Statement of Samuel J. Dubbin

United States Senate Foreign Relations Committee
Subcommittee on International Operations and Organizations,
Democracy and Human Rights

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

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

Background Representing Holocaust Survivors and Heirs

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

They explained that for decades, Holocaust survivors had been excluded from major decisions affecting their rights and welfare, as non-survivor organizations purporting to speak on their behalf controlled these processes without the consent of the victims themselves. Meanwhile, tens of thousands of survivors in their 70s, 80s, and 90s were suffering without adequate home and health care, nutrition, shelter, dental care, and other essentials of life. This shocked me, Mr. Chairman, because one article of faith throughout my adult life has been that victims of the Holocaust occupy a hallowed place in the conscience of every civilized person and institution, and deserve every consideration possible in the recognition of the unique horror they endured. In practice, their experience has been quite the opposite.

As you recall, Mr. Chairman, the Coalition leaders worked with you in 1998 when you were the Florida State Treasurer and Insurance Commissioner to enact legislation in Florida to hold insurers accountable for policies sold to their parents and grandparents

before WWII. The law required insurers doing business in Florida to disclose names of policy holders and allow survivors and heirs to bring lawsuits in Florida courts for unpaid policies. It also negated any statute of limitations defense for cases brought within ten years, and, as with other insurance consumer statutes in Florida, provided for treble damages and attorneys fees for successful claimants. The legislation the survivors are asking Congress to enact, HR 1746, is an almost identical measure at the Federal level.

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

In the year 2000, the South Florida Survivor Coalition leaders joined with elected survivor leaders from throughout the United States who had also reached the conclusion that it was past time for survivors to speak and act for themselves. They formed the Holocaust Survivors Foundation USA, Inc. (HSF), which has become the leading grass-roots voice for survivors' rights to obtain a full and transparent accounting of assets looted during the Holocaust, to recover assets traceable to living survivors and heirs whenever possible, and to ensure that all survivors in need receive priority funding from restitution proceeds which are truly "heirless." I have been the organization's legal counsel since its inception. HSF's activities have been widely reported over the last 8 years in national Jewish media such as the *Jewish Telegraphic Agency*, the *New York*

Jewish Week, the *Forward*, as well as in national media such as the *New York Times*, the *Wall Street Journal,* the *Los Angeles Times,* the *Miami Herald*, *South Florida Sun Sentinel*, *Palm Beach Post*, and Associated Press. More information about HSF's activities and goals can be found at its web site, www.hsf-usa.org.

Summary of House Legislation – HR 1746

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

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

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

HR 1746 provides a legally enforceable remedy that survivors and family members have right to control themselves. It places survivors where they would have been in 1998 after state laws passed to allow insurance consumers to pursue their traditional remedies against the companies that profited from the Holocaust at the expense of the families of the victims. Without legislative relief, hundreds of thousands of unpaid policies worth $18 billion in 2007 dollars if not more sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Generali, Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, and others.

Overview of Representation of Survivors' Interests in Litigation

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

Swiss Bank Looted Asset Allocations

In 2000, Swiss Bank Class Action Judge Edward R. Korman earmarked a total of $205 million in looted assets funds (from Swiss banks' fencing looted property) for the needs of poor survivors around the world, with 75% of the funds allocated for the Former Soviet Union (FSU) and only 4% for the survivors in the United States. The leaders of the HSF and several other survivors and survivor groups challenged the allocations because American survivors represented 20% of the class members (all living survivors) and almost 30% of the death camp survivors, including tens of thousands who are

indigent. The FSU was given $16 million per year, and about $800,000 per year was provided for the 80,000 poor or near-poor U.S. survivors. Under the settlement, most needy U.S. survivors received nothing, yet their rights were extinguished.

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

Hungarian Gold Train

My law firm was one of three firms which successfully represented Hungarian survivors seeking restitution and an accounting against the United States government for the United States= mishandling of property of the Hungarian Jews that was placed on the AHungarian Gold Train@ by the Hungarian Nazi collaborators and obtained at the end of

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

Insurance Litigation

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

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

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

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

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

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

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

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

considered an adequate alternative forum.

Id. at 355. Among the Court's findings was that ICHEIC was "manifestly inadequate because it lacks sufficient independence and permanence." *Id.* at 356. It held:

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

Id. at 356-57.

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

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

I was asked by several survivors including Floridians Jack Rubin, Alex Moskovic,

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

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

Impact of Legislation on Pending Appeals.

In my judgment as a lawyer, the appeal of Judge Mukasey's dismissal of the

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

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

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

The missing element in the survivors' battle for justice against recalcitrant insurers has been Congress. Despite numerous hearings documenting ICHEIC's inconsistencies and shortcomings, for reasons that are impossible for my clients to fathom, Congress has been silent. This is Congress's last opportunity to fulfill what

should be a simple and straightforward duty to give every survivor and heir a chance to get to the truth about their families' policies, uninhibited by any political or institutional machinations or agendas.

Background of Jewish People's Insurance Policies and Insurers' Conduct

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

History

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

One of the key selling points of many companies was the contractual right to receive policy proceeds "wherever the customer requested" in the world. There is ample

evidence that the companies emphasized this feature in their sales to Jews who were increasingly living under the dark clouds of Nazisim in Europe. For example, the policies of Victoria of Berlin provided: "From the first day that the insurance becomes effective, the insured person has the right to change professions and residence and he may go to any other part of the world. Such changes will not affect the validity of the policy in the least, which will continue to be in effect as before." Evidence of similar provisions in other companies' policies is abundant in the record that has developed, limited though that is considering ICHEIC's secrecy.[5]

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

The rape of Jewish insureds in Europe was exacerbated by the fact that German and Austrian census data identified Jewish residents and their assets, and such data was

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[5] As another example, Generali's marketing brochures and policies highlighted the availability and value of overseas assets – including assets in America – that would ensure the customers' ability to collect their benefits outside of Czechoslovakia if they so requested. *Buxbaum v. Assicurazioni Generali*, 33 N.Y.S.2d 496 (N.Y. Sup. Ct. 1942); *Kaplan v. Assicurazioni Generali*, 34 N.Y.S. 2d 115 (N.Y. Sup. Ct. 1942).

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

> The companies licensed to operate in the Protectorate were also affected by the particularly rigorous and systematic seizure of Jewish insurance assets, so that by July 1942 the Prague Gestapo was able to report 54.4 million Czech crowns in confiscated repurchase values, the bulk of which came from the portfolios of Generali (20.1 million), Victoria (13.8 million), RAS (5.9 million), and Star-Verisherungsanstalt (4.6 million).

Feldman, at 356. Professor Feldman's book and other studies and records clearly document how Allianz and other German, Swiss, Austrian, and Italian insurance companies willingly participated in confiscation activities throughout Europe.

After World War II, as Holocaust survivors and their families struggled to reconstruct their lives, insurers refused to honor the policies they had issued to insure property the Nazis seized and the lives of those who perished before firing squads and in Holocaust death camps. The companies stymied their former customers with evasions and denials such as demanding original policy documents, demanding death certificates,

denying the existence of policies, denying that they had records of policies from that period, claiming that their its assets were confiscated or nationalized by post-war communist governments obviating its obligations to Jewish Holocaust victims, and other bogus or legally deficient denials that frustrated Holocaust survivors and their families for decades.[6]

In 2002, the Government of Switzerland published the Bergier Report, also known as the Independent Commission of Experts Switzerland, Second World War (ICE) which addressed several areas of Swiss corporate and governmental complicity in and profiteering from the murder and plunder of Europe's Jews. The Bergier Report on insurance is disturbing but not surprising in its description of the Swiss insurers' dishonesty toward and disrespect for its Jewish customers. For example, despite the fact that Swiss insurers had nine (9) percent of the German market, "[i]n 1950 the Association of Swiss Life Insurance Companies reported that *its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime* so that their entitlement to claim under the policy had become dormant." Bergier Report, at 465. (Emphasis supplied). The Report also showed:

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

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

Bergier Report, at 460.

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

> Like the rest of the German insurance industry, life insurance companies, such as our German life insurance subsidiary Allianz Lebensversicherungs AG were bankrupt or near bankrupt at the end of the war after having to invest in government bonds that became worthless when Germany was defeated. Allianz Leben also held properties that were lost or destroyed in war-ravaged Germany.

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

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

> Allianz picked up the core of its stock holdings after World War II. At a time when German companies were desperate for capital, Allianz was one of the few sources of cash to rebuild the bombed-out country. As German corporations regained momentum and became global players, Allianz continued to invest and maintain its influence in boardrooms.

Steinmetz and Raghavan, "Allianz Eclipses Deutsche Bank As Germany' Premier Power," *The Wall Street Journal*, November 1, 1999.

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

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

ICHEIC Formed

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

Mr. Eagleburger has stated that ICHEIC was chartered under Swiss law and headquartered in London to avoid the reach of U.S. courts' subpoena powers. Decisions were to be made "by consensus," with the Chairman breaking any ties when necessary. Congress stayed its hand from enacting legislation.

Five years later, after several scandals were reported in the *New York Times*, *Los Angeles Times*, and *Baltimore Sun*, the *Economist*, and other media, Chairman Eagleburger admitted to the House of Representatives Committee on Government Reform (September 2003) that the ICHEIC had spent far more in administrative expenses (including first class travel) than it paid to claimants. Survivors appeared at this and other hearings and told horror stories of multi-year waits for responses from ICHEIC, denials without any explanation other than "no match found;" demands for information that no survivors or legal heirs could be expected to know; and denials by companies even in the face of documentary evidence that policies existed. Nevertheless, Congress again failed to act directly to address the companies' conduct or to assist survivors at that time.

However, that year, Congress did mandate, in Section 704 of the 2003 Foreign Relations Reauthorization Act, that ICHEIC provide reports on its operations and the companies' performance to the U.S. State Department. In spite of this Congressional mandate, *ICHEIC refused to supply the required reports every year.* Remarkably, State took no further action. Neither did Congress. Unfortunately, ICHEIC completed its "mission" in March 2007 and the results are catastrophic.

There were 875,000 estimated life insurance and annuity policies outstanding valued at $600 million in 1938 owned by Jews. And while western countries conducted limited restitution of policies for extremely low values, by 2007 the amount that was unpaid from policies in force in 1938 was *conservatively* estimated to be worth $18 billion. This estimate, by economist Sidney Zabludoff, is conservative because it uses a 30-year U.S. bond yield to bring get to current value, whereas insurance companies also

invest in equities and real estate. Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and before the House of Representatives Foreign Affairs Committee Subcommittee on Europe, October 3, 2007.

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

Meanwhile, ICHEIC's cost of operations exceeded $100 million, though the exact cost has not to my knowledge been widely published. To this day, Congress has not examined ICHEIC's operations despite this terrible track record. ICHEIC operated in virtual secrecy for nine years, disclosing only the barest minimum of information about its processes. Today's challenge for Congress is not to focus on ICHEIC, which has completed its mission. However, a review of ICHEIC's performance is necessary for the record because Garamendi and other decisions rely on ICHEIC as the reason to limit Holocaust victims' legal rights. Therefore, some particular concerns about ICHEIC's operations are examined later in this statement.

Arguments Against HR 1746

Opponents of HR1746 have coalesced around three (3) major arguments: (1) it is premised on inaccurate estimates of the unpaid value of Holocaust victims' policies; (2) it violates "deals" to provide "legal peace" for German and other insurance companies who participated in ICHEIC; and (3) it isn't likely to produce enough successful claims by survivors to justify the political costs of the ill-will it will engender among foreign governments whose insurance companies profited from the Holocaust.

HR 1746 estimates are accurate and conservative. Led by ICHEIC Chairman Lawrence Eagleburger's October 15, 2007 Statement to the House Foreign Affairs Committee, opponents claim the legislation is based on the "erroneous allegation" that ICHEIC paid less than 5% of the total amount owed to Jewish Holocaust victims and heirs. The Preamble to HR 1746 states that of the conservative estimate of $17 billion in unpaid policies in 2006 values, ICHEIC succeeded in paying only $250 million for policies.

Mr. Eagleburger also says the legislation's sponsors do not provide substantiation for the figures cited. He is incorrect. In fact, the Preamble to HR 1746 cites experts' estimates of the value of unpaid insurance policies owned by Jews at the start of the Holocaust, as ranging from $17 billion to $200 billion.

The $200 billion estimate was published in 1998 in the *Insurance Forum*, the widely respected and quoted insurance consumer newsletter published by industry expert Professor Joseph Belth of the University of Indiana Business School. Professor Belth updated his 1998 estimate to $309 billion in 2007. *See* Letter from Professor Joseph Belth to Baird Webel, Congressional Research Service, January 24, 2008.

The $17 billion estimate is based on an analysis by economist Sidney Zabludoff in the spring 2004 *Jewish Political Studies Review*. Mr. Zabludoff presented his analysis at the House Foreign Affairs Subcommittee hearing on October 3, 2007, and at the House Financial Services Committee on February 7, 2008. He used a base total value of nearly $600 million for the total value of Jewish policies in force in 1938, which was a consensus of ICHEIC participants. He then subtracted out the amount of policies paid for in post-war restitution programs (assuming 70 percent for most west European countries and 10 percent for east European countries). He then brought the remainder up to date by using the extremely conservative 30 year U.S. bond rate. The result is that value of unpaid value of Jewish policies is conservatively estimated at $17 billion in 2006 prices. Therefore, the opponents' criticism is unfounded.

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

The Pomeroy Ferras Report actually agrees in large part with Mr. Zabludoff's base calculations about the number and local currency value of Jewish policies at the start of the Holocaust. The Report did not, however, make any effort to estimate of the outstanding current value of the Jewish life insurance policies.[7] That is what Mr.

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

Consequently, the opponents of HR 1746 are incorrect when they defend ICHEIC

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

In his Europe Subcommittee testimony in October 2007, State Department representative Christian Kennedy's argued that the total current unpaid value is $3 billion, as opposed to the $17 billion estimated by HR 1746. Although Amb. Kennedy gave no explanation for his $3 billion number, it was later explained to be an estimate of the 2003 unpaid value of policies using the "ICHEIC valuations" as a base. The ICHEIC valuation system was, a *compromise* that allowed the companies to take advantage of post-war currency devaluations and political events in Germany and Eastern Europe. This was the basis on which claims were actually paid in the ICHEIC, not a value determined by economists or by a judge and jury under expert rules applicable in litigation.

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

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

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with such broad and inaccurate statements as the one Mr. Kennedy made before the Financial Services Committee: "ICHEIC studies show that its claims and humanitarian programs did a credible job of adjudicating and paying claims on life insurance policies in effect during the Holocaust era." Ambassador J. Christian Kennedy, Special Envoy, Office of Holocaust Issues, United States Department of State, Statement before the House Financial Services Committee, February 7, 2008, at 6.

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

The "humanitarian payments" were neither intended by ICHEIC nor interpreted by survivors as payments on policies. They were viewed as an attempt to give "something" to the tens of thousands of applicants whose family policies ICHEIC or the companies would not acknowledge. ICHEIC paid $1,000 but promised to "keep looking." Claimants have stated that they considered the $1,000 as tantamount to calling them liars. *See* Testimony of Israel Arbeiter before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and Testimony of Alex Moskovic and Jack Rubin before the U.S. House of Representatives Committee on Foreign Affairs, Subcommittee on Europe, October 3, 2007.

"Legal Peace." The insurance industry, the German Government, the State Department, and certain organizations that were part of ICHEIC (and their affiliates) oppose HR 1746, saying that "a deal is a deal," and the insurance companies were promised "legal peace" if they participated in ICHEIC. The short answer to this argument is that the U.S. Government did not agree to waive survivors' rights to sue insurance companies in any Executive Agreement or other action arising out of the Holocaust restitution cases and negotiations. Today, opponents of HR 1746 want to give German insurers more than they were able to negotiate for in 2000, and more than the U.S. government has the constitutional authority to provide.[8]

[8] Stuart Eizenstat's book *Imperfect Justice*, at page 270, refers to a letter from Solicitor General Seth Waxman which addresses the issue, but that letter has never to the best of this writer's knowledge been made public. It is imperative that this Committee review this correspondence and make it publicly available so that survivors, heirs, the general public, and Congress can be completely informed about the formulation of this

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

The basis now cited for the "legal peace" argument is the "$5 billion" German Foundation Agreement. That Agreement arose from the dismissal of the lawsuits filed by Holocaust survivors against German manufacturers seeking compensation for slave labor they were forced to perform to survive. The courts held that international treaties settling WWII, which encompassed infliction of personal harm during the war, precluded the judicial branch from allowing suits for personal injuries such as the injustices of slave labor. While the cases were on appeal, Germany and the U.S. Government entered into a mediation to settle the slave labor claims.

At the eleventh hour, after months and months of negotiations over slave labor compensation, and after months of speculation on the total to be offered, the Germans reportedly demanded that if the U.S. did not agree to include "insurance" in the agreement, there would be no slave labor settlement. Stuart Eizenstat's book about the negotiations describes the Germans' aggressive tactics to include insurance in the slave

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public policy decision that has profoundly and adversely affected thousands of Holocaust victims and families.

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

The fact that Congress did not legislate directly on this problem until 2003 does not mean that members of Congress were satisfied with these developments. Several members of Congress immediately protested the Executive Branch's decision to include survivors' insurance rights within the German Foundation settlement, which was always believed to be limited to slave labor. These members expressed strong disagreement that the German-U.S. Agreement over slave labor was expanded to include any kind of limits on insurance regulations or liabilities:

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

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

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

Several of these Representatives also wrote to the Solicitor General of the United States to protest the inclusion of insurance in the German-U.S. Agreement, and the Justice Department's efforts to undermine states' authority over Holocaust survivors' insurance claims:

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

See September 11, 2000 Letter from Congressman Henry Waxman, et al, to U.S. Solicitor General Seth P. Waxman (Emphasis supplied).[10]

In response to concerns raised by U.S. Congressmen, the Justice Department made it clear that under the Agreement, the Government did not purport to eliminate Holocaust survivors' legal claims against German insurers. Assistant Attorney General

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

Raben, correctly stated that the terms of the agreement only required the Government to state "that it would be *in the foreign policy interests* of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims," and "*that the United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal of private claims against German companies*." *Id*. (Emphasis supplied).

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

In 2003, the United States Supreme Court in the *Garamendi* case held by a 5-4 vote that though the Executive Agreement between the U.S. and Germany did not expressly preempt state law, there was a separate "federal policy" favoring "nonadversarial resolution" of Holocaust victims' claims that preempted the California Insurance Commissioner's power to subpoena records from German companies. In that case, several members of Congress filed an amicus brief supporting California's primary jurisdiction over insurance regulation and opposing the unlegislated "implied" expansion

of federal executive authority to preempt state law. Unfortunately the Congressional *amici's* position was not adopted by the Court, however.

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

Congress retains the authority to restore the *status quo ante* for Holocaust survivors and heirs, to enable them to bring court actions against the insurers who took their parents' and grandparents' sacred investments to protect their loved ones, then turned their backs on the insureds, heirs, and beneficiaries after the horrors of the Holocaust. Now is the time for Congress to rectify this 60-plus year injustice. Congress, not the Executive Branch, has the constitutional and statutory authority to regulate international commerce, and to define the jurisdiction of the federal courts. Therefore,

HR 1746 invokes fundamentally Congressional prerogatives, which the Executive Branch's unilateral actions undermine in an intolerable and harmful fashion.

Other Issues Precluding "Legal Peace." Congressman Wexler, in response to Ambassador Kennedy's "legal peace" argument at the Europe Subcommittee hearing in October 2007, asked what the survivors and heirs with possible insurance rights received in exchange for the "deal" the Department now says should be "honored." He pointed out the 3% payment rate as clear evidence that whatever was contemplated surely was not fulfilled. Or, as survivors and their supporters have stated, "there can be no legal peace until survivors have moral peace" through an honorable, transparent, and accountable process.

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

Inadequate Disclosure of Policy Holder Names. ICHEIC was supposed to begin with a comprehensive dissemination of names of policy holders in order to inform survivors and family members about the possibility of an unpaid policy in their family, but only a fraction of policies, including only 10% from Eastern Europe, were published. Most were published in mid-late 2003, after the filing deadline had been extended twice and shortly before the final deadline.

This failure undermined one of ICHEIC's basic tenets, i.e. that almost all Holocaust survivors and the heirs of Holocaust victims would have to depend on the

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

Ranking Committee Member Henry A. Waxman remarked:

> ICHEIC is supposed to be a public institution performing a public service, yet it has operated largely under a veil of secrecy without any accountability to its claimants or to the public. Even basic ICHEIC statistics have not been made available on a regular basis and information about ICHEIC's administrative and operational expenses have been kept under lock and key. There is no evidence of systematic changes that will guarantee that claims are being handled by ICHEIC in at timely way, with adequate follow up.
>
> Even worse, many of the insurance companies remain recalcitrant and unaccountable. ICHEIC statistics show that claims are being rejected at a rate of 5:1. . . . The Generali Trust Fund, an Italian company, has frequently denied claims generated from the ICHEIC website, or

> matched by ICHEIC internally, without even providing an explanation that would help claimants determine whether it would be appropriate to appeal.

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

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

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

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

It is true that in mid-2003, five years after ICHEIC was created, three years after the German-U.S. Executive Agreement, and after two extensions of the published filing deadlines for ICHEIC claims, an additional 360,000 names were added to the ICHEIC website from Germany, and in late 2003 approximately 30,000 more names of Generali customers were published. However, these were published long after the vigorous publicity that had occurred fully three years earlier, and after most who had been

interested had simply become frustrated and disgusted. In October 2004, the Washington State Insurance Commissioner wrote:

> The deadline for filing claims was December 31, 2003. Despite the terms of the MOU (Memorandum of Understanding), up until the very end of the claims filing period the companies continued to resist releasing and having the names of their policyholders published, in some cases citing European data protection laws. By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability. Had the companies released the number of policyholder names that could and should have been published over the entire ICHEIC claims filing period, it is likely the number of claims would have been significantly higher than the present 79,732.

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

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

> ICHEIC dealt with these issues by adopting relaxed standards of proof and doing the claimants' research for them, but no such relaxed standards will be available in court. Litigation is also, of course, time-consuming and costly, and this legislation would not ensure that any claims are resolved within the lifetimes of the survivors.

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

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

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

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

Another example is provided by the New York Legal Assistance Group (NYLAG), which represents hundreds of indigent clients in the New York City area. NYLAG also objected to the Generali class action settlement based on its clients'

ICHEIC experiences and filed an *amicus curiae* brief in the Court of Appeals. One of the cases they presented to the Court was that of Miklos Griesz. Mikos Griesz was a named beneficiary of his mother's policy, that Generali had that information in its records including the Policy Information Center (PIC), but that they all failed to inform Mr. Griesz of that fact because he filed as a beneficiary of his *father's* policy, not his mother's. Generali sat on that information for more than four years, without ICHEIC doing anything to help. That isn't unusual – the ICHEIC process really didn't have any kind of enforcement mechanism built in unless a claimant filed an appeal of a denial.

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

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

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

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

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

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

For example, the researchers reported that they had access to the Slovakian Central Property Office, which contained "more than 700 boxes of records dealing with the 'aryanization' of Jewish firms in Slovakia. Those files contained information about "the assets of the firms and of their Jewish owners .. . . declared on a special form." However, the researchers searched only "a small sample" of those 700 boxes, which provided information about "18 policies." No explanation was given for leaving most of the 700 boxes unsearched.

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

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

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

locate policy information. Today, the imperative of requiring the companies to disclose its records, not ICHEIC's performance, is the only relevant matter.

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

Opponents of HR 1746 cite the audit program as a reason to defend the process. But the public and policy makers had no way of ascertaining what the audits actually signified, much less what they found. No ICHEIC audits were published until after the body closed its doors in March 2007.

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

Moreover, the ICHEIC audits were extremely limited. Under ICHEIC rules, the companies decided what the relevant scope of investigation and analysis would be in searching for names to publish, and in determining whether claims were "valid." All the audits did was test whether the companies did what they said they were going to do. Therefore, even the audits that "passed" under this extremely limited ICHEIC mandate do not offer any comfort to claimants who were rejected, much less any basis for Congress to abandon the field in favor or ICHEIC. For example, the Deloitte & Touche LLP Stage 2 audit "passing" Generali Trieste, which was not even *issued* until March of 2007, states:

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

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

Appeals Were Biased Against Claimants.

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

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

> In my experience as an arbitrator I witnessed bias against the claimants by ICHEIC's London office and especially as

> manifested by the administrator, Ms. Katrina Oakley. She demanded that ICHEIC arbitrator apply an erroneous and phantom burden of proof rule in deciding appeals, a rule that would force ICHEIC's arbitrators to deny an otherwise valid claim.

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

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

(Emphasis by Mr. Lewis).

ICHEIC Failed to Apply "Relaxed Standards of Proof"

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

Mr. Rubin filed a claim with ICHEIC stating that the building that housed his family home and his father's general store in Vari (Czechoslovakia, later Hungary) had a sign affixed stating the building and premises were insured by "Generali Moldavia." Mr.

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

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

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

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

> Where no written record of a policy can be traced by the Member Company, *the burden upon the Appellant to establish that a policy existed*

> *is a heavy one*, even when the burden is to establish that the assertion is "plausible" rather than "probable." Where the Appellant is not able to submit any documentary evidence in support of the claim, as in this case, the Appellant's assertions must have the necessary degree of particularity and authenticity to make it entirely credible in the circumstances of this case that a policy was issued by the Respondent.

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

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

<u>ICHEIC Did Not Require Companies to Disgorge Information It Provided About Its Jewish Customers.</u>

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

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

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

This source of the information is an "examination of the collected data on unpaid policies shows that *some of the insured had to specify their 'Jewish race.'*" This revelation contradicts statements made over the last decade by the companies and their representatives.

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

> "The holder of the policy in the margin is Mr. Arrigo Lops Pegna of Ertore – the beneficiary is the wife. Mrs Gemma Servi in Lopes – Milan,

> O sc C Ciano 10, both of whom belong to the Jewish race. We renounce the aforementioned policy and signify to you that the same is in effect for an insured sum of L. 100,000."

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

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

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

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

For example, Florida's Legislature and Insurance Commissioner have consistently rejected the proposition that the ICHEIC should be treated as a substitute for Florida's

Holocaust Victims Insurance Act and traditional remedies under Florida law. In 1998, when Florida Insurance Commissioner Bill Nelson, now Chairman of this Committee, agreed to execute the Memorandum of Understanding which created the ICHEIC, he did so subject to several specific conditions, including the express acknowledgment that Florida laws would not thereby be diminished: "The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens." *See* April 29, 1998 letter from Florida State Treasurer and Insurance Commissioner Bill Nelson to The Honorable Glenn Pomeroy, NAIC President.

Commissioner Nelson again rejected the idea that ICHEIC participation created a "safe harbor" from Florida law in a subsequent letter to the members of the ICHEIC: "*Participation on the Commission should not be seen by any company as a means to shield itself from Florida's laws.* When I signed onto the Memorandum of Understanding establishing the International Commission, as every one knows, I stated: 'The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens. This has always been and continues to be my position."[11]

The principal Senate sponsor of the Florida Holocaust Victims Insurance Act and Senate Resolution 2730, State Senator Ron Silver, explained that claimants' rights to go to court in Florida are part of the bedrock of the State's common law and statutory scheme to protect the rights of Holocaust victims and heirs. In a letter to the Honorable

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

Michael Mukasey, he wrote: "One of the key elements of our legislation was to establish a right for Survivors, heirs, or beneficiaries to go to court in Florida to enforce their rights in relation to insurance policies sold before the Holocaust." Senator Silver's letter explains:

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

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

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

The provisions of HR 1746 represent common sense and common decency in allowing Holocaust survivors and families access to the United States court system to control their own right to obtain information from the culpable insurers, seek the truth about their families financial history, and recover the funds they might be owed. Given

the shortcomings in ICHEIC's names disclosure record and claims payment record, HR 1746 is necessary to allow all victims' families a fair chance to recover their financial due. The status quo creates one subclass of Americans who cannot go to court to sue insurers that pocketed their hard-earned money – Holocaust survivors. This is an untenable position for America in the year 2008.

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

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

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

Conclusion

As Holocaust survivor Jack Rubin stated before the Europe Subcommittee in October, it is indeed possible and even likely that tens of thousands of Jews' insurance

policies went up in the smoke of Auschwitz. But why should the companies be able to retain the billions in unjust enrichment due to their greed and cynicism? Even if only a few additional policies are repaid to individuals, there is no plausible reason to allow the financial culprits from the Holocaust rest easy in 2007 or ever, until they have disgorged their ill-gotten gains. Their unjust enrichment is tainted and must be returned, to the owners or to survivors in need if necessary.

Report to Congress: German Foundation "Remembrance, Responsibility, and the Future"

Bureau of European and Eurasian Affairs
March 2006

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

Introduction

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

Background

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

Implementation of the Agreement

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

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

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

Funds Available to the Foundation

By early 2002, the entire sum of 10 billion DM had been made available to the Foundation by the Federal

Republic of Germany and by German companies.

Payments from the Foundation

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

Partner Organization	Number of Recipients	Amount (in Euro)
Belarus/Estonia	129,000	345,300,000
Conference on Jewish Material Claims	154,000	1,116,800,000
Czech Republic	76,000	209,200,000
International Organization for Migration	87,000	366,300,000
Poland	483,000	971,000,000
Russia	245,000	392,000,000
Ukraine	472,000	864,500,000
TOTAL	**1,646,000 Recipients**	**4,264,800,000 Euro (approximately U.S. $5.1 billion)**

ICHEIC

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

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

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

Finanzamt für Körperschaften Wien
Finanzamt 1. Bez. Riemergasse 2 (Verzeichnis Nr. 22 / R)

Aktenzeichen des Oberfinanzpräsidenten Berlin: 188590

Jude

Anmeldebogen C 1

Auszufüllen von Schuldnern im Inland, die im Ausland befindlichen Feinden eine Leistung schulden. — § 5 der Anmeldeverordnung —

Auf Anmeldebogen C 1 sind anzumelden: Verpflichtungen aus dem Warenverkehr und dem Kapitalverkehr, Hypotheken- und Grundschulden sowie Verpflichtungen aus Versicherungsverträgen.

Verpflichtungen betreffend gewerbliche Schutzrechte und Urheberrechte, Verpflichtungen zu wiederkehrenden Leistungen, sonstige Verpflichtungen (vgl. Anleitung D. IV. 2. c) sowie Verpflichtungen zu Leistungen, die nicht auf Geld lauten, sind nicht auf diesem Anmeldebogen, sondern auf Anmeldebogen C 2 anzumelden.

1. Name (Zuname und Vorname) / Firma / Wohnort oder Niederlassung / Staatsangehörigkeit des feindlichen Gläubigers (vgl. Anleitung C.): O Barchasch S. Jude; unbekannt; unbekannt

Jude

2. Name (Zuname und Vorname) / Firma / Wohnort oder Niederlassung / Staatsangehörigkeit des Anmeldepflichtigen (vgl. Anleitung B.): O Assicurazioni Generali; Wien I., Bauernmarkt 2.

Ich schulde — wir schulden — die oben unter 2. bezeichnete Firma schuldet — den oben unter 1. Bezeichneten — der oben unter 1. bezeichneten Firma — folgende Beträge oder sonstige Leistungen (vgl. Anleitung D. IV. 1.).

Art der Schuld (z. B. Kontokorrentschuld, Darlehnsschuld, Hypothekenschuld)	Wann ist die Schuld entstanden? a) vor dem 3. 9. 39 entstanden: ja oder nein?	b) falls am 3. 9. 39 oder später entstanden, Angabe des Zeitpunkts	Wert der Schuld (nach Abzug getilgter Beträge) a) in der geschuldeten Währung	b) in RM	Zinssatz[1]	Fälligkeit oder vertragliche Laufzeit[2]	Bemerkungen
1	2a	2b	3a	3b	4	5	6
Versicherungsschuld	ja			115.47	zinslos	Er- und Ableben	

Heftrand

2. Erfassung entfällt 30/11/42.

1/2

1. Vormerkung
2. Anmeldebogen 2 und 3 an R. S. M. am
3. Kartei Hg.
4. Statistik

Statist. erfaßt. K. Nr. 1

Liste Nr. 2570

Statistik absetzen 30/11/42.

[1]) In den Zinssatz sind auch etwaige regelmäßig zu zahlende Verwaltungskostenbeiträge, Provisionen, Gebühren usw. einzubeziehen. Zinslose Verpflichtungen sind in der Spalte »Zinssatz« als »zinslos« zu bezeichnen.

[2]) Bei Festzeithypotheken ist der Zeitpunkt anzugeben, an dem die Rückzahlung frühestens verlangt werden kann, bei Kündigungshypotheken ohne feste Mindestlaufzeit ist die Kündigungsfrist anzugeben. — Falls Tilgungsraten vereinbart sind, so ist ihr Betrag und ihre Fälligkeit anzugeben.

Ich versichere, daß ich die Angaben nach bestem Wissen und Gewissen gemacht, insbesondere die geschuldeten Beträge und sonstigen Leistungen richtig und vollständig angegeben habe.

Wien, 12. September 1940. 1940.

Assicurazioni Generali
Direktion für Oesterreich
ppa.
(Unterschrift des Anmeldepflichtigen)

Anmeldungen ohne Unterschrift gelten als nicht abgegeben.

Allgemeine Assekuranz

(Assicurazioni Generali)

Gegründet 1831.

Direktion
für das Deutsche Reich
Wien I, Bauernmarkt 2.

Telegramme: Generale Wien
Ref: 12-95-20
12 45 70

An den

Herrn Oberfinanzpräsidenten Berlin-Brandenburg,
Aussenstelle,

BERLIN C 2, Neue Königstr.61/64

Bei Antworten gefl.anzuführen:
All.Best.-Verw. EN/k

Wien, am 3. November 1942.

Ihre Zahl:E KFV 188 590 C 1
Betrifft:Polizze Nr.575555 - S. B a r c h a s c h

Auf Ihre Anfrage vom 9.IX.l.J. teilen wir Ihnen mit, dass uns der jetzige Wohnsitz des Obgenannten nicht bekannt ist.

Auch ist uns die Staatsangehörigkeit des S.Barchasch, der Nichtarier ist, unbekannt. Seine letzte inländische Wohnungsanschrift war laut unseren Aufzeichnungen: Leipzig C 1, Auenstrasse Nr.23.

Heil Hitler!
ALLGEMEINE ASSEKURANZ
(ASSICURAZIONI GENERALI)
Direktion für das Deutsche Reich

Finanzamt für Körperschaften Wien

Finanzamt 1. Bez., Riemergasse 2 (Verzeichnis Nr. 22)R

Aktenzeichen des Oberfinanzpräsidenten Berlin: .....

188518

Anmeldebogen C 1

Auszufüllen von Schuldnern im Inland, die im Ausland befindlichen Feinden eine Leistung schulden. — § 5 der Anmeldeverordnung —

Auf Anmeldebogen C 1 sind anzumelden: Verpflichtungen aus dem Warenverkehr und dem Kapitalverkehr, Hypotheken- und Grundschulden sowie Verpflichtungen aus Versicherungsverträgen.

Verpflichtungen betreffend gewerbliche Schutzrechte und Urheberrechte, Verpflichtungen zu wiederkehrenden Leistungen, sonstige Verpflichtungen (vgl. Anleitung D. IV. 2. c) sowie Verpflichtungen zu Leistungen, die nicht auf Geld lauten, sind nicht auf diesem Anmeldebogen, sondern auf Anmeldebogen C 2 anzumelden.

1. Name (Zuname und Vorname) Firma Wohnort oder Niederlassung Staatsangehörigkeit } des feindlichen Gläubigers (vgl. Anleitung C.): Heymann Hermann Jude; früher Brüssel, ~~unbekannt~~ unbekannt; ~~unbekannt~~ staatenlos

2. Name (Zuname und Vorname) Firma Wohnort oder Niederlassung Staatsangehörigkeit } des Anmeldepflichtigen (vgl. Anleitung B.): Assicurazioni Generali; Wien I., Bauernmarkt 2.

~~Ich schulde — wir schulden~~ — die oben unter 2. bezeichnete Firma schuldet — den oben unter 1. Bezeichneten — ~~der oben unter 1. bezeichneten Firma~~ — folgende Beträge oder sonstige Leistungen (vgl. Anleitung D. IV. 1.).

Art der Schuld (z. B. Kontokorrentschuld, Darlehnsschuld, Hypothekenschuld)	Wann ist die Schuld entstanden? a) vor dem 3. 9. 39 entstanden: ja oder nein?	b) falls am 3. 9. 39 oder später entstanden, Angabe des Zeitpunkts	Wert der Schuld (nach Abzug getilgter Beträge) a) in der geschuldeten Währung	b) in RM	Zinssatz[1]	Fälligkeit oder vertragliche Laufzeit[2]	Bemerkungen
1	2a	2b	3a	3b	4	5	6
Versicherungsschuld	ja		Dollar 1.605.51	4.002.54	zins-los	Er- und Ableben	

1. Vorprüfung
2. Anmeldebogen 2 und 3 an R. S. M. am
3. Kartei
4. Statistik

[1]) In den Zinssatz sind auch etwaige regelmäßig zu zahlende Verwaltungskostenbeiträge, Provisionen, Gebühren usw. einzubeziehen. Zinslose Verpflichtungen sind in der Spalte »Zinssatz« als »zinslos« zu bezeichnen.

[2]) Bei Festzeithypotheken ist der Zeitpunkt anzugeben, an dem die Rückzahlung frühestens verlangt werden kann, bei Kündigungshypotheken ohne feste Mindestlaufzeit ist die Kündigungsfrist anzugeben. — Falls Tilgungsraten vereinbart sind, so ist ihr Betrag und ihre Fälligkeit anzugeben.

Ich versichere, daß ich die Angaben nach bestem Wissen und Gewissen gemacht, insbesondere die geschuldeten Beträge und sonstigen Leistungen richtig und vollständig angegeben habe.

Wien, 12. September 1940.

Assicurazioni Generali
Direktion für Oesterreich
p.p.

(Unterschrift des Anmeldepflichtigen)

Anmeldungen ohne Unterschrift gelten als nicht abgegeben.

Der Oberfinanzpräsident Berlin-Brandenburg
— Außenstelle —

Berlin C 2, ...
Neue Königstraße 61/64

1. **Vermerk:** Es ist anzunehmen, daß der Jude Heymann Hermann seine deutsche Staatsangehörigkeit auf Grund der 11. Verordnung zum Reichsbürgergesetz vom 25. November 1941 verloren und die Staatsangehörigkeit eines feindl. Landes nicht erworben hat; sein Vermögen ist deshalb voraussichtlich dem Reich verfallen. Weitere Bearbeitung unterbleibt gem. Amtsverfügung 6/42 vom 3. Juli 1942.
2. **Laufzettel betr. Juden** (zu 188518 - 61)

Ersuchende Stelle	Datum	Ersuchte Stelle	Ersuchen	Erledigungsvermerk	Datum
Platz		Kartei	Liegen weitere Anmeldungen vor?	[illegible]	12/2.43
Kartei	15.2.43	~~Registr.~~	Ersuchen zur Beifügung	Kartei	16.
~~Registr.~~	19.2.43	Platz	Entscheidung ob beigefügte Bogen Judenbogen sind	.....	
Platz		Kartei	Vermerk auf Karteikarten	[illegible] Kartei	24.2.43
Kartei		~~Statistik~~	~~Abschrift~~ der erfaßten Beträge	.....	16.
~~Statistik~~	19.2.43	Registr.	Ablegung der Bogen gem. Amtsverfügung 6/42	[illegible]	

Im Auftrag
(Sachbearbeiter)

3. ~~z. d. A.~~ 19.2.43

PI 30

C/2340. OFP. 526/42.

Allgemeine Assekuranz
(Assicurazioni Generali)

Gegründet 1831.

Direktion
für das Deutsche Reich:
Wien I., Bauernmarkt 2.

Telegramme: Generali Wien
Ruf: U 2-95-20
U 2 45 10

Der Oberfinanzpräsident
Berlin-Brandenburg
Aussenstelle
27. NOV. 1942
Anlagen

An den

Herrn Oberfinanzpräsidenten Berlin-Brandenburg
Aussenstelle,

B e r l i n C 2, Neue Königstrasse 61/64

Bei Antworten gefl. anzuführen:
Abt. Best.-Verw. EN/k

Wien, am 23. November 1942.

Ihr Zch.: 188 518 Cl
Betrifft: Police Nr. 574534 - Hermann Heymann, früher Brüssel.

Auf Ihre Anfrage vom 6.v.Mts. teilen wir Ihnen wunschgemäss folgendes mit:

1.) Jetziger Aufenthalt des Berechtigten (Versicherungsnehmer) unbekannt, zuletzt wohnte der Versicherte in Paris oder Brüssel ohne nähere Adresse,

2.) letzte Wohnung im Inland: Berlin, Grunewald, Dunckerstr. 19,

3.) Staatsangehörigkeit des Berechtigten im Zeitpunkte seiner Auswanderung: unbekannt,

4.) heutige Staatsangehörigkeit unbekannt,

5.) der Berechtigte (Versicherungsnehmer) ist Jude,

6.) die Anmeldung als feindliches Vermögen erfolgt in der Annahme, dass Belgien Feindesland sei.

Auf Grund Ihrer jetzigen Ausführungen nehmen wir zur Kenntnis, dass die Versicherung nicht anzumelden war.

Heil Hitler!
ALLGEMEINE ASSEKURANZ
(ASSICURAZIONI GENERALI)
Direktion für das Deutsche Reich

Der Oberfinanzpräsident Berlin-Brandenburg
— Außenstelle —
PIKV 188518 61- Ev.

Berlin C 2, 9. Dez. 1942
Neue Königstraße 61/64

Vfg.

1. An ~~Polizei~~ Einwohnermeldeamt (Einwohnermeldeamt)
~~Finanzamt~~ ..... in Berlin

Anmeldung feindlichen Vermögens.

Der Hermann Heymann hat zuletzt Berlin, Grunewald Dunkerstr. 19 gewohnt. Es wird um Feststellung und Mitteilung gebeten, wohin der Genannte ausgewandert ist. Soweit dort bekannt, bitte ich um folgende Angaben:

1. Jetzige Anschrift,
2. ~~Geburtstag und Geburtsort,~~
3. Staatsangehörigkeit (der früheren und der jetzigen),
4. ~~Ist der Genannte Jude?~~

2. Wvlg. 20.1.1943

Mit Nachricht vom 18.12.42 ~~wird Nachricht~~ verpflegt.

Die Registratur: 28.12.42

- 8. Dez. 1942

J. A.

PI 8b

C/2340. DFB. 381/42. 4/12 42 Lü.

Das Gesuch ist seit 1. 2. 37 von Berlin, Taubenstraße 19 als Winter nach Paris abgemeldet. Staatsangeh. V. R. vermerkt.
Jüte.

Auskunft erteilt 12. 12. 42
Berlin
Das Einwohner-Meldeamt
der Polizeipräsidium
Fk. Lehmann

Der Oberfinanzpräsident
Berlin-Brandenburg
Außenstelle
18. DEZ 1942
Anlagen

W. Vg.
12/12.

Allianz Eclipses Deutsche Bank As Germany's Premier Power

By GREG STEINMETZ and ANITA RAGHAVAN
Staff Reporters of THE WALL STREET JOURNAL
November 1, 1999

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

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

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

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

Image Problems

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

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

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

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

Deutsche Bank Trims Stake

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

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

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

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

Tensions Surfaced

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

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

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

Difficult for Foreigners

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

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

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

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

Takeover of Schering

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

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

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

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

Opposition to French Firm

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

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

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

Allianz picked up the core of its stock holdings after World War II. At a time when German companies were desperate for capital, Allianz was one of the few sources of cash to rebuild the bombed-out country. As German corporations regained momentum and became global players, Allianz continued to invest and maintain its influence in boardrooms.

Grudging Move

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

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

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

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

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He said he was aware of problems at Eastgate and that everything possible was being done to correct them.

The Chairman said the companies needed to know of some developments with regard to the issue of legal peace and getting the courts to dismiss the class action suits. The general impression had been that there would be a way for the U.S. government to go directly to the courts on behalf of the companies. That is not possible, and it appears that ICHEIC, as the exclusive instrument for dealing with these problems, will have to go to the court and represent that there is universal agreement within ICHEIC that these cases should be dismissed. Unless there is total agreement that this includes everybody in ICHEIC, we cannot do this. ICHEIC would be supported by a statement of the U.S. government recognizing that ICHEIC is the exclusive remedy.

The Chairman does not think there is any serious problem here. It is largely irrelevant, since the statement by the U.S. government on behalf of the German Foundation was rather weak, and ICHEIC can be more forceful.

IV. German Foundation and German Insurance Association (GDV) Progress Report

Mr. Bindenagel reported that 45 out of 60 slave labor cases had been dismissed, and that the others would be dismissed shortly. The insurance cases were to be heard on November 28 (which date was subsequently postponed), and the banking cases on January 24.

For the court handling insurance claims, the U.S. government filed a strong statement on the procedures to be followed by ICHEIC, including a memorandum describing the process. There were three statements in the U.S. government's filing relevant to ICHEIC: that there should be resolution by agreement rather than adversarial actions; that it was the U.S. government's policy to bring relief during the lifetime of survivors; and that ICHEIC should be seen as the exclusive remedy for resolving insurance claims relating to the Nazi era.

Mr. Kent expressed concern about survivors having to pay for the investigation of their claims. He said the insurance question should not have been grouped with slave labor, as they are separate issues.

Mr. Thalmann expressed concern about the Chairman's statement that a representation by ICHEIC to the courts had to be unanimous. He was afraid there would always be someone who would not agree to such an intervention. In addition, he thought it would require ICHEIC to remain in existence forever, because there is no guarantee that claims relating to the Nazi era will not continue to be brought years from now, and we would still need to intervene in litigation against insurance companies.

Mr. Ferras agreed with Mr. Thalmann. He also questioned how a U.S. judge would regard ICHEIC's legal basis. We intend to have legal peace in the United States for all of the claims all over Europe for all of the companies participating in the process, but in a case like Luxembourg, for example, that country's government is not a party to ICHEIC. He does not see how anyone

MEETING OF
INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS
ST. REGIS GRAND HOTEL, ROME
NOVEMBER 15-16, 2000

Those present were:

Tina Anselmi
Andrew Baker
Silvia Balsiger-Signer
Kenneth J. Bialkin
J. D. Bindenagel
Bobby David Brown
Madelynne Brown
Daniel Bucheton
Bernadette Burns
Richard Burt
David Butler
Alberto Corinti
Avv Desiderio
Lawrence S. Eagleburger
Philippe Ferras
Geoffrey Fitchew
Philip Francis
Dale Franklin
Rudolph Gerlach
Jolanta Goldstein
Steven Green
Teresa Griffo
Aleksandra Hanzel
Beverly Hartley
Karen Heilig
Torsten Hinkelmann
Bernd Honsel
Tom Howard
Tomas Jelinek
Jenna Joyce
Roman Kent
Nigel Kinder
Gad Komeran
Boris Krasny
Marc Krymalovski
Barbara Laumann
Peter Lefkin
Rose Lenihan
Catherine Lillie
Costanza Loser
Diane Mand
Giovanni Manghetti
Frank Mankiewicz
Jody Manning
Shavit Matias
Harriett Mouchly-Weiss
Karin Münzel
Carlo Parenti
Guido Pastori
Giovanni Perissinotto
Leo Peeters
Glenn Pomeroy
Robert Raives
Zvi Ramot
Bozena Rosiak
Moshe Sanbar
Johann Saueressig
Marco Schnabl
Hans-Ulrich Schoch
Neal M. Sher
Dennis Silverman
Israel Singer
Berri Sommer
Elan Steinberg
Anna Swiderska
Gideon Taylor
Willem Terwisscha
Ulrich Thalmann
Alberto Tiberini
Leslie Tick
Gail Tregurtha
Harry Wall
Pat Webber
William Webster
James Woods
Sid Zabludoff
Arie Zuckerman
Tadeusz Zylinski

Congress of the United States

Washington, DC 20515

October 25, 2000

The Honorable Janet Reno
United States Attorney General
U.S. Department of Justice
5111 Main Justice Building
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Madame Attorney General:

We understand that the Department of Justice has filed a brief in the Ninth Circuit Court of Appeals arguing that the California Holocaust Victims Recovery Act (HVIRA) would interfere with the Federal Government's role in dealing with outstanding insurance policies held by European insurance companies doing business in the United States. We are concerned about the serious implications this action has for the interests of Holocaust survivors and their heirs under Florida's Holocaust Victims Insurance Act. We believe that congressional action will be required to ensure meaningful recovery of insurance policies for Holocaust victims and heirs if the Courts agree with the Department's position. Therefore, we are seeking your views on our legislative proposals to protect and advance Holocaust victims' insurance claims.

We are concerned about the Department's position for several reasons. First, the U.S. Holocaust Assets Commission Act of 1998, Public Law 105-186, 112 Stat. 611 (1998), calls for the Commission to "take note of the work of" the National Association of Insurance Commissioners (NAIC) with regard to Holocaust-era insurance issues, and to report on precisely the kinds of information the California legislation asked to be reported by the insurers. If the Justice Department is correct that the states cannot elicit the information we have sought through the NAIC, then the United States has effectively lost all leverage in its efforts to account for one of the largest categories of theft from Holocaust victims.

We are also concerned because, under present circumstances, various international efforts have not effectively advanced Holocaust survivors' claims to unpaid insurance policies. Recent reports from NAIC members concerning the International Commission for Holocaust Era Insurance Claims (ICHEIC) reveal a very disturbing situation. Companies that are members of ICHEIC have approved fewer than 10% of the "strongest" claims submitted by State Insurance Commissioners under the "Fast Track" process. Instead of applying "relaxed" standards of proof as called for in the founding Memorandum of Understanding (MOU) that established the commission, the companies (who, we are surprised to learn, make the initial decision themselves), are in fact, applying very stringent standards.

Under the "regular track," the ICHEIC has received approximately 47,000 claims. As of August 31, only 10,700 of these had been distributed to the companies. The companies have made a total of thirty-eight offers under the regular track program so far, and have rejected over 500 of these claims. Companies have paid out between $2 million and $3 million in claims so far, a minuscule fraction of the billions owed. This figure is low even in comparison to the amount of money the companies and the ICHEIC have spent on staff, travel, and the like.

The ICHEIC has also apparently failed to deliver so far on basic elements of a valid process. After 20 months and the expenditure of untold millions of dollars in administrative expenses, there is no appellate process in place and no information on how the ICHEIC auditing process is being used to insure a thorough and neutral review of the sweeping denials. Furthermore, the U.S.- German Executive Agreement establishing the German Foundation Fund has further endangered the viability of these claims by calling for the dismissal of class action insurance law suits before credible auditing and appeals processes are in effect.

If States are limited in enforcing their own legislative acts requiring insurers doing business in their states to disclose information about Holocaust era policies, and providing various avenues of relief for claimants in their courts, then tens of thousands of American Holocaust survivors and their heirs will not be able to obtain meaningful information about family policies, much less recover the funds improperly withheld by these companies for so many decades.

ICHEIC does its work in secret, so the public and even Congress are not aware of the status of its activities. We have also been very disturbed to learn that even the State insurance commissioners who serve on the ICHEIC believe they do not participate in important ICHEIC decisions. We are concerned that the Justice Department is enabling a non-transparent process controlled by insurance conglomerates with huge exposure and influence to become the *de facto* substitute for effective state regulation of insurance claims, in the tradition of the McCarran-Ferguson Act.

Perhaps of greatest concern is that the disclosures of policy holder information, which was to be the central mission of the ICHEIC, and which the California and other state laws are designed to facilitate, has not occurred in a significant way. After nearly two years, an unacceptably small number of insurance policy holder names have been disclosed to facilitate the filing of claims. Yet, the Department of Justice says, and we must face the possibility that the Courts may agree, that States cannot require companies with business links in their states to disclose such crucial information, which Holocaust victims and their heirs have virtually no other means to obtain.

Consequently, we are planning to move ahead with legislation to ensure that insurers are held accountable, and that survivors and heirs are compensated for policies sold to individuals who became victims of the Holocaust. Enclosed are early versions of two bills many of us sponsored or supported, the Holocaust Victims Insurance Act (H.R. 126), and the Justice for Holocaust Survivors Act (H.R. 271), for which we would like your comments in light of current developments.

Sincerely,

Peter Deutsch
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

Robert Wexler
Member of Congress

Lincoln Diaz-Balart
Member of Congress

Carrie Meek
Member of Congress

Mark Foley
Member of Congress

Alcee Hastings
Member of Congress

Clay Shaw
Member of Congress