

Statement of Roman Kent

**U.S. Senate Foreign Relations
Subcommittee on International Operations
and Organizations, Democracy and Human Rights**

Hearing on:

**"Holocaust Era Insurance Restitution
After ICHEIC"**

May 6, 2008

I am a survivor of Auschwitz, the Chairman of the American Gathering of Jewish Holocaust Survivors and Their Descendants, and an officer of the Conference on Jewish Material Claims Against Germany, known as the Claims Conference. I served as a member of the Presidential Advisory Commission on Holocaust Assets in the United States and participated in the negotiations leading to the establishment – and was a Commissioner – of the International Commission on Holocaust Era Insurance Claims (“ICHEIC”).

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

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

For these reasons, I believe that I have a unique perspective from which to comment on the issues which are the subject of today’s hearing. However, before proceeding, I would like to express my gratitude to Chairman Nelson, as well as to the other members of this Subcommittee, for addressing issues of Holocaust-era compensation and restitution. The U.S. Congress has played a historic role in this just and moral effort – an effort for which we have little time remaining.

At the outset, I want to highlight several key points:

- First, the insurance companies which participated in ICHEIC have committed to continue to accept and process Holocaust-era insurance claims received after the close of ICHEIC – applying the ICHEIC standards in their decisions – at no cost to claimants. In addition, the Holocaust Claims Processing Office (“HCPO”) of New York State, will assist survivors nationwide filing such claims with insurance companies, at no charge.
- Second, the proposed insurance legislation will raise the expectations of survivors only, in the end, to disappoint them. The costs, time and effort required to engage in the litigation the proposed legislation authorizes, will be excessive, if not prohibitive. In addition, the mandatory publication by the insurance companies which participated in the ICHEIC process of all policy-holder names will, at this point, yield little new information regarding policy-holders who were victims of Nazi persecution. Even assuming that stringent European data

privacy hurdles could be overcome, the overwhelming majority of the policies disclosed will not be Jewish-purchased, while most of those that are will have been previously published and/or compensated. Thus, the huge expectations that the legislation will generate on the part of survivors will simply not be met – leading to upset, disappointment and frustration.

- Third, I am concerned that the proposed legislation will, by undermining previous commitments and reopening previous agreements, significantly damage critical, ongoing negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding immediately required for survivors in need in the United States and worldwide. Without question, these negotiations offer the real prospect of substantial benefits for many survivors now, as compared to the doubtful likelihood of insurance recoveries for more than a few survivors and their heirs offered by the enactment of H.R. 1746.

THE CONTEXT IN WHICH ICHEIC WAS ESTABLISHED

Since the beginning of World War II and continuing for almost the next sixty years, few Holocaust survivors were able to recover the proceeds of their unpaid Holocaust-era insurance policies. During that period, survivors faced enormous obstacles in their efforts to obtain payment on such policies, thousands of which remained unpaid, and few attorneys stepped forward who were willing to help with their plight.

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

Clearly, there was a vacuum in post-war insurance restitution efforts. There was no effective way for survivors to obtain payment for their pre-war insurance claims. After struggling to survive Nazi concentration camps, hardly any survivors had the documentary proof necessary to establish the existence of insurance policies, or the evidence simply no longer existed as it was destroyed or lost during and after the war. Therefore, few survivors or members of their families were able to convert the policies they had purchased into the compensation they were owed.

That is precisely why the ICHEIC agreement was reached: to establish a process to fill this void and enable claimants to attain a measure of justice which, up to that point, had not existed.

The agreement to establish ICHEIC, known as the Memorandum of Understanding, was signed in 1998 by the following parties: the World Jewish Restitution Organization and the Claims Conference – both included representatives from the American Gathering of Holocaust Survivors and the Centre of Organizations of Holocaust Survivors in Israel – which are organizations that, for years, have represented and worked on behalf of survivor rights; the National Association of Insurance Commissioners, which represented the state insurance commissioners of all 50 states; six (which later became five) large European insurance companies; and the State of Israel. In addition, as part of the negotiations with the German government and industry, which ultimately led to the establishment of a DM 10 billion fund, primarily for former slave and forced laborers, the German insurance companies also became part of the ICHEIC process.

ICHEIC provided a forum – at not cost to survivors and without regard to statutes of limitations – to identify, process and compensate previously unpaid claims based on Jewish Holocaust era insurance policies. ICHEIC, however, did not receive funds covering the entire European market. Rather, the five European companies which signed the Memorandum of Understanding, along with the German companies which were part of the German Foundation agreement (collectively, “ICHEIC companies”), which provided funding for ICHEIC, represented only a portion of the vast European insurance market. Insurance companies representing the larger part of the market did not participate in the ICHEIC process.

No funding or any other sort of participation, for example, was forthcoming from insurance companies which, prior to the war, had been located in the former Czechoslovakia, Hungary, Poland, Romania, and the former Yugoslavia, among other Central and Eastern European companies. These companies, or their assets, were nationalized, went bankrupt, or otherwise went out of business. Although such companies issued thousands of Jewish Holocaust-era insurance policies, they paid nothing, nor have the governments which took over such companies, or their successor governments, paid a penny to survivors for their insurance claims.

Nonetheless, ICHEIC took on the obligation to make payments to claimants even for such policies, despite the fact that no funds were provided by these companies or governments. Information regarding such policies was difficult if not impossible to obtain. Yet, ICHEIC, through its own research, located available information on the policies and evaluated them through a special process created for claimants of policies from Eastern European companies that had been liquidated, nationalized, or for which there was no known successor. These claims were evaluated by ICHEIC staff according to ICHEIC rules and guidelines, including ICHEIC valuation standards.

A continual stream of complications had to be resolved during negotiations with the insurance companies which participated in the ICHEIC process. One such issue related to the differing data protection and privacy laws of each country – Germany, Italy, France and Switzerland – in which these companies are located. In an effort to have as many names as possible identified and disclosed of those most likely to have had a life insurance policy during the relevant period and who were thought likely to have suffered any form of Nazi persecution, each country's laws needed to be addressed individually. Publication of large numbers of names, where the overwhelming majority of the individuals were neither Jewish nor Holocaust victims, was of paramount concern to European governments. Yet, in spite of this and many other obstacles, ICHEIC was able to publish the names of over 500,000 Holocaust-era insurance policy holders which were most likely to have been victims of Nazi persecution.

Further, ICHEIC developed and implemented a liberal evidentiary approach which no court of law would follow. No court of law, for example, would or could rule in favor of an individual making a claim based on an insurance policy not presented in court. However, as we know, many Holocaust-era insurance policies were destroyed, lost or otherwise cannot be produced. In contrast, ICHEIC agreed to – and did – pay claimants who did (and could) not produce an insurance policy. This is no small matter. Without an insurance policy, how is the identity of the policy holder, the face value of the policy, the premiums paid and, most importantly, the beneficiary ascertained, so many years later? How can a court rule in favor of any claimant when the beneficiary of a policy is unknown? ICHEIC decided, as a matter of principle, that the family would receive compensation for the policy to address such circumstances.

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

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

In sum, the ICHEIC process was a response to the ineffectiveness of lawsuits and compensation programs in dealing with issues raised by Holocaust survivors related to their pre-war life insurance policies. It became the first – and, indeed, the only – organization ever to offer Holocaust victims and their heirs a mechanism to pursue claims against insurance companies, at no cost, with no regard for any statute of limitations, even if neither the claimant nor the insurance company could produce the policy in issue. However, the companies which participated in the ICHEIC process did not represent the entire, nor even the majority of the, Holocaust-era European insurance market.

THE VALUE OF JEWISH OWNED HOLOCAUST-ERA INSURANCE

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

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

To be able to function and begin processing claims, ICHEIC had to resolve a number of such issues regarding what values and methods were appropriate to use, in the face of profound differences between the Jewish side, on the one hand, and the insurance companies, on the other. After lengthy arguments, the parties involved in ICHEIC recognized the virtually endless potential for disagreements over such determinations and ultimately were able to develop a methodology accepted by the parties which, in turn led to the negotiated settlements and compromises essential to moving a slow and difficult process forward.

The determination of the present value of unpaid, pre-war Jewish insurance policies requires, under the ICHEIC valuation system or any valuation system, a number of calculations involving many complex factors, including the following:

- (i) the total face value of all life insurance policies at the beginning of the Holocaust period, in the local currency at the time;

- (ii) the Jewish share of the total value of all life insurance policies, based on the percentage of the Jewish population in a given country;
- (iii) the propensity for Jewish individuals to purchase insurance in greater numbers and at a higher value than the rest of the population;
- (iv) an adjustment for policies which have been paid; and
- (v) a system of valuation by which unpaid Holocaust-era Jewish policies (which includes heirless claims and others who did not or could not make a claim) are converted into today's value.

However, there is no single, correct measure for any of these factors, while the range of possible values for each factor is vast. No consensus exists, for example, regarding how much higher than the average the Jewish propensity to purchase insurance was, or how much higher than the average the face values of such Jewish policies were.

Moreover, a number of the currencies which had been used to purchase policies before World War II became virtually worthless. Companies argued, both in ICHEIC and in court cases, that the policies were, therefore, also virtually worthless. ICHEIC, in the end, did not accept that argument.

These represent a few of the many, complex determinations that had to be made to reach a decision regarding the total value of unpaid Jewish Holocaust-era insurance policies. Nonetheless, the final conclusions one can reach – as to the amount of the entire relevant market and what percentage of that total was paid through the ICHEIC process – radically differ depending on which values and methods, out of the extensive range of possibilities, are selected for the relevant component factors.

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

Although the Memorandum of Understanding called for the resolution of claims against Holocaust-era insurance policies issued by the companies participating in the ICHEIC process, ICHEIC's efforts went well beyond that.

First, only a small percentage of all the claim forms submitted to ICHEIC named a specific company, and few claims included any documents linking the policy in issue to the specific company named in the claim. Further, some claims that did identify the policy-issuing companies turned out to be companies which were not signatories to the Memorandum of Understanding,

nor German insurance companies. To ensure that these claims would be treated properly, ICHEIC entered into agreements with other agencies and transferred these claims as appropriate.

Second, to ensure the broadest possible reach, when ICHEIC received anecdotal claims that did not identify a specific insurance company, it nonetheless circulated such claims to all member companies that did business in the policy-holder's country of residence.

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

Finally, although the ICHEIC process has closed, the participating insurance companies have made commitments, orally and in writing, to accept and process any Holocaust-era claims they continue to receive, with no cost to the claimant and in spite of any statute of limitations.

CONCLUSION

Was ICHEIC perfect? Clearly not. When dealing with matters relating to the Holocaust and the atrocities committed, the most that can be achieved is an imperfect justice. Nothing can remedy the wrongs that were perpetrated.

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

- First, ICHEIC filled a void by establishing a mechanism to identify and process Holocaust-era insurance claims, even when claimants typically had no documentation. Prior to the ICHIEC process, there was, practically speaking, nowhere to go to recover the proceeds of unpaid Holocaust-era policies;
- Second, the ICHEIC process was at no cost to survivors, and without regard to statutes of limitations;
- Third, ICHEIC paid claims against insurance companies which no longer existed, whether due to nationalization, bankruptcy or other reasons;
- Fourth, the insurance companies which participated in the ICHEIC process have continued to accept and process claims – again, at no cost to the claimants and regardless of statutes of limitations. Claimants may obtain, at no charge, the assistance of the Holocaust Claims Processing Office in filing such claims;

- Fifth, an archive consisting of over 500,000 most likely Jewish insurance policy holders is now available to survivors, historians and other researchers; and
- Sixth, in total, over a half-billion dollars in payments to Holocaust-era insurance policy-holders and heirs, as well as to programs benefiting Holocaust survivors has been distributed as a result of ICHEIC. The payments included providing critically needed home care funding for elderly and ailing Holocaust survivors.

These, by themselves, are an impressive list of achievements, particularly considering that survivors had virtually nowhere to go with their insurance claims before ICHEIC was established.

My apprehension regarding H.R. 1746 is that it will not achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. Thus, whatever ICHEIC's shortcomings, they will not, in any meaningful way, be remedied by the enactment of the bill.

The bill mandates that insurance companies, notwithstanding the strict, European data privacy laws, disclose the names of **all** policyholders during the entire relevant period, but this extraordinarily costly effort will yield little new information regarding Jewish policyholders. This is especially the case regarding the five insurance companies which signed the Memorandum of Understanding and the German companies which were part of the German Foundation agreement -- they already have disclosed most, if not all, of their Jewish purchased, Holocaust era insurance policies. Thus, almost all policies which would be disclosed will not be those purchased by individuals who suffered Nazi persecution; many of the policies may have been paid; and many of those not paid, will have been previously compensated

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

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

Finally, I am extremely concerned that the Holocaust Insurance Accountability Act will severely damage the common goal of those looking to help survivors. It will jeopardize critical, on-going negotiations with governments for the continuation and expansion of funding to meet the vast, immediate needs of Holocaust survivors, both in the United States and worldwide. For example, German insurance companies were included in the ICHEIC process as part of the negotiations which ultimately resulted in the formation of the German Foundation, a DM 10 billion fund primarily for former slave and forced laborers. Those negotiations and the working of the German Foundation occurred with the involvement, and under the auspices and approval, of the German and U.S. governments, among others. The proposed legislation threatens to undermine such negotiations. Moreover, I also worry that the support the U.S. government provides Holocaust survivors will be undermined as the German government loses faith in the ability of the U.S. government to keep its commitments.

RECOMMENDATIONS

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

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

Second, most of the remaining unpaid, Jewish Holocaust-era policies were issued by companies which did not participate in the ICHEIC process. Thus, it would be helpful for Congress to focus its effort on developing measures to have companies that were not involved in ICHEIC address the issue of Holocaust-era insurance. As a related point, reimbursement is still being sought from Eastern European governments for claims paid by ICHEIC to claimants who held policies issued by Eastern European insurance companies that were nationalized or had their assets nationalized. We would request Congressional assistance in the efforts to recover such funds, as well as in the broader problem of having Eastern European countries address and resolve, in a meaningful way, the restitution of property confiscated during World War II.

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

Thank you.

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