely adequate for us to sign off on. The appeals negotiations I would characterize as nearly complete. The lists negotiations, we are still waiting for some more information about the quality and the nature of the databases that the non-MOU companies have. Depending on the results of those inquiries, I think we've got a decent basic framework that should provide the basis for an agreement on lists provided that we get the types of answers we're looking for in these inquiries.

Audits at this point are a big bit of a sticking point, and again I don't feel comfortable giving details about what the disagreements are about but we've got significantly more work to do on audits. I mentioned the cost issue which, you know, as I said, was the main issue that was raised in this resolution that I offered at the NAIC and that's a very significant gulf between the two sides.

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

Mr. EAGLEBURGER. I want to correct one thing. These are not negotiations about bringing these companies into ICHEIC. They are negotiations which would deal with the issues where ICHEIC requires things like audits and so forth. In other words, if we're going to have an agreement with the Foundation, the Foundation is going to have to agree to a number of things that are important to us, to the regulators, and to the Jewish community, audits that are adequately done, appeals and so forth, but it's not a negotiation to bring those companies into ICHEIC. They have made it clear they won't do that.

Mr. SHAPO. Congressman, I think what we would likely see come out of this is some kind of an agreement between ICHEIC and the Foundation and the German Insurance Association that would be memorialized in a way that—well, if it's to succeed and we're to sign off on it in a way that would basically incorporate the fundamental parts of core ICHEIC processes on all the issues we've been talking about here today.

Mr. KENT. Congressman, you were right before when you said that the German Foundation agreement about slave and labor is beginning to work. However, the one issue is the insurance. It is not working. The negotiations already a year and a half. I'll give you an example. There is the Net Alliance Association of Insurance Companies. Then the negotiation went down one, two, three, and they belong, they are the six members, not the German Foundation, not the association of the Germans. And this is not working

because in the first place, as I said before, the German Foundation was supposed to have been only for slave and labor and then only through a blackmail, and that's the only way I can use it. This was thrown into the insurance and we have trouble.

Chairman Eagleburger is right. If not for the government interference of throwing in—I mean the German Government of throwing in and then having an ambiguity because we have to realize that ICHEIC is a private corporation. It is——

Mr. WAXMAN. Thank you, Mr. Kent. I appreciate—I agree with what you're saying. I do agree that has become a real problem. I received a copy of the proposed agreement dated March 2000, drafted by the German Insurance Association, and I find a number of the German Insurance Association's suggestions troubling. For example, the association wants insurance companies to have a veto power over ICHEIC decisions. In addition, it wants a German-only appeals process outside of ICHEIC. Also it wants to limit the publications of policyholder names and wants to have German-only auditing, avoiding true independent auditing.

Mr. Eagleburger, can you describe ICHEIC's response to these proposals?

Mr. EAGLEBURGER. Yes. If there weren't ladies present I'd even do it more clearly, but we've made it very clear we will not accept that.

Mr. WAXMAN. And how about you, Mr. Shapo?

Mr. SHAPO. I have the same position.

Mr. WAXMAN. Perhaps most troubling is the efforts made by insurance companies to receive large reimbursements. Mr. Eagleburger, what is ICHEIC's position on the company's efforts to recoup expenses?

Mr. EAGLEBURGER. To the degree we've come to grips with it, Congressman, and we have not finally yet, we're all over the lot within the Commission on the subject, and it's an issue that when we have proceeded further with the negotiations on audits and all these other issues that we are going to have to face—well, we run the gamut now of those who are totally opposed to anything to some who are prepared for a modest reimbursement, nothing like the companies desire, and I don't know where we'll come out, frankly. It's going to depend to some degree, I suppose, on the quality of the rest of the agreement. My personal view—and I've made it very clear, my personal view is I think the idea is a terrible one. But this is one ICHEIC as a whole is going to have to deal with.

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

Mr. SHAPO. Yes, Congressman. I think I devoted four full pages in my written testimony to this. It's a very byzantine and complicated——

Mr. WAXMAN. We'll accept that for the record——

Mr. SHAPO. But the bottom line is I think that the proposal is contrary to the letter and the spirit of the executive agreement, and I furthermore don't think it's consistent with the German law.

Mr. WAXMAN. Mr. Lefkin, what is your position?

Mr. LEFKIN. Allianz has certainly fulfilled its obligation. It has provided 20–40 million Deutsche marks to Mr. Eagleburger and the International Commission, and it's operating under the auspices of

the German Foundation law as well and has had all of its funding requirements there.

Mr. WAXMAN. Given that the majority of German insurers have still not agreed to join ICHEIC and the questions raised regarding whether exhaustive lists of policyholder names have been provided by member companies to ICHEIC for publication, it seems logical to question whether the February 2002 deadline for filing claims remains appropriate.

Mr. Eagleburger, is the current filing deadline fair or do you think it should be changed?

Mr. EAGLEBURGER. Well, the answer is I personally think it's going to have to be changed. This also is an issue that's going to have to be debated within ICHEIC, but certainly if we have new names, I personally believe it would be an outrage not to give them an opportunity to file their claims in a reasonable way. Now, whether the Commission will agree with me or not, I don't know—well, I do know. We'll have the regulators and the Jewish groups in favor of it, and we'll have the companies opposed. And under those circumstances I suspect we'll end up extending.

Mr. WAXMAN. Well, it certainly seems to me incomprehensible that people should be barred from going forward with claims if they didn't even have the opportunity to get the lists.

Mr. EAGLEBURGER. Yes.

Mr. WAXMAN. Mr. Shapo.

Mr. SHAPO. I'll stick up for the companies and I will assume that they will not be so preposterous as to suggest that a name that a claimant derives from a newly discovered list should not merit being processed whether it takes—whether it's received before February or after February.

Mr. EAGLEBURGER. Mr. Waxman, this does lead to one other comment I'd like to make which is at the heart of a lot of my problems now and that is if we extend, it's going to cost more money to keep ICHEIC going. And I have—at this stage at least I've been in a running battle for some months now with the companies to provide us with more funding. August 2000 was the last time they gave us anything. At this point we can operate for a while, but I will tell you now that I am going to raise the decibel level on this issue substantially within the next few weeks and either the companies are going to provide us with sufficient funds to continue, or we are going to have a very serious problem, which I can only tell you I will not take lying down.

Now, at the moment we'll be much better off if we get an agreement with the Foundation because then there will be substantial moneys flowing again, but if we don't get that agreement with the Foundation in some reasonable period of time, we're going to have troubles, and I should say to you in my judgment the companies, the MOU companies now, the companies within ICHEIC are perilously close to my having to rule and tell everybody publicly that they have not been—what's the word we use? They have not been in compliance with ICHEIC and under those circumstances, courts and so forth, may do whatever they wish, but either this issue gets settled and soon or we're going to have a donnybrook.

Mr. WAXMAN. As I understood, you think that we ought to extend the deadline and connect that to the publication of the policyholder

list. Do you think we also ought to have an extension of the deadline connected to fundamental reforms of the ICHEIC process such as new guidelines for ICHEIC with regard to expenditures?

Mr. EAGLEBURGER. I hadn't thought about it and I guess the answer is I don't know that we ought to extend the dead—if we're going to extend it at all for the claimants, we can certainly use that time to do whatever sort of reforms we agree need to be done, but you haven't started beating my wife yet, Mr. Waxman, and beyond that I really can't go——

Mr. WAXMAN. Do you believe, Mr. Eagleburger, that there should be sanctions against insurers that have failed to join the settlement process?

Mr. EAGLEBURGER. Tough question, and I'll tell you why. The answer is by and large, yes, I think we should. I have spent too much time in the U.S. Government watching sanctions be of very little use but if we can fashion the right kind of sanctions, I'm not sure—I'm assuming your question means U.S. Government sanctions; is that correct?

Mr. WAXMAN. I would think those are the only ones we'd have access to.

Mr. EAGLEBURGER. Well, the answer to that is in a general way, yes, I don't object to it. We'd have to talk about the specific circumstances——

Mr. WAXMAN. Anybody else——

Mr. EAGLEBURGER [continuing]. Under which they would be imposed.

Mr. WAXMAN. I'm going to ask to see if anybody else wants to comment on the sanctions. Mr. Kent.

Mr. KENT. Yes, I believe it is correct. Because the way I have seen what's going on right now, particularly with the German Foundation, and the way they want to implement it, whatever they like, Allianz wanted. Whatever they don't like it, they don't want it. So unless there would be a strong sanction by our government to protect our rights, not insurance company's right, then I would say they will continue doing what they are doing because it reminds me of the very famous story which the Russians said to the Pope how many divisions do you have? If you don't have something that we can hold over their heads, then they will do what they're doing right now, and the German Foundation is the perfect example.

You asked, Congressman Waxman, about the expenses. They had no right to ask for it. MOU companies are subject to the MOU, not to the German Foundation.

Before I finish I just want to mention one thing. I am sorry, Congressman Waxman, if I raised my voice to you. I'm not a youngster. I spent a lot of time working on the German Foundation and I took a lot of abuse what I heard from the Germans and other things. I don't want to see anybody being abused. I have learned during the war that one cannot be a bystander. You have to take sides. You cannot be neutral.

Mr. WAXMAN. I appreciate that and I regret that—if I——

Mr. KENT. I raised my voice but it was in——

Mr. WAXMAN. I regret if I raised my voice to you or to Secretary Eagleburger, but I do believe—everybody, you should understand—

that Congress has a role to play. When our constituents are complaining that their claims aren't being paid and they're being ignored, then I think we have to pay attention to it, and when we look at the data, we see the high expenditures by ICHEIC and the meager results and I think the committee should be investigating first and then deciding on appropriate legislation. That's our job.

I introduced a bill that you all are aware of that would require companies doing business in the U.S. to list their names, list the names of the insured. I certainly don't want to question people's motives, and I accept people's sincerity and their intentions. But I think absolutely that's fair for Congress to look into ICHEIC, to look into the insurance companies, to look at the results which I have to say are very disappointing. But let me go back to some of these other questions.

Ambassador, I want to know, Mr. Bindenagel, under the German agreement, the United States makes statements of interest. Is my understanding accurate that the criteria for receiving the benefit of the statement of interest does not take into account whether a company has agreed to comply with ICHEIC procedures?

Mr. BINDENAGEL. That's correct, Mr. Waxman. The eligibility for the statement of interest is in the U.S. foreign policy that the Foundation and therefore ICHEIC be the exclusive remedy for resolving these issues and we will file statements of interest in the U.S. foreign policy.

Mr. WAXMAN. Do you believe that the United States should file statements of interest advocating dismissal of claims against companies that refuse to comply with ICHEIC procedures?

Mr. BINDENAGEL. If the operations of ICHEIC are functional and they do not work, then they have the claimants, the plaintiffs, and others have the right to reopen the cases, as I said before.

Mr. WAXMAN. Since there are concerns about the effectiveness of ICHEIC, is the State Department reconsidering its position?

Mr. BINDENAGEL. The State Department is not reconsidering its position and I must take this opportunity to respond to your offer to comment on sanctions. It is not in our view the right time for sanctions at this point, as you can tell. These issues are very emotional, contentious, and we would like to focus all of the attention, all of the energy of all of the parties on the resolution of these issues that you've raised here today—audits, appeals, lists, and costs. We would like all of the attention to be focused on those issues and the resolution of those issues, not be diverted by issues of threats and sanctions. They're out there. We know that.

The insurance commissioners have made safe harbor issues a concern. There are possibilities of reopening these cases if the legal cases don't work. All of the energy, sir, should be directed toward the resolution of these issues. We have 550 million marks that's available to pay claims and 350 million marks of that to make humanitarian payments for people who waited too long for those payments.

Thank you.

Mr. WAXMAN. During the July 17, 2000, signing ceremony of the U.S.-German agreement, U.S. Holocaust Envoy Stuart Eizenstat said, "It is critically important that all German insurance companies cooperate with the process established by ICHEIC. This in-

cludes publishing lists of unpaid insurance policies and subjecting themselves to audit. Unless German insurance companies make these lists available through ICHEIC, potential claimants cannot know their eligibility and the insurance companies will have failed to assume their moral responsibility." If participation in ICHEIC procedures is not a criteria for receiving the benefit of a U.S. statement of interest, how is the U.S. Government continuing to exert pressure on these companies and the other companies at ICHEIC to publish policyholder names?

Mr. BINDENAGEL. I must say, as I have indicated, both prior to the change of administration and in this administration, we have worked very closely with all of the parties here at the table and those not at table to do just that. You heard the representative from Allianz Fireman's Fund say that there are 140,000 names that they have submitted to ICHEIC. That is indeed a principal point that, yes, indeed lists——

Mr. WAXMAN. I think that he said he submitted to Yad Vashem.

Mr. BINDENAGEL. No, to ICHEIC.

Mr. SHAPO. To ICHEIC.

Mr. BINDENAGEL. For checking with Yad Vashem. Indeed that is a signal that we want to have. Those people who have potentially the ability to make a claim need to have those lists. We have made that very clear. The parties are themselves negotiating the details of that agreement.

Mr. WAXMAN. I also understand the U.S. Government is committed to continuing to file statements of interest in cases after the February 2002 ICHEIC deadline for filing claims passes, yet serious concerns have been raised that ICHEIC member companies have not yet published these lists of policyholders that would facilitate the filing of claims and many other insurance companies have not even agreed to join ICHEIC procedures and haven't provided any names.

In light of this does the State Department believe that the February 2002 deadline should be extended?

Mr. BINDENAGEL. Mr. Waxman, the State Department doesn't take a position on any particular issue. I think we've made it very clear in the first part of your question. Indeed we are committed to filing statements of interest, and the second with regard to publication of lists we have made it clear that is a very important part for the public confidence that ICHEIC is doing what it set out to do. The actual negotiations themselves over the date and the deadline is an issue for the members of ICHEIC to make themselves.

Mr. WAXMAN. One moment. I want to thank all of you. I still have additional questions, but I'm going to ask the chairman's indulgence to—and members of this panel—to submit questions in writing so that we can receive responses in writing and have them on the record. There are a number of areas of detail that I think we ought to pin down. Rather than take the time here to go through all of them, particularly since many of you may have to check your records, it would be I think beneficial for us all to get a response in writing for the record.

So with that request, Mr. Chairman, I would hope the members of this panel will respond to those questions and respond in writing

for us and in as prompt a manner as possible. We'll outline that in the letter to them.

Mr. LATOURETTE [presiding]. Without objection, the gentleman's request will be entered into the record and the Chair would ask for the cooperation of the panel. And I just have a few housekeeping matters, if I could take Mr. Waxman's indulgence, and then if you have some additional questions, we could finish.

Mr. Eagleburger, starting with you and it stems from questions that Mr. Waxman was talking to you about. It relates to a letter that you sent to the committee, I think yesterday, relative to the expenses under the MOU. In that letter you referenced the fact that no expense money has been received from the participating insurance company since August 2000.

Mr. EAGLEBURGER. Right.

Mr. LATOURETTE. You went on for a little bit of time in your response to one of the questions to Mr. Waxman and I think also in the letter that you sent to us you believe that the money, which I believe totaled $60 million if I understand things correctly, is being withheld as some form of punishment for decisions that you've made. Is that your belief?

Mr. EAGLEBURGER. Yes. And it was not only withheld. We'll never see it. But the companies first agreed—and this was the first meeting of ICHEIC. I asked the companies to agree to in effect a $90 million escrow account just to demonstrate their goodwill. They finally agreed to it. They paid in $30 million and have never paid anything since, and I was told by representatives of the companies that they were withholding it because they were unhappy with some of these decisions I had made, that it is—the $60 million has not been forthcoming, and I do not believe it will be, sir.

Mr. LATOURETTE. Can you give us an example for the record of an example of one of the decisions that you made that you think has caused them to lead to this conclusion?

Mr. EAGLEBURGER. I thought you might ask and I've got a list of them here. Hold on a minute. Because it's a fair number but I will only give you a few—if I remember where I put it. Anyway the point is, for example, valuation of Eastern European policies. What formula do you use to value an Eastern European insurance policy that was written say in 1935? And that has caused—I hope I don't have to explain what the valuation was because I couldn't. I mean what the process was. It's fairly complicated. But the companies were very unhappy with that.

Valuation of German insurance policies, some insurance policies, and what to do about blocked and confiscated policies, many of which were confiscated during the Holocaust, many of which were just blocked so they couldn't be paid, and I issued the decision which said that in both cases those policies should be honored by the companies and, in other words, they would—if we found a blocked or confiscated policy that fell within the purview of the ICHEIC process that companies would have to pay it.

And then there was another one, for example, on what should the companies do about paying on nationalized policies where, for example, the company would have owned a company in Poland, which was then nationalized by the Communists immediately after

they took over, and again I ruled that those policies should be paid. And that also did not make the companies very happy.

There are some others if I thought more about it, but it's those kinds of things.

Mr. LATOURETTE. Let me, Mr. Lefkin, to you, is it accurate that Allianz has cutoff payment to ICHEIC since August 2000?

Mr. LEFKIN. Allianz has been operating—is actively involved working with Mr. Eagleburger and Mr. Sher on the Financial Oversight Committee. I am not privy to those discussions. I do know that Mr. Eagleburger—what I've heard is there is adequate funding now and that there are a number of issues that are being discussed, but ICHEIC is in no imminent danger of being closed down certainly.

Mr. LATOURETTE. And I apologize because I got here late because of other business and the way the Congress works is you come late, they make you the chairman. So I got to be the chairman, but I thought I heard Mr. Eagleburger indicate that no money has been paid since August 2000, and while he can keep going for a while he's not so sure, and I think he said Armageddon is coming or some other appropriate expression. So my specific question, and if you don't know the answer, I'd ask that you submit it for the purposes of the record: Are you aware as to whether Allianz has paid any money to the Commission since August 2000?

Mr. LEFKIN. I'm not aware of that. I'll investigate that for you, Congressman.

Mr. LATOURETTE. Did you hear Mr. Eagleburger's abbreviated list, he said it wasn't all-inclusive but he indicated that there was a list of decisions that he had made in his capacity that had frustrated or not pleased the company. Are you aware of those decisions?

Mr. LEFKIN. I'm aware of those decisions, yes.

Mr. LATOURETTE. And is it your understanding that your company is one of the ones frustrated by his decision?

Mr. LEFKIN. Not particularly. I mean there are five companies part of the Commission. Some of the decisions frankly were not that controversial. Some of them were. There's always varying degrees of debate. Even after some of those decisions were made the funding still continued. I believe, as Mr. Eagleburger or Mr. Sher said, the last check was received I think in August 2000. Many of the decisions that Mr. Eagleburger cited as having companies' disfavor were made before that date.

Mr. LATOURETTE. The specific question I would be interested having your company answer in writing is, one, have you made any payments since August 2000 based upon his observations and, if not, how do you believe that complies with the MOU that was entered into?

Ambassador, to you, there was some discussion about sanctions and what do we do about it and so forth and so on and a lengthy discussion about these letters of interest that are filed in litigation. If I have that right, what happens is when a claim is filed the government pursuant to this agreement files a letter of interest, and these cases are then dismissed without prejudice so that at some point there isn't a satisfactory resolution that the plaintiff could come back and refile in the appropriate forum.

Is that correct?

Mr. BINDENAGEL. That's my understanding. I do want to point out that in the cases in which we have filed statements of interest, the U.S. Government is not the only one who has asked for dismissal but the plaintiffs as well, the defense, and in some cases special masters of the court have also asked for dismissal so that when we supported this Foundation and the Foundation supports the International Commission here, it's really together with all the parties. It's not in opposition.

Mr. LATOURETTE. I know. I understand that. But my limited experience, I haven't practiced law since I came to Congress, but I haven't met a Federal judge yet that wouldn't rather clear his docket than move things along especially with the spate of appointments by all administrations have left vacancies all over the country for political reasons in my opinion, and it seems to me that may be an opt out that people are choosing. The difficulty in claims like this that are 50 or 60 years old is you have claimants who are not getting any younger. The opportunity whereas a young person like Mr. Waxman wanted to dismiss something without prejudice and come back and file it later may not be available to someone in their 70's or 80's who has been waiting a very long time to settle a claim.

But the question I specifically have, though, is what is the State Department doing? If Mr. Eagleburger's observation is right, and I believe that it is, that Armageddon is coming and that no payments have been made pursuant to this agreement, which leads to our foreign policy of entering these letters of interest, and they haven't paid any money since August 2000, what is the State Department doing to encourage these folks to do what it is they're supposed to do that then gives them a benefit, I would suggest, in our legal system?

Mr. BINDENAGEL. In fact, in my written statement I have outlined many things that we've been doing. Since this administration took over and reaffirmed the position of Special Envoy, we have engaged with all the parties in not only the insurance issues but the whole range of issues. Mr. Armitage has taken up these issues directly with the German Government on a regular basis, and I have spent much of my time since the change of administration trying to help create an atmosphere of cooperation so that these issues could be addressed. I have spent many times directly dealing with all the people at the table here, trying to keep the focus on the issues.

As you can tell, it's a very emotional and sensitive issue and very often gets off the rails, if you will. And I have traveled extensively in Europe, meeting individuals and we have focused on the four issues that we have been talking about here today, appeals, audits, lists, and costs. The attention that's been spent and the deep level of detail is for the negotiators to deal with, but we have tried and I think so far succeeded in increasing the pace of the negotiations.

Mr. Eagleburger has called together negotiations with the German Foundation repeatedly. If there's a complaint it is that it has taken up too much of the time, as you heard from some of the other panel members. We've been very intensively operating and trying to resolve these issues because there's—550 million marks was ne-

gotiated, is deposited, is available for paying claims and for making humanitarian payments.

Mr. LATOURETTE. If I understood, and if I haven't understood it correctly, correct me, but the agreement seems to be working well or at least better on the slave labor side than it is on the insurance side. I thought I heard you say that, and I think that I would agree with that. On the insurance side, though, relative to U.S. foreign policy, if the companies are not willing to honor their commitments, and that if the commitment was made to Mr. Eagleburger to give him $90 million to do his job and he's made them mad with some of the things that he's done and so now they're withholding money so that he can't do his job or they starve him out, what observation would you like to make relative to continued U.S. foreign policy?

I mean we are basically giving these companies legal peace in the United States in exchange for doing what it is they said they were going to do. When do we reach the conclusion, even if they're doing a bang-up job in the slave labor side, that they're not doing what they agreed to do on the insurance side and do you think that we're close, as Mr. Eagleburger indicated, or do you think that's a ways down the road?

Mr. BINDENAGEL. Mr. Chairman, I think you have by holding this hearing today brought everyone's attention to this issue, including all of the negotiating partners. I think that's a rather major contribution to this process. I understand Mr. Eagleburger's concern and skepticism with the outcome. I will confirm his comment earlier that I am optimistic that we will achieve an agreement. The agreements that we have made are not at issue with the exception of the fulfillment of the company's financial commitments. That has not been done. The issue was diverted by the Foundation and we will hold them to the agreements that they have made.

Mr. LATOURETTE. Is there a trigger that you're aware of in U.S. policy or sort of a drop dead date that, hey, if you guys don't fork over the other $60 million, we're not going to file these letters of intent that—I understand the plaintiff and defendant still have to come forward and say yeah, we would like to dismiss it at this moment too, but clearly when the U.S. Government gets involved and files a letter of interest, it's not like me calling up and saying I'm kind of interested in this case, can I file an amicus brief? You bring the full weight and authority of the Federal Government and it can't be lost on anything that is what the government would like them to do at that moment in time. But is there a moment in time that you think we're heading toward that we're going to be done with it?

Mr. BINDENAGEL. There's a moment in time each time there's a case and each time the government consults obviously also with the Justice Department as we go through this process for each case, that is the moment where we review where we are and whether or not they have done what they have agreed to do.

Mr. LATOURETTE. Mr. Kent.

Mr. KENT. Mr. Chairman, if I may throw in another halfway educated guess why the payments are not forthcoming, and I believe it's simply for the reason that Allianz wants to get all their expenses paid, which is completely contrary to the MOU. So what

they are doing, they are withholding the payment and they feel that this way they are not paying the 550 million unless they're going to get paid their expenses. They could get it over my dead body because they have signed MOU and they are responsible for the expenses just like every other company.

This example also is being amplified because the other insurance companies also say if they are not paying, why should we pay? Very normal human reasons. So that you have a domino effect what the German Foundation created, and Mr. Bindenagel is correct when he stated that the slave labor part of it is working, but the insurance which had no part to be there is not working, and it's not working because of one company, Allianz and the Insurance Association, because they want what they want. They want a pound of flesh. Don't want to pay and in this particular issue, let me tell you my own feeling. When we spoke about slave labor. To me it was strictly a moral and ethical issue. I never spoke during the negotiation about money. It was only a moral and ethical issue. This particular case, the insurance is a moral issue, yes, but it is also a monetary issue because the insurance companies—I am a lay person. I say they stole the money from the people that had the policies. They kept it for 60 years. So I said it once to Mr. Hansmeyer, I don't blame you for what your fathers did in Auschwitz and other camps, but I am blaming you for what you're doing right now because you know or you should know that you had in your Treasury hundreds of millions of dollars which did not belong to you. It belonged to the people, so——

Mr. LATOURETTE. Thank you. Mr. Lefkin, is there anything you would like to say that obviously——

Mr. LEFKIN. The only thing I would like to add is the estimated size of the unclaimed insurance policies arising from Germany is about $30 million. At least that was a fairly liberal estimate that was agreed to during the context of the German Foundation negotiations. There has been 550 million Deutsche marks allocated to this. So I think there is more than enough money in the German Foundation compensating to satisfy the needs of all the individual policyholders. And again these are very complex negotiations. They are operating under the context of a German law which was negotiated in part with the Jewish organizations and the U.S. Government. I think it's going to work. I can tell everyone's frustration at this table is probably shared universally, even in Europe, but ultimately you're dealing with people of goodwill and ultimately you have 550 million Deutsche marks on the table which should satisfy all individual insurance claimants.

Mr. LATOURETTE. Mr. Taylor, is there something you'd like to say, sir?

Mr. TAYLOR. Yes. I just don't want to let the record show that there was any sense of agreement from the Jewish side in those negotiations that the exposure of Allianz or German industry was $30 million. Without repeating the negotiations, the argument was it was a considerably higher sum involved in the insurance policies issued by Allianz and by the subsidiaries of Allianz.

Mr. LATOURETTE. Thank you, Mr. Taylor. Mr. Lefkin, just for the record, where did that figure that you used, $30 million, come from?

Mr. LEFKIN. It was one of the estimates that was used, and again I was not privy to the negotiations, but what I understand was that when they arrived at the sum as to what was the size of the unclaimed insurance policies in Germany, and that includes all German companies, not just Allianz, which has about a 15 percent market share, historical market share, it was estimated—and I don't know exactly by whom or by—but the number was agreed to of about $30 million. The German Insurance Association actually believed that's probably much larger than what it really is. Nonetheless, I think the important thing is that there is more than enough money in the Foundation to cover the needs of individual policyholders.

Mr. LATOURETTE. Mr. Singer has made the point before and Mr. Kent I think has made it again that there is a sum of money there and the only explanation that Mr. Singer at least could offer to the committee as to why we're not moving faster is that the companies are dragging their feet. What would your observation be about that?

Mr. LEFKIN. Companies aren't really parties to the Foundation negotiations. They're being led, and Chairman Eagleburger mentioned this before, they're being led by a very capable diplomat, Ambassador Bräutigam, who was the former German ambassador to the United Nations. So I really can't comment beyond that. There are some very complex issues. Mr. Bindenagel certainly referred to some of them, and perhaps I would probably toss those questions over to either of them, who might be able to elaborate further.

Mr. LATOURETTE. Let's go to Mr. Eagleburger. He had his hand up.

Mr. EAGLEBURGER. Well, Mr. Lefkin is a good friend of mine. I like him dearly. He doesn't know what's going on in this particular case. I can assure you that what happens is that Mr. Bräutigam, Ambassador Bräutigam, the German negotiator, at the end of these meetings goes back to Germany and clearly has to brief, debrief the various insurance companies that are his constituents and he may make suggestions to the companies about how they ought to respond to these issues, but he is totally in the hands of the companies as to what they will agree to. He is not an independent operator in this regard, and so the German insurance companies do in fact have substantial influence on the positions taken in the negotiations and most of the time those influences are in my judgment less than creative.

Mr. LATOURETTE. Mr. Shapo, what would you like to share with us?

Mr. SHAPO. Thank you, Mr. Chairman. It just can't be said that the companies have no part in this and that they're innocent bystanders, exactly as the chairman has described. Ambassador Bräutigam has to go back to the companies and try to convince them to accept what we've negotiated. Precisely as my answer to Congressman Waxman's question when he asked about how negotiations went in London, the problem with the lists was that we were waiting for information back from the companies that had been raised in our previous meeting. We had asked a series of questions and Ambassador Bräutigam has been diligently working

to get back those answers, but the companies hadn't been provided them yet, and that's why we didn't get further on lists yesterday than we had hoped to.

Mr. LATOURETTE. Ambassador, I'll get to you in a second, but Mr. Lefkin, Mr. Shapo brings up a point that I wanted to ask you. Can you explain to the committee why it took 2½ years to—I heard you say over 100,000 names to ICHEIC and are being examined by Yad Vashem, but is there some explanation why it took Allianz 2½ years to produce whatever it is you did for this?

Mr. LEFKIN. Actually the sequence of events, Congressman, was that we reached an agreement with Mr. Bobby Brown, representing the State of Israel, and with Chairman Eagleburger, I believe it was the October meeting of 1999, and we submitted names over to ICHEIC for distribution to Yad Vashem early in the year 2000, I think January or February of that month. What we do know is that there have been processing problems in Yad Vashem, and I don't know all the reasons why they have not been processed, but our company has fulfilled its obligations in transferring them over to ICHEIC to be transferred over to Yad Vashem.

Mr. LATOURETTE. So the premise of my question, it took 2 ½ years—you think it took a couple of months after an agreement was reached and when I say it took 2½ years, I'm wrong in that regard. Mr. Eagleburger.

Mr. EAGLEBURGER. I want to explain the Yad Vashem issue and it was something we got stuck in the middle of that we had nothing to do with. To make a long story short, IBM had its subsidiary along the line—had done some work for the Volcker Commission in terms of using Yad Vashem for some of their activity and IBM was unwilling for some period time after the—when we wanted to—when we went to Yad Vashem and Yad Vashem wanted to use this software, IBM was for some very lengthy period of time totally unprepared to let us do that without a payment of what, it was $1 million or something like that? About $1 million. And I wasn't ready to pay $1 million. So finally the issue was resolved with no payment but it took some time, and that's why there was the delay and it was certainly not—it's one of the few times I would have to tell you that Allianz wasn't at fault.

Mr. LATOURETTE. Thank you. Ambassador, is there something you wanted to say relative to our last question?

Mr. BINDENAGEL. I did. Thank you, Mr. Chairman. The issues are going back and forth here and the reason that the U.S. Government wants these issues resolved is because ultimately it goes to the international agreement that we reached with the Federal Republic of Germany, and the two governments are politically responsible for ensuring that these agreements are implemented fully.

Mr. LATOURETTE. OK. Thank you very much. I don't have any more questions on this subject. I'll turn back to Mr. Waxman to see if he has anything more in a minute, but I did promise a constituent of mine that I would ask, Ambassador, this of you because of what it is you do for a living and it doesn't have anything to do with ICHEIC; so all you ICHEIC guys can sit back and take a deep breath and I'm done with it.

There are two gentleman that live in my district that I represent east of Cleveland, OH, places like Beachwood and Pepper Pike and

other places like that in northeastern Ohio and they have to do with property in Poland and we've made contact with the State Department. We've made other contacts and we can't seem to quite crack the code and tell these folks where to go and let me just briefly describe the two situations.

The one gentleman who was confined to Auschwitz and still survives today. His family operated and owned a bus company in Poland that was expropriated, and the second gentleman was a lottery agent, a Polish lottery agent and deposited $100,000 as a bond for the lottery tickets that he sold. He was a bonded lottery agent. That also has never been returned by the Federal Government. I'm aware that the Helsinki Commission provides property claims in former Soviet Republics where property was, but I don't know if there exists a comparable entity to assist in these cases, and my question to you is, is there any internationally coordinated effort by the U.S. Government to authorize holocaust survivors to bring direct claims for confiscated property against the Polish Government directly or through any international organization that you're aware of?

Mr. BINDENAGEL. Mr. Chairman, no, I'm not aware of it, but I'd be glad to take the question and get you an answer.

Mr. LATOURETTE. If you could, I have it written out and I'll be happy to hand it to you when we're done and my constituents would very much appreciate the guidance because like these folks with the insurance polices they have been waiting a very long time for an answer. I don't——

Mr. KENT. Mr. Chairman, I could answer you the question so far to the best of my knowledge.

Mr. LATOURETTE. Sure.

Mr. KENT. There is no agreement between our government and the Polish Government. I could add, however, that there are some conversations between the—in the group, in other words, the Jewish part in the Polish Government but they are still not under the auspices of our government. So far they were not successful so—but negotiations are——

Mr. LATOURETTE. I thank you. Mr. Taylor, do you want to add?

Mr. TAYLOR. If I could just add, I think this issue of private property restitution in Poland is one that has received some attention but not adequate attention, and perhaps it is something that this committee and the U.S. Congress would look at because I think it does raise some important issues and we do see a role for the U.S. Government and the Congress to try to encourage this issue to be treated, dealt with in a serious and comprehensive manner.

Mr. LATOURETTE. Thank you. I don't have any more questions. Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. Eagleburger, the insurance company Winterthur told the committee that the ICHEIC rulings are not binding upon members of ICHEIC. Do you agree with that position?

Mr. EAGLEBURGER. No, I don't. And I had heard this view expressed. This was some months ago now. I went out with a questionnaire to each of the companies and asked, "Do you believe that my decisions are binding or not?" And to the degree I could—the responses were obviously written by someone who was a crafty—

it was very hard to figure out what their answers were is the best way to put it, but my view is that they are bound by these decisions and if they don't follow them, I—and that's why I want to check on what is going on in the various companies in terms of policy claims responses and so forth. If they aren't following them, I will certainly make it public and—which is about the best I can do, but at the same time will also make it clear that as far as I'm concerned they have not met their obligations under ICHEIC and that anyone who wishes a quarter, whatever, can take that for whatever they wanted to use it for.

And I should mention related to this, if I may, one of the things I should have mentioned earlier in terms of when you asked the question about sanctions, let us not forget—and I don't want to put words in his mouth, but let us not forget that we do have State insurance regulators and that depending upon the degree of the crime, if you will, they also have substantial authority over these insurance companies. For example, if the companies do not follow my directives, one of the things I'm going to do right away is turn to the insurance regulators of the States and say I think it's time you took a hard look at whether you want to continue to stand aside and not sanction yourself.

Mr. WAXMAN. Mr. Shapo.

Mr. SHAPO. Thank you, Congressman. And I'd just put out again for the record that the resolution that I wrote and that we passed in the United States explicitly brings up the possibility of further regulatory actions in the resolved paragraphs and it enumerates the types of actions that could lead to by myself and my colleagues.

Mr. WAXMAN. Mr. Lefkin, what do you have to say about the comment by Winterthur that they don't feel that ICHEIC rulings are binding on them? How does your client respond?

Mr. LEFKIN. I would prefer not to comment on a statement made by another company.

Mr. WAXMAN. Does your company feel that the ICHEIC decisions are binding on you?

Mr. LEFKIN. We have always abided by all the ICHEIC decisions.

Mr. EAGLEBURGER. Is that a yes or a no?

Mr. WAXMAN. To pin you down, do we want to assume that's a yes or a no, Mr. Lefkin?

Mr. LEFKIN. That every decision he has made we have complied with, and I cannot predict with any degree of accuracy in the future what will transpire but we've always tried to work in a cooperative manner.

Mr. WAXMAN. Mr. Shapo.

Mr. SHAPO. Congressman, Mr. Hansmeyer from Allianz wrote a letter to Chairman Eagleburger on September 18 saying that "I hope you understand that, under these circumstances, we cannot abide by these decisions."

Mr. WAXMAN. In closing, I want to return to Mr. Eagleburger because we had a heated exchange earlier this afternoon when I got to the issue of expenses, and I want to make it clear to you that I'm not questioning your motives or intentions. You've stated forcefully your desire to help claimants, and I don't question that. But I do think that this committee should get answers to some of these

questions that we were going to ask of you and have already asked of you.

Chairman Burton and I requested that ICHEIC break down its administrative expenses by the following categories: Salaries, office-related expenses, meetings and conferences, outreach to Holocaust survivors, and claims processing. ICHEIC only provided information on outreach and claims processing. At least $12 million of the $40 million expenses is unaccounted for.

I'm going to ask, if you would, to respond to a letter that we will send you to further elaborate on how much is spent on salaries, how much is spent on meetings and conferences, and I would hope you would cooperate with us, Mr. Eagleburger.

Mr. EAGLEBURGER. If you want a yes or a no, I'll have to look at the letter, Mr. Waxman, and then I'm get back to you.

Mr. WAXMAN. Well, I will hope that you will get back to us and give us the information that I think we are entitled to as a committee that has legislative jurisdiction, jurisdiction to investigate any matter that is relevant to Federal legislation. I've indicated I've already introduced Federal legislation. We have a clear interest in this issue, as do you and as do others at this table. And when people are aggrieved they go to their representatives, and as their representatives we want to get answers and explore fully what has been going on in this whole area. There seems to be, whoever's fault it may be, a lot of money spent for very little results for the people who need the results, and those are the people who are waiting to have their insurance company claims paid for.

But I think this hearing has been helpful. I think this hearing has been useful.

Mr. Shapo, let me ask you—my staff wanted me to request of you Allianz's letter that you referred to so we can have that for the record.

[The information referred to follows:]

18-SEP-2001 18:58 ALLIANZ AG VORSTAND H7 2 +49 89 38002009 S.01/01

Herbert Hansmeyer
Member of the Board of Management

09/18/01

The Honorable Lawrence S. Eagleburger
The International Commission
on Holocaust Era Insurance Claims
1300 L Street NW
Suite 1150
Washington D.C. 20005

Dear Mr. Chairman,

In this period of tragedy, we can take comfort that the US Government has a reservoir of wise old sages like yourself, providing it with counsel and advice from your many years of diplomatic service. While we focus on this horrible tragedy, we also know that the world needs to go forward. In this spirit, I am writing this letter to you.

We have reviewed your decision memorandum of September 17th, 2001. As we understand it, this memorandum reverses and materially changes decisions which had been reached in the ICHEIC after a lot of analyses and sometimes painfully long discussions. We are perplex that you propose these changes without any prior consultation or discussion within the ICHEIC. I hope you will understand that, under theses circumstances, we cannot abide by these decisions.

Please rest assured that we are committed to working within the spirit of the MOU on the resolution of this matter. We know that the next weeks will be difficult for you as you are going to recover.

Our best wishes and prayers are with you.

Kind regards,
Sincerely,

Herbert Hansmeyer

Allianz Aktiengesellschaft
Koeniginstrasse 28
D-80802 Munich
Telephone +49.89.3800-5930
Telefax +49.89.3800-2009

Mr. WAXMAN. I thank you all for your participation, and while sometimes we have been antagonistic, that is not the purpose. I want to work with all of you to make sure we get this job done for the people that are asking for the assistance.

Mr. LATOURETTE. I thank the gentleman, and I join Mr. Waxman. It has been a long afternoon. Thank you for your observations to the committee. And if a request has been made for you to follow-up on the record, we ask that you do that at your earliest convenience.

And, Mr. Shapo, I guess you are going to have the final word.

Mr. SHAPO. Can I make one just very quick observation? It has to do with the claims process and the way it has been driven. I think it's implicit in some of the remarks, and I'm not sure it was stated explicitly, and that is the Commission made an explicit policy choice to encourage inquiries and claims. The ad that was put out said, suppose your family had a Holocaust-era insurance policy, and you just didn't know about it. Certainly that is designed to encourage people to err on the side of caution and perhaps to—perhaps has had the effect of probably encouraging more claims than it would if you took another philosophy and only encouraged people that knew with 100 percent certainty that they had a claim. And that has certainly led to a high number of claims, but it has led to more—gross number of valid claims being higher.

And unfortunately, some of us have been disappointed that the companies have not been giving more of the benefit of the doubt to claimants who have been given a basic presumption of a claim, and that is something that we are seeking to work out. But that is something I wanted to make sure that I had a chance to say for the record.

And also I wanted to say for the record that the chairman at all times fiercely and jealously insists on respect for survivors. He doesn't always insist on respect for me, but——

Mr. LATOURETTE. I thank you all very much, and this hearing is adjourned.

[Whereupon, at 4:50 p.m., the committee was adjourned.]

[The prepared statement of Hon. Edlophus Towns and additional information submitted for the hearing record follows:]

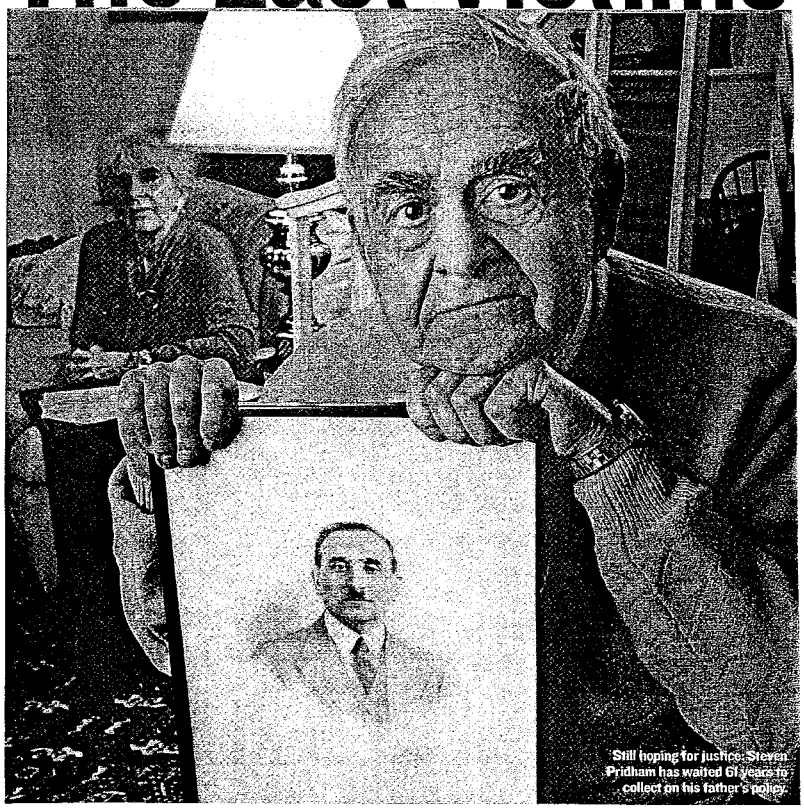
Statement of Congressman Ed Towns (NY-10)
Committee on Government Reform
"The Status of Insurance Restitution for Holocaust Victims and Their Heirs."
November 8, 2001

Thank you, Mr. Chairman for holding this important hearing today. I would also like to thank the holocaust survivors as well as their family members who have traveled such a long hard road to testify before us regarding their experiences with the International Commission on Holocaust-Era Insurance Claims (ICHEIC). In addition, I welcome the other witnesses who I hope will shed some light on the many questions that my colleagues and I have regarding ICHEIC and its apparent failure to make restitution to the victims and heirs.

This hearing is made all the more urgent because of the fast approaching deadline for filing insurance claims with the "German Foundation". The U.S. government signed an agreement with Germany to create this Foundation in June 2000. As part of this agreement ICHEIC was to provide the information necessary to expedite claims, i.e. the names of all policyholders; unfortunately, ICHEIC has failed to live up to its side of the bargain. ICHEIC member companies issued close to 3,000,000 Holocaust-era policies and yet have only provided 9000 names to ICHEIC for publication. ICEICH was also supposed to relax the standards of proof for resolving claims; however, fewer than 2% of claimants have received any compensation. In addition, ICHEIC offers only a very limited appeals process exclusively for claimants who can identify the company who held the policy. It is difficult for many of the claimants to identify a company because their documents were lost or confiscated in the ghettos and concentration camps. Moreover, many heirs believe that it is likely that their relatives would have had policies but they lack the information that the ICHEIC companies have.

It is absurd that ICHEIC has not fully implemented its original plan. It is absurd that ICHEIC is hiding behind claims of privacy laws impeding their ability to publish policyholders' names. It is absurd that there is a deadline in the next two or three months which threatens to stop survivors and their heirs from pursuing claims. Clearly, ICHEIC has not worked. The question is can anything be done to rectify this problem ? The insurance companies have no motivation to pay claims and as a result they have been dragging their feet, trying to run out the clock. We must ensure that every step is taken to guarantee that policyholders or their heirs receive the restitution that they deserve. They have waited too long and have paid too dear a price for any other conclusion to be acceptable. I look forward to hearing from the witnesses and working with my colleagues to address this outrageous situation.

The Last Victims



Still hoping for justice: Steven Pridham has waited 61 years to collect on his father's policy.

As the Jews fled the Holocaust, European insurers pocketed their premiums. Decades later, they promised compensation. But so far, they've paid out a pittance.

BY MICHAEL MAIELLO AND ROBERT LENZNER

FOR MORE THAN 50 YEARS THEY HAVE WAITED—TENS OF thousands of Holocaust survivors and their descendants who were cheated out of life and property insurance payments by a handful of giant European insurers that still do business today. Two years ago a system was put in place to redress their grievances, setting aside $220 million for upwards of 170,000 claimants. But after decades of denial, dissimulation and delay, they still haven't been made whole.

So far, 70,000 claims have been filed with an international commission overseeing the effort—but over 80% of them still

The aftermath of Kristallnacht; Hitler and Göring in Austria; Kurt Schmitt, Allianz's chairman and later Hitler's minister for economic affairs; Eduard Hilgard, an Allianz executive, cooperated with the Nazis.

haven't been processed. Only 9,600 have reached a final ruling, and the commission has made settlement offers in a mere 496 cases, totaling only $5.7 million, an average of less than $12,000 per claimant—a tiny sum given the time value of money, the equivalent of $300 compounded at 7% since the end of World War II.

"We would like to see some justice," says Minneapolis resident Steven Pridham, who submitted a claim last year and hasn't seen a cent. He says his father had two life insurance policies, one with a face value of at least $12,000 way back in 1940. Both policies were issued by Allianz AG, a German giant with cozy ties to the Nazi government at the time.

Today Allianz has a worldwide reputation as big as the $41 billion in premiums it wrote last year. It controls 14% of the German market and does 6% of its business in the U.S., ranging from Pimco Advisors and Oppenheimer Capital in New York to Fireman's Fund Insurance Co. in Novato, Calif. Any reminder of its ties to Adolf Hitler would play poorly in the U.S.—which may be one reason Allianz is the only German insurer to join the international claims commission, contributing $12 million to its operating budget.

Even today, the insurers can barely mask their contempt for the legitimacy of the claimants. "Ultimately, it is an act of public appeasement," says Herbert Hansmeyer, a managing director of Allianz charged with overseeing the company's operations in the Western Hemisphere. "I cannot become very emotional about insurance claims that are 60 years old."

The claimants, a small group among the estimated 1.3 million Holocaust survivors, had seemed bound for a better outcome when the settlement effort began in the fall of 1998. An encouraging sign came last year when Swiss banks, accused of hoarding Jewish money and property confiscated by the Nazis during the war, agreed to a $1.2 billion settlement. Their prospects brightened earlier this year with the creation of a $4.4 billion fund in Germany to compensate those forced into slavery by the Third Reich. Half the sum would come from government, half from industry—and include in that latter $2.2 billion was $220 million for th insurance plaintiffs.

That plan arose from an accord between th U.S. State Departmer and the German government aimed at aidin survivors in exchang for insulating Germa companies from a wa of private lawsuits ov their complicity in th Holocaust. So why ha so few cases been settle

For starters, creakir bureaucratic machine takes thousands of hou to match existing fil with a claimant—an much of the effort is aimed at disqualifying unmerited clai rather than locating deserving recipients. Also, the U.S.-Ge man deal has a series of unintended loopholes that have hel up settlements. And the insurers—already convinced th

have paid for the sins of the past—have been slow to dip into their pockets.

The conflicting parties came together in Washington, D.C. in October 1998. Under pressure from the National Association of Insurance Commissioners and a class action seeking more than $2 billion, Allianz and four giant European insurance companies met with regulators, plaintiff attorneys and delegates from Jewish groups around the world. The idea was to negotiate an out-of-court settlement with Holocaust survivors and their heirs, who claimed the companies had never paid out on their World War II era life insurance policies.

It was a frantic and angry meeting. Nobody knew what the liabilities might amount to, but the rhetoric was peppered with the word "billions." The participants agreed on one thing only: to form the International Commission on Holocaust Era Insurance Claims to find legitimate policyholders and arrange compensation. A nonprofit association registered in Switzerland, based in London and run out of Washington, D.C. by Lawrence Eagleburger, former secretary of state in the first Bush Administration, the commission would be funded by its five corporate members—Allianz of Germany, Axa of France, Zurich Financial Services AG and Winterthur Schweizerische Versicherungs-Gesellschaft of Switzerland, Assicurazioni Generali of Italy—and the Dutch Insurance Association.

The move lifted the hopes of claimants like Steven Pridham. Raised in the Lithuanian town of Memel, where his father owned a textile factory, he was sent to school in England in 1937 and was joined by his father two years later. The elder Pridham died of stomach cancer shortly thereafter.

Dealing with Allianz has been, by turns, bizarre and frustrating. The company first denied that Pridham's father ever owned policies, then called days later to tell him it had located the documents. After a month had passed, Allianz sent a letter explaining that it couldn't release funds because "your mother was named beneficiary, but obviously the sum insured could not be paid out because she had left Germany," adding, "We assume that we subsequently had to pay out the sum insured to the financial authorities of the Third Reich."

The insurer urged Pridham to appeal to the commission but warned, "There are still some open issues as to how payment is going to be made. Please be assured that you are going to be informed immediately once the remaining uncertainties are solved." In February Pridham asked the commission about his appeals options but received no answer.

Pridham's father was one of 2.5 million people who inquired about or bought insurance from Allianz between 1922 and 1938. For years petitioners have alleged that insurers refused to honor claims by descendants because they couldn't produce a copy of the policies for property or life insurance or a death certificate—never mind that nearly all Jews were stripped of their possessions and that concentration camps weren't handing out records of those they murdered.

In fact, of the thousands upon thousands of insurance policies Allianz issued during those years, it claims that only 27 of its policyholders went unpaid and are eligible for remuneration. How does it arrive at that number? It has identified 6,700 old files relating to Jewish customers—and it contends 6,673 of them aren't entitled to any payment. Why? Because they have already received some form of prior compensation, which disqualifies them under terms set by the international settlement commission.

Insurance companies also claimed they themselves were victims of the Nazis, because they had been forced to buy war bonds that were worthless by 1945. This overlooks the fact that the successor government to the Third Reich took over their payout obligations, partly by using funds from the U.S.

And if the insurer did pay a policy's proceeds to the Nazi government, would it be obligated to pay again to the family that was the rightful beneficiary? The insurers argued this wouldn't be fair. But the connection between the insurers and the Nazi government is complicated. Kurt Schmitt, Allianz's chairman in the 1920s, became Hitler's minister for economic affairs in 1933. He was an acquaintance of Hermann Göring, Hitler's finance minister and commander-in-chief of the Luftwaffe. At Allianz, one of Schmitt's managing directors, Eduard Hilgard, eagerly cooperated with the Third Reich as head of the German Insurance Industry Association.

"It would be absolutely against justice for German insurance companies to take over the financial expiation of the Jews," said an Allianz director after Kristallnacht.

The close ties show up in Allianz's role after Kristallnacht, the night of violence in 1938 that resulted in the destruction of 7,500 Jewish shops. Hilgard spoke with Göring just afterward, and at first Hilgard denied that Jews had any right to file claims because the destruction of property was the result of riots, and property policies didn't cover civil disturbances. But that explanation would imply the Nazis couldn't keep order. Hilgard thought at least some claims—those held by foreign policyholders—should be paid since Allianz didn't want to be seen as a firm that reneged on its obligations.

But reimburse injured shopkeepers? "Reprisals against the Jews in November 1938 had the character of entitled punishment for the Jews," Hilgard wrote insurance companies. "It would be absolutely against justice for German insurance companies to take over the financial expiation of the Jews." The remarks show up in a transcript of a conversation between Hilgard and Göring, in files of the Office of the Military

Governor of the United States in the National Archives.

Göring and Hilgard finally agreed that Allianz would pay a portion of the claims—to the Nazis—and pocket the rest. Soon after, Jews were prohibited from suing insurance companies. At the behest of the Nazis, Allianz began to confiscate Jewish insurance contracts. (Some of the files in the Allianz archive are stamped "Jude.") Even as the company surrendered most of the cash value of policies to the Third Reich, it always kept a tidy "cancelation fee" of 25% from pension insurance and 5% from life insurance accounts, according to the German government. No one knows how much that amounted to.

There were other notorious links. Allianz sold property insurance to factories run by the the Deutsche Ausrüstungswerke (the German Equipment Works, or DAW), a corporate front for the SS. Located outside major concentration camps, the plants used slave labor to drive German industry throughout the war. The SS bought the policies to preserve the fiction that its DAW operations were legitimate, even though they were generating money the SS used in its power struggles against other factions in the Nazi government.

Despite such damning evidence, getting insurers to pay up has been all but impossible. With 70,000 claims filed thus far, another 100,000 are expected to be filed in the next three years. According to Deborah Senn, former insurance commissioner for Washington State, 84% of the claims submitted as of December 2000 haven't been completed. At that poky rate, while paying out only $12,000 per claim on average, the commission will disburse all of $82 million or so by the time its mission is complete—far less than the allotted $220 million.

But it will have spent $85 million to get there: $25 million in the past two years, plus a hoped-for $60 million through 2003. For what? Claims matching and high overhead. Eagleburger, the commission's chair, draws a salary of $350,000. The panel has 7 employees in Washington, 12 in London and has contracted out a call center in New York. "There's no question in my mind that we spent more on what I'll describe as administration than we should have," says Eagleburger.

The insurance money is part of German industry's $2.2 billion fund to cover every sort of claim, from slave labor to life insurance. The money is to be collected from corporations and distributed by a German foundation called, rather incongruously, "Remembrance, Responsibility and the Future." The foundation and the $2.2 billion limit on all compensation are the result of a deal between the U.S. and German governments to resolve the claims of Holocaust survivors. The Berlin government agreed to the big fund in an appeal to the Clinton Administration for immunity from class actions in U.S. courts against companies like Deutsche Bank, Porsche and BMW.

That pact, however, complicated the separate and simultaneous effort by Eagleburger to set up the settlement commission with German insurance companies. For its part, German industry agreed to collect $2.2 billion in voluntary contributions from all the nation's businesses—even those that didn't exist during the war. The government said it would kick in an equal amount of money. "We promised our companies we would only pass our money along to the foundation when legal peace has been achieved," says Wolfgang Gibowski. A onetime press secretary to former German Chancellor Helmut Kohl, Gibowski is a policy architect for a group that represents the German industrial side of the foundation.

Trouble is, the U.S. government couldn't deliver "legal peace." Then-deputy treasury secretary Stuart Eizenstat could only promise that the U.S. State Department would deliver a "statement of interest" to judges hearing Holocaust related cases, asking for dismissal in favor of the foundation settle-

"It is an act of appeasement": Herbert Hansmeyer, a managing director at Allianz; former deputy secretary of state Stuart Eizenstat; Lawrence Eagleburger and a lawyer for Assicurazioni Generali.

ment. The deal was codified in a letter sent by Bill Clinton to German Chancellor Gerhard Schröder and in a later executive agreement. This was to be the end of the issue.

But suits still being heard in U.S. courts threaten the enactment of the agreement. A case brought against IBM in February, accusing it of providing punch-card machines to the Nazis, was withdrawn in late March when German industry leaders threatened to withhold their donations to the foundation. In New York's Southern District, however, Judge Shirley Wohl Kram, presiding over a $4.5 billion case against German banks, refused to approve a dismissal, arguing initially that German industry should turn over the funds first.

"It is not the right of Kram to ask for the money first," says Gibowski, who oversees the industry fund. Another hurdle: It's unclear exactly how much money has actually been handed over. Gibowski says $1.3 billion already is in the bank, with the balance in pledges made by German companies. But he refuses to say which companies have paid or pledged. Conversely, Allianz's Hansmeyer says 16 corporations each paid $45 million at the beginning of the year—$720 million in all—and have agreed to cover the obligations of the 6,000 other companies that have pledged so far. But it's unclear how that would be enforced—and no money has yet been paid out.

And there are further wrinkles that hold up repayment—starting with cross-border ownership. For example, Allianz owns 51% of RAS, an Italian insurer that operated in eastern Europe during the war. It didn't pay out on a large number of policies because its operations were nationalized by the communist governments of Poland and then-Czechoslovakia after the war. As a majority-owned unit of Allianz, it also expects immunity from lawsuits in the U.S.

Another obstacle: key differences in the treatment of claimants. The family of a victim who was forced into slave labor may seek restitution even if the family has already received compensation from the German government—at least under the rules of the international commission. But life insurance policyholders aren't entitled to any further funds if they have already gotten government compensation.

For Allianz, however, new claims could start to pile up, given its recent $20 billion bid to acquire Dresdner Bank. Once near collapse under the weight of hyperinflation during the Weimar Republic, Dresdner was later taken over by the Nazis and became the bank of choice for companies run by the SS. It's one of the banks facing litigation in Judge Kram's courtroom.

With so much entrenchment by plaintiff lawyers on one side, and European insurers on the other, who will do right by these last survivors of genocide? Steven Pridham was 16 when his father, fleeing Lithuania to escape the Nazis, joined him in England. Now 77, Pridham wonders whether he will live long enough to see justice served. F

Settling a Case—After 85 Years

It happened so long ago. But 94-year-old Samuel Kadorian of Van Nuys, Calif. says he remembers the forced march of his family and thousands of other ethnic Armenians from their home in Ottoman Turkey back in 1915. Along the way his father, Garabed, was shot and killed by Turkish soldiers; his brother and two sisters also died. Kadorian and his mother survived prison and, with the help of a Swiss doctor, escaped to Syria, immigrating to the U.S. in 1920.

Like an estimated 3,647 ethnic Armenians in the Ottoman Empire, Kadorian's father bought a life insurance policy from New York Life Insurance Co. The contracts were sold mainly through the company's Paris office and were denominated in French francs. Most of those policyholders are thought to have perished in the slaughter, when the Turks worried that Armenians would side with their traditional enemy, Russia, in World War I and systematically massacred hundreds of thousands of people. After a claims committee met in New York and Paris, New York Life decided to send a lawyer to Constantinople in 1917 to pay off 38% of its outstanding policies, leaving 2,186 unresolved. By 1924 the insurer retreated from Europe for good.

Throughout the decades there were occasional attempts by survivors and their descendants to collect death benefits. But New York Life stalled, claiming that petitioners couldn't prove their relationships to the deceased. Then came a 1999 class action brought in Los Angeles by Martin Marootian, 85, whose uncle was a policyholder killed in 1915. Last year, when the insurer tried to have the case dismissed in federal court, California lawmakers passed legislation granting Armenians living in California the right to pursue World War I era claims against insurers in state court.

From then on New York Life behaved like a model corporate citizen. Its lawyers descended on the company's 60,000-square-foot warehouse in Clinton, N.J. and found, in a fireproof vault, microfilmed documents, ledgers and other files on insured Armenians. In mid-April, more than 85 years after the massacre, the company reached a potential settlement—and a $15 million payout.

Under the pact, New York Life plans to publish the 2,186 names on the outstanding policies so relatives of the insured can collect the benefits. A committee will consider the claims, and the company will drastically relax its usual stipulations, requiring only that claimants demonstrate a familial relation to the insured.

The families won't get much. The agreement calls for payouts amounting to ten times the face value of the original polices—on average about $6,000. New York Life will donate $3 million to Armenian civic groups in addition to the death benefits that are not claimed.

As usual, lawyers are among the biggest winners. Plaintiff attorneys—including William Shernoff, who has litigated Holocaust-era cases—stand to pocket $2.5 million.

—Nathan Vardi

7/18/01 Associated Press (Pg. Unavail. Online)
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Wednesday, July 18, 2001

Armitage Speaks on Holocaust Claims
By BARRY SCHWEID
AP Diplomatic Writer

WASHINGTON (AP) - Deputy Secretary of State Richard Armitage called on German insurance companies to make a fair settlement of claims by victims of the World War II Holocaust.

Armitage told Jewish leaders Wednesday the Bush administration supports efforts to "try to bring a measure of justice to the survivors."

Some 6 million Jews were killed by Germany and its supporters during the war. More than a half-century later, survivors of the nearly successful effort to exterminate Jewry in Europe are still seeking restitution.

In a speech Tuesday to the same Claims Conference, former Secretary of State Lawrence **Eagleburger** accused Allianz, the large German insurance company, of failing to compensate a single claim of the 4,800 claims submitted by the international commission on Holocaust-era insurance headed by him.

"How much have they paid by July 3rd? A great big **fat zero,"** **Eagleburger** said of the claims made on behalf of prewar policy holders.

Allianz rejected **Eagleburger's** criticisms, saying it had settled two claims from victims recently, outside the process established by the international commission. It cited another 18 claims paid out before the commission's creation and a further 170 claims paid by its Italian subsidiary, RAS.

The company said 92 per cent of the claims did not name any insurance company, as survivors failed to recall where their family had held insurance policies.

Declaring "my neutrality has been sorely tested over the past two years," **Eagleburger** said he doubted an agreement ever would be reached between the German Foundation and the German insurance companies.

Last July, the German Foundation was established in Berlin. Armitage

said it began making payments last month to former slave and forced laborers.

Austria has made payments to some Austrian survivors and French banks have made a significant contribution to a fund soon to be distributed to victims or their heirs, Armitage said.

In all, he said, more than 500,000 Holocaust survivors in 67 countries have received about $60 billion in compensation payments.

"The administration of George W. Bush is committed to promoting a measure of justice for victims of the Holocaust as an expression of this country's commitment to human rights and human dignity," the State Department official said.

---- INDEX REFERENCES ----

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Monday, **July** 9, 2001

Metro Desk

THE NATION **Holocaust** Claims Still Going Unpaid Reparations: Panel formed to settle disputes over prewar insurance policies makes little headway, documents show. German firms say few valid requests exist.

HENRY **WEINSTEIN**
TIMES LEGAL AFFAIRS WRITER

Nearly three years after an international commission was created to resolve **Holocaust**-era insurance disputes, the leading German insurance company has not paid a single claim, according to internal commission documents.

Instead, a consortium of German insurance companies has taken steps to make collection more difficult, including filing lawsuits in California and Florida to try to contest statutes designed to make collection easier. The companies also have not honored a commitment to provide a complete listing of potential unpaid policyholders, according to insurance regulators and Jewish advocates.

Allianz, the largest German insurance company, for example, has provided only 380 names so far out of a list of 1.5 million policies, according to commission records.

The companies say that producing the lists would be overly burdensome and in some instances would violate European privacy laws. But U.S. officials say the lists are vital to the process of settling the insurance claims.

"Production of lists and giving claimants an opportunity to know if they are on the lists or their relatives were on the list is essential for people to have confidence that all reasonable efforts have been taken to try to resolve the situation," said Nathaniel S. Shapo, director of the Illinois Department of Insurance and chairman of the **Holocaust** task force of the National Assn. of Insurance Commissioners.

The firms also are seeking to get a credit for at least $25 million they gave to the International Commission on **Holocaust** Era Insurance Claims for operating expenses. The reimbursement would come from funds that are supposed to go toward paying policyholders, according to commission documents.

The broad issue involves claims by heirs of people murdered by the Nazis who allege that the insurance companies have refused to pay off life insurance policies written in prewar Europe.

The claimants and their advocates argue that tens of thousands of such unpaid policies exist, but the insurance companies insist that unpaid claims are rare.

In 1998, about a year after the in surance controversy erupted, several of the companies, including Allianz, said that a number of policyholders had been compensated under **Holocaust** reparations

programs set up by the German government in the 1950s.

Joerg Ailgaeuer, an Allianz spokesman in Munich, reiterated that position on Friday. He acknowledged that "it does look weird to have that zero" in the international commission's list of claims paid. However, he said that a number of Allianz policyholders had been compensated under German government reparations programs in the 1950s, '60s and '70s. He offered no specific dollar figures.

U.S. officials dispute that assertion.

"If there were no valid claims, Allianz would not have agreed to participate" in a proposed multimillion-dollar settlement fund for claims, said Stuart E. Eizenstat, the former deputy secretary of the Treasury Department who was the special U.S. envoy on **Holocaust** issues in the Clinton administration.

Eizenstat said Friday that he is "very concerned about the impasse that may be developing" over the claims process and the publication of policyholder lists.

The moves by the insurance companies have angered Jewish leaders as well as insurance regulators in California and elsewhere in the United States.

The international commission has scheduled a special meeting for Tuesday in Washington aimed at resolving some of these issues, but a resolution seems unlikely, according to several sources, including Reuven "Bobby" Brown, one of the Israeli government representatives on the commission.

"That meeting will be high noon at the OK Corral," Brown said. "I know I speak for the Jewish side. . . . We are not going to agree to anything that is not a fair shake."

In addition to the impact on the insurance claims themselves, the continuing dispute could delay completion of a related settlement reached earlier this year to resolve World War II slave labor claims.

The two issues were linked in a $4.6-billion deal funded by German industry and the German government. Payments already have started flowing to some of the thousands of former slave laborers covered by the agreement.

Of the money in that settlement, $220 million was allocated to cover insurance claims. But no accord has been reached on several key issues that would allow that money to be distributed.

"It is critical that there be an agreement . . . relating to the unpaid policies of German insurers," Lawrence S. **Eagleburger,** the former U.S. Secretary of State who heads the international commission on insurance claims, said in a declaration filed recently in a related court case.

"At present, no such final agreement has been reached," he said. "And it is uncertain that any such agreement will be reached," **Eagleburger** added in an uncharacteristically pessimistic tone.

The international commission was created in October 1998 in an attempt to find a way outside the U.S. court system to settle battles over unpaid claims. At the time, the insurers were facing multibillion-dollar class-action lawsuits in the United States. They were also concerned about legislation in half a dozen states, including California and Florida, designed to make it easier for people to collect on insurance policies from the **Holocaust** era. Under some of those laws, the U.S.

subsidiaries of the European insurers faced the loss of their state licenses to do business if valid claims were not honored.

Commission Criticized by Both Sides of Dispute

Five insurers--Allianz of Germany, AXA of France, Winterthur and Zurich of Switzerland and Assiscurazioni Generali of Italy--agreed to fund the commission in return for receiving a "safe harbor" from litigation in the U.S.

Several German insurance companies that declined to participate in the international commission, as well as the German Insurance Assn., have challenged the constitutionality of the California and Florida laws, thwarting their implementation.

The international commission has been criticized by both sides. Survivors say the panel has failed to get insurers to pay claims more rapidly; insurers call the group overly aggressive on behalf of the survivors. The organization has also come under fire for high levels of spending on administrative costs, including newspaper advertisements, salaries and hotel bills, which total almost 10 times the amount paid to survivors.

Officials at Allianz say they had launched an internal audit of their prewar policies even before the international commission was formed. The audit of a sample of policies revealed very few that were unpaid and showed that offers had been made on those, said Allgaeuer, the company spokesman.

He added that Arthur Andersen, the large public accounting firm that did the audit in 1998, concluded that completely reviewing the company's files would have taken 1,529 person-years.

Allgaeuer also said that Allianz had received no valid claims under the process set up by the international commission--an assertion that is disputed by U.S. insurance officials.

"I know people who are holding Allianz policies from this era" that have not been honored, said Deborah Senn, the former insurance commissioner for the state of Washington who was one of the most forceful regulators in support of survivors while she was in office. "This company has thrown every barricade in the path of survivors," said Senn, who now practices law in Seattle.

Along the same line, other survivor advocates point out that of the thousands of claims sent to the international commission for review, the companies have denied only nine because they were previously paid by one of the firms and denied an additional 66 because the individual was compensated by a government program, according to records of the International Commission on **Holocaust** Era Insurance Claims.

One of the complicating factors is that nearly all **Holocaust** victims lost their records when they were taken to the German death camps, said Shapo, the Illinois insurance department head. Moreover, the Nazis did not issue death certificates at the camps. Consequently, virtually none of the survivors or heirs of those who died have records to document their claims, making them dependent on the willingness of the insurance companies to search their files.

Effort to Show Goodwill Exists

"That leads to a rough road and is at the heart of the extraordinary frustration that people experience," Shapo said.

From the standpoint of the companies, however, the insistence on further searches of files and publication of lists has unnecessarily dragged out the process of settling claims.

Wolfgang Gibowski, a spokesman for the German Foundation, which is supervising the slave labor claims process, said that representatives of the foundation would try to calm disagreements at Tuesday's meeting. "We are going to talk to the American side, the Israeli side, to convince them there is goodwill on the German side," he said.

But, he added, the international commission "should think more about taking care to get payments started than to discover and discover and discover and accelerate costs."

"They think there are more unpaid policies" than actually exist, he said.

Another thorny issue is the contention of the German Foundation that German insurers, primarily Allianz, should be able to recoup at least $25 million that they previously appropriated to fund the commission's operations.

Foundation leader Hans-Otto Brautigam presented **Eagleburger** with a proposal on June 11. **Eagleburger** distributed it to commission members, including U.S. insurance regulators, Israeli officials and leaders of Jewish organizations in this country, arousing ire in all three constituencies. In an accompanying memo, **Eagleburger** said Brautigam had told him the proposal was based on a German law and that "while there is some room for discussion. . . his flexibility is very limited."

Among other things, the foundation maintains that the German insurers should be able to recover $21 million in contributions that were made by German companies for the commission's administrative expenses from 1998 through 2000. (In effect, the reimbursement would be effectuated by setting off $21 million from the money the commission would get under the slave labor agreement.)

"This is an inappropriate use of foundation money," California Department of Insurance attorney Leslie E. Tick wrote in a June 15 memo to **Eagleburger.** "Claim money should not be used to reimburse Allianz for [commission] expenses incurred to date."

Commissioner Shapo said he also was troubled by the Brautigam proposal. "I have yet to see evidence that there is a basis" for these proposals in the U.S.-German agreement settling the slave labor issue.

Critics of the reimbursement proposal also note that none of the other companies that originally funded the commission in the fall of 1998 would be reimbursed because they are based in other countries and thus are not covered by the U.S.-German agreement. "They want a sweetheart deal we are not going to give them. We are not going to give better terms to the Germans than to the others," Israel's Brown said.

---- INDEX REFERENCES ----

KEY WORDS: **HOLOCAUST;** INSURANCE INDUSTRY -- GERMANY; INSURANCE CLAIMS; VICTIM COMPENSATION

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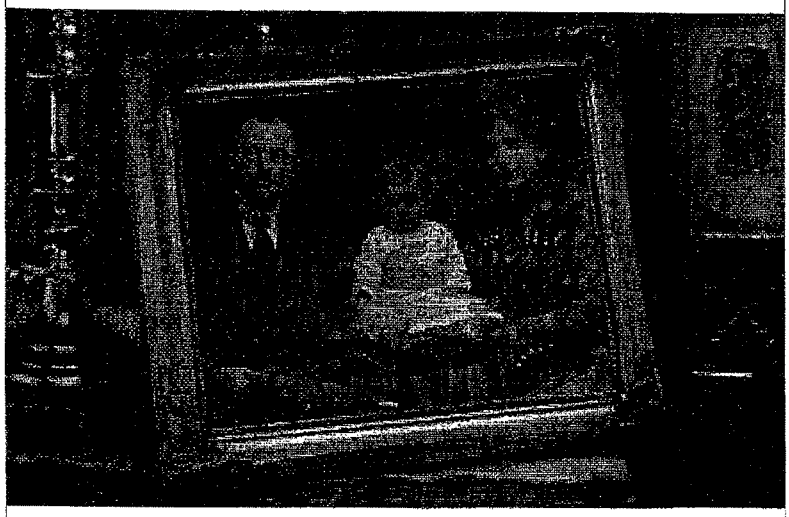
Suppose Your Family Had a Holocaust Era Insurance Policy and You Just Didn't Know About It?



If you are a Holocaust survivor or the heir of a Holocaust victim, you may have a legitimate unpaid Holocaust era life, education or dowry insurance claim and the opportunity exists for you to receive payment. You can now file claims through a new Claims Resolution Process set up by the **International Commission on Holocaust Era Insurance Claims.**

The Commission consists of representatives of United States insurance regulators, five European insurance companies and their subsidiaries, the State of Israel, worldwide Jewish and Holocaust survivor organizations and European regulators as Observers.

The unique Claims Resolution Process provides individuals with a central source for information on, investigation into, and payment of those outstanding policies, without any charge to the claimants.

For more information, mail in the request to the right, visit the website www.icheic.org or call

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Yes, I'd like to learn more about The Holocaust Era Insurance Claims Process

Name _____

Address _____

_____

City _____

State _____ Zip Code _____

Country _____

Preferred Language _____

Mail to:
International Commission
PO Box 1163
Wall Street Station
New York, NY 10268
USA

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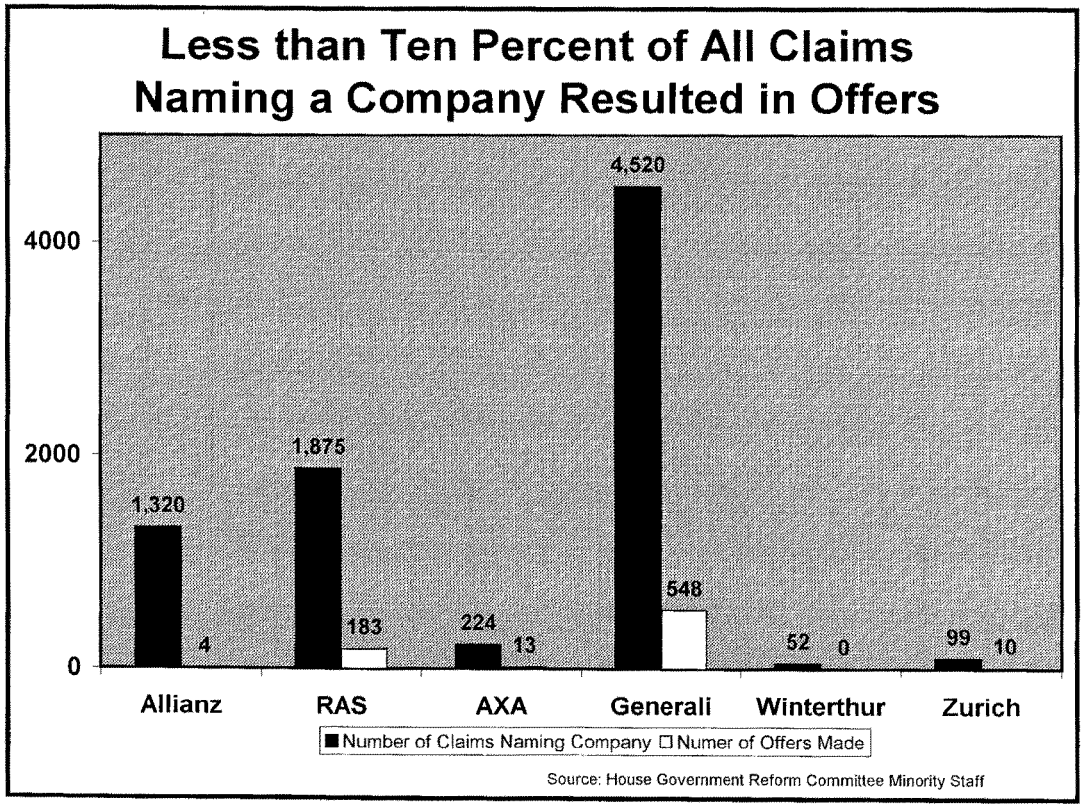
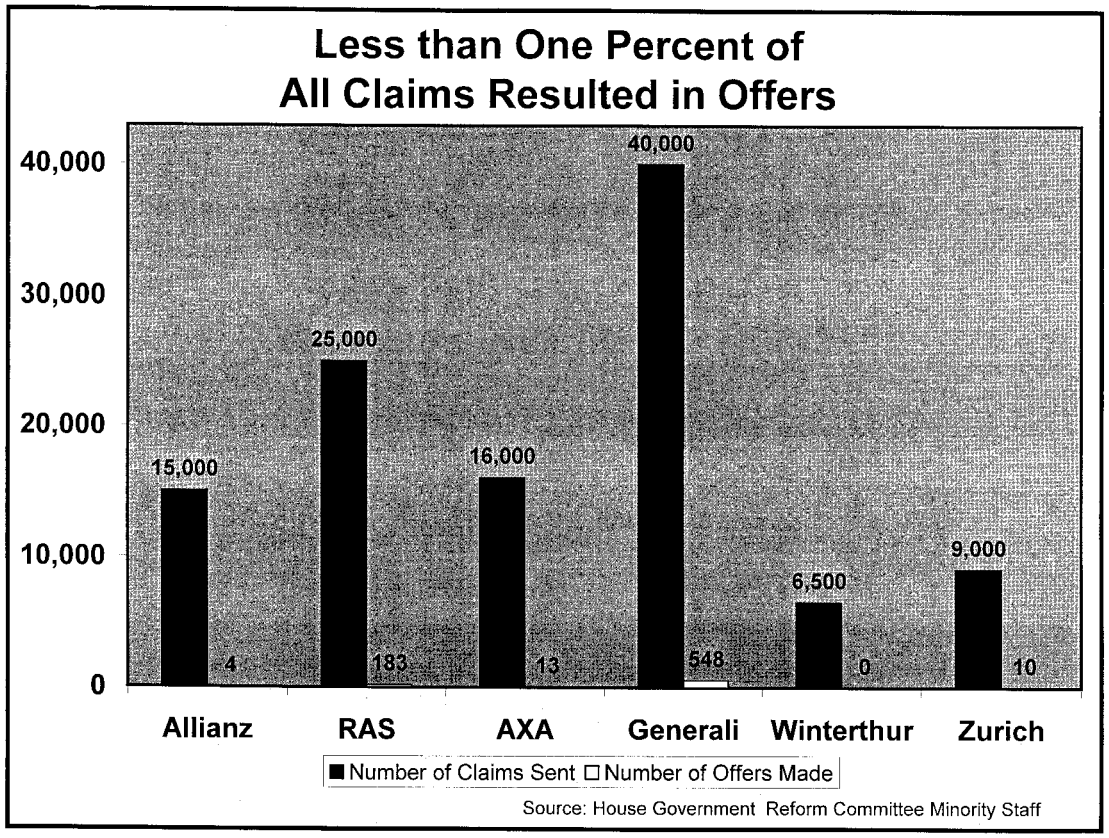

Less than Ten Percent of All Claims Naming a Company Resulted in Offers
4000
2000
0
1,320
4
1,875
183
224
13
4,520
548
52
0
99
10
Allianz
RAS
AXA
Generali
Winterthur
Zurich
Number of Claims Naming Company
Numer of Offers Made
Source: House Government Reform Committee Minority Staff


Less than One Percent of
All Claims Resulted in Offers
40,000
30,000
20,000
10,000
0
15,000
4
25,000
183
16,000
13
40,000
548
6,500
0
9,000
10
Allianz
RAS
AXA
Generali
Winterthur
Zurich
Number of Claims Sent
Number of Offers Made
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INDEPENDENT

November 21, 2001

The Honorable Lawrence S. Eagleburger
Chairman
International Commission on Holocaust Era Insurance Claims
1300 L Street, NW
Suite 1150
Washington, DC 20005

Dear Mr. Eagleburger:

Thank you for your participation in the November 8, 2001, Government Reform Committee hearing on the status of Holocaust-era insurance claims. You and the other witnesses provided valuable information about the efforts of the International Commission on Holocaust Era Claims to date and the challenges that lie ahead.

As I mentioned during the hearing, there are a number of areas about which I have additional questions for the hearing record. I am hereby submitting them to you and request that you reply in writing by December 5, 2001.

Research and Publication of Names

1. In your November 7, 2001, letter to the Committee, you explained that lists of policies provided by companies to ICHEIC are cross checked with a database of Holocaust victims at Yad Vashem, the institute for Holocaust studies and research in Israel.

   a. What is the purpose of matching the insurance companies' lists and the Yad Vashem lists before the publication of policies?

   b. Please describe the criteria used in determining whether a name in the Yad Vashem database corresponds to a name on the lists provided to Yad Vashem? Specifically, what types of data (e.g., last name, birthdate) must match for a name to be published by ICHEIC?

   c. If a name provided by a company is not in the Yad Vashem database, is there any chance that the name would be published by ICHEIC, assuming research independent of the company research didn't identify this name?

2. According to your November 7 letter, there are three million names in the Yad Vashem database. We know that there were six million victims of the Holocaust, and numerous other survivors. How can we be confident that the Yad Vashem cross-check is not hampering the publication of names by companies?

3. In an October 11, 2000, letter to me you indicated that European privacy laws could impede the publication of lists. Have those issues been resolved? If not, with which privacy laws are you still concerned? What steps have been taken to resolve these issues?

4. Your November 7, 2001, letter states that ICHEIC is in the process of implementing an electronic name matching program. Please describe how this program will work and when it will be completed.

5. During the hearing you discussed the research that was completed by ICHEIC, not by member companies, to identify policyholders.

   a. Please describe how ICHEIC went about completing this research.

   b. Where is the information that you collected through that research and who has access to it?

   c. Are all policyholder names identified during that research placed on the ICHEIC website? If not, how does ICHEIC decide which names to add to the website?

   d. Do the names identified through this ICHEIC research go through the Yad Vashem matching process?

6. Did U.S. or other non-European insurance companies issue Holocaust-era policies? Do you have databases of those companies' policies?

7. With respect to the publication of names, is there any distinction regarding whether the names listed included those who survived the Holocaust and those who perished in it?

8. When an individual files a claim regarding a potential policy, it is my understanding that the potential policyholder name is cross-checked against the list of known policyholders that is published by ICHEIC. Is this name also cross-checked against any of the names that were not published but to which ICHEIC has access? For example, would such a name be cross checked with unpublished names that resulted from ICHEIC research, or that were provided by companies or state insurance regulators? If so and the name matched, would the claimant be informed of the match?

Claims That Do Not Name a Company

9. Your November 7, 2001, letter states that about 81% of claims filed with ICHEIC do not name a specific company. I understand that Section 8A1 of the ICHEIC Memorandum of Understanding (MOU) envisioned a system to deal with those types of claims as well as to deal with claimants who seek relief under policies issued by companies no longer in existence.

   a. Please describe how you expect this system to operate.

   b. Why hasn't this system been put in place to date?

   c. When do you expect that this issue will be resolved?

Review of Claims

10. What procedures are in place in order to respond to a claimant's queries once a claim is entered? For example, if a claimant writes or calls to ask about the status of his or her claim, who responds to that call or letter?

11. We have heard a number of reasons why a company may chose to reject a claim. For example, the company may say that the claim was already paid or that the policyholder did not pay premiums.

   a. Please describe the different rationales used by companies as the basis for rejecting claims, and provide the percentage of rejections made for each such rationale.

   b. Please detail what information a company must provide to prove its rejection.

12. Concerns have been raised that, although ICHEIC has issued a number of rulings to ease the acceptance of claims, claims that were denied prior to those rulings have not been reviewed in light of the rulings. Has ICHEIC reviewed claims denials issued before ICHEIC rulings that may have been relevant to the claims? Has ICHEIC required companies to do so?

13. Please list each of your decision memoranda issued to date and describe whether each is being followed by member companies and how each is being enforced by ICHEIC.

Appeals Process

14. In your November 7, 2001, letter, you explained that an Appeals Tribunal has been constituted.

a. When was the appeals system put in place?

b. How much compensation will the 30 arbitrators on the Appeals Tribunal receive?

15. According to the ICHEIC claims packet, claimants seeking appeal must waive their right to sue on the claim by signing a "Declaration of Exclusive Remedy."

a. How many claimants whose claims have been denied have been willing to sign a "Declaration of Exclusive Remedy" in order to appeal their denials?

b. How many of those appeals have been decided? What was the time line for those decisions? What is the average length of time for an appeals decision to be handed down? How many denials have been overturned?

16. Your November 7, 2001, letter mentions that under an agreement reached with Generali, appeals of Generali claims are made in a separate process.

a. How many cases have been appealed under that process? What were the results of these appeals?

b. Do claimants who appeal under this process have to agree to waive their right to bring a lawsuit on their claims?

Policing

17. During the hearing you described your desire to create a "policing force." Please describe the following:

a. How you believe the policing force will work;

b. Where the policing force will be located;

c. Who will work for the policing force and whether they will be ICHEIC employees or from the private sector;

d. Whether the policing force will be used to enforce the MOU through steps such as reviewing whether companies are following relaxed "standards of proof"; and

e. Whether it will be used to ensure compliance with your series of decision memoranda.

ICHEIC Administration and Costs

18. I understand that ICHEIC meetings and records are closed to the public.

    a. Why are meetings and records closed?

    b. Have ICHEIC members ever discussed the possibility of making the process open?

19. The October 12, 2001, letter to you from me and Chairman Burton requested a breakdown of ICHEIC expenditures to date in the following categories: (1) salaries, (2) office related expenses, (3) meetings and conferences, (4) outreach to Holocaust survivors, and (5) processing of victims' claims. I appreciate your November 7, 2001, response regarding categories (4) and (5). Please provide the requested information regarding categories (1), (2), and (3).

20. During the hearing I asked a number of questions regarding the companies' audits. Please provide copies of the audits of the ICHEIC member companies.

21. Has ICHEIC itself been audited? If so, how many times? Please provide copies of any such audits.

22. Please describe the organizational structure of the ICHEIC staff. In addition, please detail which responsibilities are handled in the Washington office and which are handled in London, including which office and staff handles contractor oversight.

23. Please describe how you oversee the London operation of ICHEIC.

Humanitarian Funds

24. Please explain what the guidelines are for use of "general humanitarian funds" under section 8B of the MOU.

25. How does ICHEIC review requests for funds and how will they will be distributed? Does any one ICHEIC member have veto power in this process? Is a majority vote required for such expenditures?

Thank you for your attention to these questions.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: The Honorable Dan Burton