Statement of Samuel J. Dubbin

Dubbin & Kravetz, LLP
1200 Anastasia Avenue
Suite 300
Coral Gables, Florida 33134
(305) 357-9004

Testimony before the United States House of Representatives

Committee on the Judiciary

Subcommittee on Commercial and Administrative Law

Hearing on HR 4596: The Holocaust Insurance Accountability Act of 2010

September 22, 2010

Statement of Samuel J. Dubbin
Dubbin & Kravetz, LLP
Before the House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law

September 22, 2010

My name is Samuel J. Dubbin. I would like to thank Judiciary Committee Chairman Conyers and Subcommittee Chairman Cohen, 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. To their shock and dismay, Holocaust survivors and the heirs of Holocaust victims today are the only American citizens who are categorically precluded from the U.S. courts to recover compensation for insurance policies indisputably bought by their family members but never paid. Holocaust survivors, and

their families, are profoundly disappointed that Congress has not acted to stand up for their rights.

It is unfortunate that many of the survivors who I will speak about today were not physically able to travel to Washington for this hearing, but I implore you on their behalf to think of them and them alone in your deliberations. They are entitled to every consideration, and you have the power to restore their full rights and erase the trauma of second class citizenship imposed by the status quo.

I. Background Representing Holocaust Survivors and Heirs

I have practiced law in Miami, Florida since 1982, having clerked for a federal judge after passing the Florida bar in 1981. 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.

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. HSF leaders have testified in Congress on this very subject several times in the past few years. More information about HSF's activities and goals can be found at its web site, www.hsf-usa.org.

II. Summary of House Legislation – HR 4596

HR 4596 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 that prevents survivors from getting a full accounting about family insurance policies in U.S. courts, has permitted the companies to hide behind the secrecy of ICHEIC, an unregulated and extra-legal process, chartered in Switzerland and headquartered in London, and funded and controlled by the insurers, which made decisions about Holocaust survivors' insurance rights with absolutely no governmental or judicial oversight.

The few times Congress tried to examine ICHEIC's processes or operations, ICHEIC refused to cooperate – and got away with it. ICHEIC officials 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 but determined way not to allow the bureaucratic, political, and economic forces opposing HR 4596 to substitute for a decent respect for the financial and human rights of Holocaust survivors. Survivors deserve better.

Since my last testimony in May 2008, before the Senate Foreign Relations

Committee, I have made several disturbing discoveries about the efforts of the Executive Branch – under Democratic and Republican Presidents – to expand the protections extended to the insurance industry far beyond, and contrary to what was agreed to by President Clinton with respect to executive agreements with Germany and Austria, and even reversing President Clinton's policy with respect to Generali, a company from Italy which has no agreement with the United States. Today, contrary to what President Clinton agreed to, the executive branch has baldly stated that U.S. policy supports dismissal of survivors' and heirs' suits against insurance companies, including Generali, *solely* because they participated in ICHEIC. In so doing, the executive branch not only misrepresented the policy of the United States government, but supported an astonishing and radical expansion of executive authority beyond anything allowed by the Supreme Court, and even beyond the expansive view of executive power represented by *AIA v. Garamendi*.

It is long past time for Congress to assert itself and reverse the Executive Branch's power grab and the courts' current acquiescence in this radical expansion of executive power that has eviscerated Congress's authority over domestic policy by the mere use of the words "foreign policy," and terribly eroded states' authority to govern their citizens in areas of traditional state policy such as contracts, torts, and property laws.

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. To be sure, with so many Holocaust survivors facing their last years, many living in crushing poverty, any further delay by Congress will be fatal to thousands of survivors who are depending on you for action today.

HR 4596 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 over $20 billion today (if not more) sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, Generali, and others.

The survivors' point of view with respect to the restitution processes of the past decade are summarized in a January 2009 letter from the Holocaust Survivors Foundation USA to President Barak Obama, in which they wrote:

> Despite headlines in the media that "Holocaust restitution" has been successful, this is simply not the case. The reality is that specific property restitution for individuals has been largely unsuccessful and disappointing. Only a fraction of the funds actually looted was recovered by individual owners or heirs, and only a small portion of funds paid out for "humanitarian purposes" have trickled down to meet the pressing needs of living Holocaust survivors.
>
> The unbearable fact that while so many survivors are suffering today, huge corporations that profited from the Holocaust not only compete successfully in the "global marketplace," but in the U.S. Congressional lobbying sweepstakes. There is an urgent need for a comprehensive solution to the issues of restitution and justice for survivors who are still living. The only thing that is clear is that the status quo has

> not delivered either material restitution or moral closure for Holocaust victims.
>
> According to data compiled by the Jewish Federation system in 2004, there are 174,000 survivors or "Nazi victims" living in the United States. Over 40,000 survivors, 25% of the U.S. survivor population, live at or below the official U.S. poverty level, and another 40,000 have incomes so low (up to twice the official poverty level) that they are considered poor given the cost of living in their communities. Despite some safety nets, far too many U.S. Holocaust survivors cannot afford adequate nutrition, shelter, health care, dental care, emergency services, eyeglasses, in-home care, and the like. This does not even begin to address the problems unique to aging Holocaust survivors, such as finding health-care professionals who can deal with the long-term effects of starvation, beatings, disease, extreme injury to teeth due to malnutrition and other deprivations, and other traumas that many endured in the ghettos and concentration camps.

The HSF leadership proposed a four-point program to advance survivors' rights, interests, and welfare. Unfortunately, the Obama Administration has not responded to the survivors' post-inauguration letter, and the Administration has not, after nearly two years in office, made any concrete improvement to survivors' legal status or quality of life.

III. ICHEIC and Insurance Litigation

The need for legislation is underscored by the fact that the courts have held, contrary to any precedent, that the "policy" of the federal executive supporting ICHEIC as the "exclusive remedy" for claims by survivors, beneficiaries, and heirs, categorically prohibits Holocaust survivors, U.S. citizens including veterans and combat veterans, from going to U.S. courts to sue insurance companies who defaulted on simple contractual obligations. Over the past decade, I have represented several survivors and heirs and beneficiaries with claims against various European insurance companies, and also assisted several survivors and heirs over the years who attempted to navigate the ICHEIC

system.[1] In that role, I have observed first hand many of the inconsistencies, irregularities, and failures voiced by survivors and reported in the media. But ICHEIC's performance is really immaterial – even if it was more "successful" it is simply contrary to American values and the Constitution to deny survivors and family members equal rights enjoyed by every other American.

Based on my involvement and the public record, I will describe the evolution of the need for HR 4596.

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

[1] 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 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.

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.[2]

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

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

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

> ICHEIC is entirely a creature of the six founding insurance companies that formed the Commission, two of which are defendants in this case; it is in a sense the company store. . . . The concern that defendants could use their financial leverage to influence the ICHEIC process is not merely theoretical. . . . ICHEIC's 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 (2003) that even though the U.S.-German executive agreement did not expressly preempt sate law, the agreement's requirements and the executive branch's general "policy" that Holocaust survivors' claims should be

---

[2] 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 meant to terminate survivors' and heirs' rights to sue German companies, the cases would have had to been settled under Federal Rule of Civil Procedure 23 with notice to every potential class member and an opportunity to opt out. This wasn't done.

resolved on a non-adversarial basis preempted the State of California's right to require insurance companies to produce more records than ICHEIC required. After that decision, Judge Mukasey reversed himself, and in 2004 held that because of *Garamendi,* U.S. foreign policy mandated that he dismiss the Generali cases, even though there was no executive agreement between the United States and Italy, and no opposition from the U.S. nor Italian governments.

Notably, both the Supreme Court in *Garamendi,* and Judge Mukasey, observed 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, basically a settlement with minimal or no benefits to the class members.

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 lodge objections to the settlement. Unfortunately, the District Court stated that it had a very limited role and was not at liberty to consider ICHEIC's flaws in deciding whether to approve the settlement.[3] The Court approved the deal, saying that given Judge Mukasey's dismissal of the cases on "foreign policy" grounds, the class

[3] Judge Mukasey retired from the federal bench while the appeal was pending, and review of the class settlement was assigned to U.S. District Judge George Daniels.

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] And, unfortunately, the Second Circuit affirmed the settlement as being within the trial court's discretion, and the Supreme Court denied review.

In other words, despite clear evidence of ICHEIC's unfairness and ineffectiveness, the federal courts held that based on Judge Mukasey's expansive theory of executive preemption, survivors and heirs with claims were stuck with ICHEIC even if they never agreed to be bound by it. This included thousands of survivors and heirs with documented claims against Generali that were denied under the notorious "negative evidence rule," described below in more detail.

When the opt-out plaintiffs' appeals were argued in the Second Circuit in June 2008, Generali admitted that it had asked the Clinton Administration on several occasions to file statements of interest supporting them in survivors' lawsuits, similar to what the U.S. agreed to provide German companies under the executive agreement, and the Clinton Administration *refused* because there was no executive agreement between the U.S. and Italy, and therefore no U.S. foreign policy interest. However, in August 2008, the Second Circuit wrote a letter to Secretary of State Condoleezza Rice asking whether litigation against Generali posed a conflict with U.S. foreign policy even though there was no executive agreement with Italy.

---

[4] On October 2, 2007, the Second Circuit Court of Appeals agreed with one of the arguments advanced by the objecting survivors, and 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. Judge Daniels approved the settlement again for the same reasons as before on January 7, 2008, and my clients appealed that decision on the merits.

In October 2008, the Department of Justice sent the Second Circuit a letter stating that despite the lack of any Executive Agreement between the United States and Italy, Generali was the beneficiary of a "Federal Executive Policy" that the ICHEIC commission should be the exclusive forum for Holocaust survivors' insurance claims. According to DOJ, Generali was entitled to "foreign policy" protection solely because it participated in ICHEIC, and despite the absence of any executive agreement, and despite the fact that the Italian government did not object to the litigation.

The DOJ stated, completely contrary to what it had said in 2000 and in numerous letters to concerned members of Congress and in Court briefs:

> it would be in the foreign policy interests of the United States that ICHEIC be regarded as the exclusive forum for resolution of insurance claims against companies like Generali that participated in the ICHEIC process. (page 1);
>
> it is contrary to settled United States foreign policy for plaintiffs' claims to be adjudicated in the courts of the United States" (page 9-10); and
>
> it would be in the foreign policy interests of the United States that such claims not be pursued through the courts. (page 11).

Letter Brief of U.S. Department of Justice, October 29, 2008.

After President Obama took office, the Court sent another letter to the State and Justice Departments, asking the same question. Surprisingly, the Obama DOJ followed the Bush DOJ and sent a letter to the court declaring that survivors' litigation against Generali conflicted with U.S. foreign policy, despite the lack of any treaty or other agreement, and ignoring President Clinton's contrary position.

After the Obama DOJ's submission, the Second Circuit affirmed the dismissal of the plaintiffs' claims based on "executive preemption." The court held that "executive foreign policy" favoring resolution of victims' claims by this commission preempted

these U.S. citizens' rights under state law to sue Generali for breach of contract and other common law claims, even though the "policy" was not formalized in, much less required to be asserted, in any Executive Agreement or Treaty. The Second Circuit relied on the *Garamendi* decision and the DOJ's two briefs. *Weiss v. Assicurazioni Generali, S.p.A.*, 592 F.3d 113 (2d Cir. 2010).[5]

IV. 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.

A. 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

[5] Dr. Weiss has filed a Petition for Certiorari in the U.S. Supreme Court to review the Second Circuit's decision, with University of California, Irvine, Law School Dean Erwin Chemerinsky as the lead counsel. Three amicus briefs have been submitted to the Court in support of the certiorari petition, by (1) a bipartisan group of members of Congress, including many co-sponsors of HR 4596, (2) the California State Senate, and (3) a distinguished group of law professors in the fields of constitutional law and U.S. foreign relations law.

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.[6]

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

---

[6] 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).

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.

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 any pleading, 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.[7]

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

---

[7] 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.

RAS , Generali's sister company, also Trieste based pre-war was a vigorous worldwide competitor to Generali. RAS was, like Generali, a Jewish founded and owned company is now part of German giant Allianz-Munich Re. Kurt Schmitt, Allianz's CEO from the late 1920's and Hitler's first choice for Minister of Economics, saw the two Jewish owned insurance giants as bereft of cover after the collapse of the Hapsburg Empire in 1918. The obvious question is how Allianz managed to acquire the RAS shares? Among the utter failures of the current system is the lack of any accounting for how Allianz obtained control after the Jewish founding families shareholders, board of directors and policyholders were despoiled and exterminated. Allianz should show the provenance of the shares they now control.

Association of Swiss Life Insurance Companies reported that *its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime* so that their entitlement to claim under the policy had become dormant." Bergier Report, at 465. (Emphasis supplied). The Report also showed:

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

Bergier Report, at 460.

Public denials of insurers' Holocaust profiteering have continued even in the supposed recent environment of "truth and transparency." In 1998, Allianz AG Board Member Herbert Hansmayer sought 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.

B. ICHEIC Formed in 1998 by Insurance Companies

In 1998 several States, including Florida and New York, 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 insurers and foreign governments persuaded certain 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 admitted that ICHEIC was chartered under Swiss law and headquartered in London to avoid the reach of U.S. courts’ subpoena powers. It was funded entirely by the insurance companies, with decisions were to be made “by consensus,” i.e. no decision was made without insurance company acquiescence. The Chairman would break 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, in 2003, 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*. The State Department cited a letter from Chairman Eagleburger rejecting Congress's authority over ICHEIC, *but that letter has never been made public*. Remarkably, State took no further action.[8] Neither did Congress.

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. *See* 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.[9]

---

[8] According to the State Department reports: "The Department requested additional information from ICHEIC in an effort to meet the reporting requirements of Section 704(a)(3)-(7). ICHEIC Chairman Lawrence Eagleburger responded that he would not provide the Department of State any information regarding ICHEIC's undertakings."

[9] Using the same conservative 30 year bond rate, the same policies represent unpaid obligations of $20.5 billion in 2010 dollars.

When ICHEIC closed its doors in March 2007, it had paid fewer than 14,000 of the 800,000 pre-WWII life/annuity/endowment polices estimated to be owned by European Jews in 1938 and *unpaid* when ICHEIC began.[10] The total amount paid through ICHEIC on policies was $250 million, which was less than three percent (3%) of the minimum conservative estimate of $18 billion total in outstanding values at the time.[11]

ICHEIC also paid $31 million in $1,000 "humanitarian payments" and allocated another $165 million for "humanitarian projects" through the Claims Conference (including many unrelated to survivors' needs). So, even if one adds all of ICHEIC's claimed payments, totaling about $450 million, ICHEIC generated less than 5% of the money stolen from European Jews' life 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 helpful for the record because today, this private, off-shore "commission" funded and controlled by the

---

[10] Today, ICHEIC and its supporters take credit for having "paid 48,000 claims," to inflate the body's alleged success. This total includes 34,000 checks of $1000 for "humanitarian payments." But survivors and heirs do not regard the 1,000 payments as being for policies; neither did ICHEIC during its tenure. Survivors considered the $1000 checks transparent attempts at pacification. *See* Testimony of Jack Rubin, U.S. Senate Committee on Foreign Affairs, May 6, 2008.

[11] Indiana Business School Professor Emeritus and insurance consumer expert Joseph Belth estimated the value of unpaid life (only) polices in excess of $300 billion in 2008. September 11, 2008 Letter from Samuel J. Dubbin to Sharon Swingle, at 12, note 14.

insurance industry, which operated in secret and paid a tiny fraction of Jews' policies is now considered the legally binding "alternative forum" *for Holocaust survivors and beneficiaries and heirs of Holocaust victims,* supplanting their rights as American citizens of access to U.S. courts for vindication of their state law rights. Congress can no longer tolerate such an outcome.

C. ICHEIC's Track Record

Perhaps the most succinct summary of ICHEIC's failures was written by Yisroel Schulman, President of the New York Legal Assistance Group (NYLAG), a public interest law firm that represented many survivors who attempted to navigate ICHEIC. When ICHEIC feted its conclusion in 2007 with a champagne reception and the Chairman said it had "achieved its goal of bringing a small measure of justice to those who have been denied it for so long," Mr. Schulman had a different perspective:

> As a lawyer who has closely worked with ICHEIC claimants, I sadly disagree. For nine years, ICHEIC failed the very people it was created to serve.

Yisroel Schulman, "Holocaust Era Claims: Mission Not Accomplished," *The New York Jewish Week*, May 4, 2007.[12]

1. ICHEIC's Disclosure of Policy Holder Names Was Slow and Incomplete.

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

[12] ICHEIC participants were required to sign "confidentiality agreements." Since Florida's Insurance Commissioner was an ICHEIC member, I was able to obtain early ICHEIC minutes through Florida's Public Records Law, section 119.07, Florida Statutes (2002). There came a time that the Chairman stopped distributing certain materials because the "confidentiality agreements" were being circumvented.

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 ICHEIC. *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 several *years* 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.

In the 110th Congress, the German companies and the GDV sought leniency from proposed legislation based on their publication of 360,000 names requires close scrutiny. This plea is undermined 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 final claim deadline was imminent.

2. <u>Insurers did not handle claims speedily or apply relaxed standards of proof.</u>

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.

The alleged "relaxed standards of proof" were largely ignored. Reports cite a multitude of denials by companies without providing the information in company files necessary to allow the claimants or the ICHEIC "auditors" to determine whether companies applied relaxed standards of proof, failure to provide claimants with any documents traced in their investigations, and other denials in violation of ICHEIC published rules.[13]

One notorious ICHEIC policy – the "negative evidence rule" -- allowed Generali to deny claims by survivors and heirs with documented policies if Generali *said* they

[13] These include analyses by Lord Archer on behalf of the ICHEIC Executive Management Committee in 2003, the Washington State Insurance Commissioner in 2004 (3-5, 24, 32-33, 39, and 48-57**)**, various news reports, and the amicus curiae submissions of the New York Legal Assistance Group (NYLAG) and ICHEIC Arbitrator Albert Lewis.

were not in the company's 1936 ledger. Generali denied claims on that basis but asserted that it did not have any records to document the payment, lapse, or surrender of victims' policies. Despite the ICHEIC "rule" placing the burden on companies to prove that a documented policy was not payable, ICHEIC accepted Generali's position, and placed the burden on claimants to disprove Generali's defenses.

Instead of "relaxed standards," ICHEIC allowed Generali to impose a far *more difficult* burden of proof than claimants would have to face in most state litigation where the insurer has the burden of proving its defenses once a policy is established.[14] As NYLAG's Schulman wrote: "ICHEIC's decision to allow the use of negative evidence belies the claim . . . that the organization's principal purpose was to find claimants and pay them."[15]

In addition, the Generali Trust Fund (GTF), which handled half of all Generali claims, was dismissed for non-performance. According to NYLAG's President Schulman:

> [I]n late October 2004, the commission terminated its relationship with the [Generali Trust Fund], citing GTF's gross incompetence. Despite acknowledging GTF's sub-par performance, *ICHEIC refused to review any of the fund's final decisions, thereby denying claimants a fair decision-making process*.[16]

So, even though the body that handled half of Generali's claims was dismissed for non-performance, there was not even an effort to correct those errors.

---

[14] *See, e.g.*, *Pan American Bank v. Glinski*, 584 So.2d 52 (Fla. 1st DCA 1991); *Viuker v. Allstate Ins. Co.*, 70 A.D.2d 295, 420 N.Y.S.2d 926 (N.Y. App. 1979); *Sanchez v. Maryland Cas. Co.*, 67 A.D.2d 681, 412 N.Y.S.2d 173 (N.Y. App. 1979).

[15] Yisroel Schulman, "Holocaust Era Claims: Mission Not Accomplished," *The New York Jewish Week*, May 4, 2007.

[16] *Id.*

3. Survivors and Heirs Were Not Represented On ICHEIC

Amazingly, while insurers were voting members (with controlling power) of ICHEIC, claimants and their representatives were excluded. While many state regulators worked hard to protect claimants' interests, the lack of actual, accountable and legitimate claimant representation was a fatal flaw of ICHEIC. One measure of the stacked deck is seen in the "Alpha List" of ICHEIC participants. Each meeting was attended by dozens of insurance company executives, lawyers, lobbyists, and public relations specialists. Yet no chosen representatives or attorneys of survivors, heirs, or claimants were allowed to attend meetings, much less participate in policy-setting decisions. How can Congress consider such a forum to be a proper basis on which to deny Holocaust survivors their constitutional rights?

4. Officials and Policies Were Biased Against Claimants

After ICHEIC closed, and after reports surfaced about its dismal record, former New York State Insurance Superintendent and ICHEIC Arbitrator Albert Lewis disclosed that ICHEIC officials pressed him and other appellate arbitrators to rule *against* survivors even when they had credible claims, if the *survivors* could not produce *documentary* proof of a policy. He wrote:

> 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 arbitrators 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.

See Stewart Ain, "Phantom Rule May Have Limited Holocaust-Era Awards to Claimants, The New York Jewish Week, June 29, 2007.

Mr. Lewis also provided evidence that the "phantom rule" was adopted and applied by several of the appellate arbitrators even though ICHEIC published "rules" were supposed to be more favorable toward claimants. Amicus Brief of Albert Lewis in Appeal No. 07-1380, In re Assicurazioni Generali, S.p.A. Holocaust Insurance Litigation, at 6-8.

Examples of Survivors' Claims Denied by Insurers and ICHEIC.

Jack Rubin. Jack Rubin was born in Vari, Czechoslovakia, which later became Hungary. The family home and his father's general store had a sign stating the building and premises were insured by "Generali Moldavia." In April 1944, at the age of 14, Jack and his entire family were forced from their home and taken to the Beregsastz Ghetto, and then deported to Auschwitz and other Nazi death camps. His parents perished, but he survived. When he returned, the family home and business were destroyed and no family papers remained.

In 2000, Mr. Rubin filed two claims with ICHEIC. He named his parents Rosa Rosenbaum-Rubin and Ferencz Rubin, with their years of birth. He mentioned the "Generali Moldavia" sign, and even gave the name of the family's insurance agent, Joseph Schwartz, who "did not survive the Holocaust."

The Generali Trust Fund acknowledged that Generali Moldavia was a property insurance subsidiary of "the Generali Company in Hungary." However, it denied any payment in the absence of a document *from Mr. Rubin proving the insurance*. It stated that "the archives of the Generali company did not contain the water copies of the policies issued by subsidiaries." The ICHEIC Appellate Arbitrator upheld Generali's denial based solely on the company's representation.

Neither ICHEIC nor the Arbitrator requested, much less demanded, any actual evidence from Generali's records, such as information on common customers between Moldavia Generali and the parent company or any of its life subsidiaries. The Arbitrator didn't ask Generali if it had an agent named "Mr. Schwartz" in the region where Mr. Rubin's family lived, nor did he examine files on agents. In court, Mr. Rubin's lawyer would have the right to obtain discovery and try to make these connections.

A recent discovery casts further doubt on ICHEIC's superficial acceptance that Assicuarazioni Generali, S.p.A. and Generali Moldavia were separate. The photograph, attached as an exhibit to this submission (and copied on the next page), shows the Generali building in Prague during the years that Mr. Rubin's father would have purchased his policies. As is clear from the marquee, Assicurazioni Generali, S.p.A. and Moldavia Generali occupied the same building in Prague. This connection was either not known by the Arbitrator, or not pursued. In either case, the process provided no oversight or even curiosity.[17]

Contrary to accepted wisdom, it was not ICHEIC's function to question insuers' denials. It served as a mail drop for accepting claims and dispatching insurers' responses. That is why survivors and heirs need access to courts to get discovery, rules the insurers would be required to follow, and a fair hearing where the claimants control their own claims.

[17] ICHEIC famously promoted the idea that claimants did not need lawyers. Jack Rubin did not have legal counsel at the time he filed his ICHEIC claim or appeal.


ASSICURAZIONI GENERALI
SECURITAS
MOLDAVIA-GENERALI
Bruna Bruna

Herbert Karliner. Herbert Karliner now lives in Miami, Florida. But he remembers Kristallnacht as if it were yesterday. He was a small child that day when he awoke to the news that his father's store and most other Jewish-owned businesses were set on fire. Within hours, the Gestapo arrived and took his father, Joseph Karliner, to Buchenwald. Though his father returned, his family was fated to sail on the SS St. Louis that was turned away from the shores of Miami Beach in 1939. After the St. Louis returned Europe, Joseph Karliner and most his family were killed in the Holocaust. Only Herb and his brother Walter survived.

Before he died, Joseph Karliner had told his sons about a life insurance policy that he bought from Allianz "in case something happened." When Herb and Walter approached Allianz after WWII, the company said his policy had been paid out to an "unknown person." When Herb Karliner applied to ICHEIC in 2000, Allianz said the policy had been paid to the beneficiary. This closed the case under ICHEIC rules.

Years later, Mr. Karliner managed to obtain the "repurchase" document. It was dated Nov. 9, 1938 -- Kristallnacht. If either Allianz or ICHEIC had given him the document as they were required to do under ICHEIC rules, Herb could have informed them that *his father surely did not stop at the Allianz office on his way to Buchenwald to cash in his life insurance policy that day*.

In addition, Herb Karliner asked for information about several other Karliner relatives posted on the ICHEIC web site. Allianz admitted that several of the named individuals had been sold Allianz policies, but refused to give him any information unless

he could provide their dates of birth. Since Herb was a 9 years old when WWII began, he had no conceivable way of knowing the birthdates of adult relatives who died in the Holocaust. However, Allianz was fully within its rights under ICHEIC rules to deny Herb Karliner the information about insured relatives for whom he and his brother were the likely heirs.

Like Herb Karliner many 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 Generali, Allianz, and many others.

Jack Brauns. When Jack Brauns was born in Lithuania in 1930, his father bought a $2,000 endowment policy from Assicuarazioni Generali, S.p.A. to pay for his education at age 18. Unfortunately, his adolescence involved four years in Nazi death camps before he was liberated from Dachau. After the war he moved to Rome to live with relatives and go to school. His parents miraculously also survived, and went back to Lithuania, where they were able to recover *the original policy*. Jack took the original policy to the Generali office in Rome to redeem the company's promise to help fund his education, but Generali rejected his claim.

Jack Brauns managed to complete his medical education without his Generali money and practiced medicine in Los Angeles for 50 years. When ICHEIC began, though he no longer "needed" the money, he applied to collect on his Generali policy. Even though the policy is clearly denominated in "U.S. Dollars," Generali denied payment on the ground that the policy was denominated in "lits" and "lats" which were supposedly valueless. This simply was untrue. Generali denied the claim, then later offered "a few thousand dollars" which Dr. Brauns rejected. Even under the ICHEIC

valuation system (conservative as it was), a $2000 policy would have been worth at least $70,000 in the year 2001.

David David. David David was a resident of Milwaukee, Wisconsin, who was born in the area of Poland that is now the Ukraine. His great uncle, Aron Sanel Schapira, his maternal grandmother's brother, ran a business and Mr. David believed it likely that he had insurance to protect both his business and his family.

When the area where he grew up became safe for travel by Jews, Mr. David went there. Through a person he know in that area, Mr. David learned that his great uncle kept several valuables stored in the walls of the house where he had lived, a common practice for that time and place. The house was still standing and occupied when Mr. David visited and so, Mr. David asked his acquaintance to retrieve his great uncle's items. They found among the items a life insurance policy that Mr. Schapira had purchased in 1920 from Assicurazioni Generali, S.pA. The terms of the policy provide for the payment of benefits to the bearer of the policy.

Mr. David tried for years to collect from Generali, to recover the due after the catastrophe suffered by his family. His contacts with Generali proved futile. Mr. David died in 2004; his children are the only know surviving members of this family, with great parts of the family killed in the Holocaust.

Mr. David filed a claim with ICHEIC on March 20, 2001. Notwithstanding ICHEIC's rules to respond within ninety (90) days, ICHEIC response was dated December 22, 2006 offering $1,000.00. Generali also responded to him by letter dated May 25, 2005 and denied the claim because it claimed the policy left its portfolio prior to 1936, what is now known as the "negative evidence rule."

Suzanne Marshak. Ms. Marshak, of Chicago, now 81 years old, is a Holocaust survivor from Paris, France. When ICHEIC started, she filled out forms naming the relatives that she remembered to be relatively well-to-do, including her uncle Albert Bleich who was a prominent and wealthy physician. Generali responded with a letter admitting that it had sold her uncle one policy in 1921 worth 50,000 Hungarian crowns. Generali denied payment, claiming the policy "lapsed before the Holocaust," but refused to give her any proof. ICHEIC allowed this – now known as the "negative evidence rule."

George Curtis. George Curtis (Kertesz) was born in Kalocsa, Hungary, in 1914. His father Sandor Kertesz operated a successful wholesale business supplying all the general stores in the city, "Kertesz Sandor A.G." Mr. Curtis's parents were deported to camps in Austria in 1944; they were fortunate to survive and return to Hungary. Mr. Curtis himself was captured in 1943 by the Russians and was a POW in Siberia before returning to Hungary in 1948. His father died in Hungary in 1953 and his mother came to the United States in the mid-1970s and died here.

Mr. Curtis applied to ICHEIC and received a copy of an insurance policy purchased by his father from "Triesti Altalanos Biztosito Tarsulat (Assicurazioni Generali)," Policy No. 52603, in 1926, for the face amount of "Dollars 2,000 – ch. New York." The policy was to mature in 15 years. Premiums were payable at the rate of "33.58 Dollar New York."

However, the Generali Trust Fund denied payment on the ground that "Policy Nr. 52603 was cancelled or surrendered before the year 1936, i.e. does not refer to the Holocaust Era, and therefore no payment can be offered in respect of it."

Generali provided no documentary proof of how it decided that the policy was surrendered before the year 1936. Mr. Curtis disputed Generali's explanation because his father's business continued successfully long after 1936, until his deportation in 1944. (the Jews of Hungary did not become subject to the full Nazi fury until the spring of 1944, and that many businesses were able to function up until then.) However, under ICHEIC's "negative evidence rule," Generali's denial is binding and no appellate arbitrator would have the right to reverse the decision.

Sandor Kertesz most certainly could have used the money Generali owed him after surviving the camps in 1945 when the war ended. When George Curtis tried to redeem his father's policy – payable in "New York Dollars – 55 years later, the ICHEIC value – if it had been paid – would have been about $70,000. George Curtis was over 90 years old, and the funds could have helped him a great deal had Generali honored the policy.

Sello Fisch. Sello Fisch now lives in Queens, New York. He was born in 1935 in Berlin, Germany, where his father and maternal grandfather ran a successful business. In 1939, he and his family (parents, older sister, and maternal grandparents) fled to Shanghai. After filing a claim with ICHEIC in August 2000, it was discovered that Mr. Fisch's father, Herman Fisch, had bought a policy from Generali. The General Trust Fund (GTF), nonetheless, determined that he was ineligible for any compensation because the policy was allegedly not included in Generali's so-called "mechanized records" as of 1936 (the year that Generali reportedly began using punch cards to mechanize its system). Solely on the basis of such "negative evidence," the GTF's final decision of October 30, 2003 concluded that Herman Fisch had either cancelled or

redeemed his policy before 1936.

Survivors and survivor advocates universally condemn the negative evidence rule. However, even under ICHEIC's rules and decisions, Mr. Fisch should have been able to escape the operation of this rule because under ICHEIC Rule C.5, "negative evidence" could not be used in situations where the Holocaust was deemed to have begun in the country concerned "prior to the year in which the policy no longer appeared on Generali's mechanized records," which, in this instance, allegedly, was 1936. Since Mr. Fisch's father moved to Berlin in 1928, his policy should not have been subject to the negative evidence rule, because under ICHEIC rules the Holocaust was deemed to have begun in Germany in 1933, after the Fisch family moved there. Even so, Chairman Eagleburger personally rejected NYLAG's effort to distinguish his case, asserting an exception to the exception that the negative evidence rule did not pertain to the country of residence, but the country where a policy was purchased (Poland in the Fisch family's case).

Untold Numbers of Generali Claimants Were Denied Based On Negative Evidence. Generali denied over 5,000 claims in ICHEIC. Since Generali outright rejected over 5,000 claims, it is likely that hundreds or even thousands of these were "negative evidence" cases. Unfortunately, hard numbers are not available – mostly because ICHEIC refused to comply with Congressionally mandated reporting requirements, and then, over the objections of the California insurance commissioner, agreed to bury claims and other files for several decades. This is also a maneuver Congress must reverse.

But the operative problem is that survivors and heirs should never have been

subjected to this trickery. If the courts had remained open for claims, these practices would have been avoided because of the threat that a real court would apply rules of accountability and would have operated with the transparency required by the Constitution. But instead, ICHEIC used "relaxed standard of proof" as a slogan, not a rule, and gave Generali the benefit of the doubt.

Miklos Griesz. Miklos Griesz was born in Budapest, Hungary, the child of wealthy, prominent, and caring parents, Arnold and Alice Griesz. He submitted an ICHEIC claim on April 6, 2000, listing 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."

Four years later (February 24, 2004) the Generali Trust Fund denied his claim on the basis that "no match [was] found." However, facts 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.* In over four years, Generali either did not find or did not disclose vital information that Miklos Griesz was a named beneficiary on a policy sold in Hungary. Either way, they were unbelievably incompetent or simply determined to withhold the information from the claimant and hope he relied on their response that there was "no match found."

Fortunately, Mr. Griesz was represented by the New York Legal Assistance Group (NYLAG), which recruited two large New York City law firms to help with his claim. After they appealed the original denial, the lawyers located Mr. Griesz's mother's name on the ICHEIC website. Even then, Generali hardly exhibited the spirit of "relaxed standards of proof." Generali responded:

> 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.

This of course was not true. Miklos Griesz was a named beneficiary of his mother's policy, and Generali had that information in its records, but failed to inform Mr. Griesz of that fact because he filed as a beneficiary of his *father's* policy, not his mother's.[18]

6. ICHEIC Did Not Require Companies to Disgorge Information It Provided About Its Jewish Customers.

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

The companies defense of their conduct for the last decade has centered on the representation that they "could not identify who was Jewish" among its customers after WWII, hence shouldn't be viewed as 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:

---

[18] ICHEIC's standard operating procedure was that the companies processed claims. ICHEIC did not oversee the decisions and decided whether or not to make an offer. The only "review" occurred if a claimant filed an appeal. Even then, the Arbitrators provided no oversight, as shown by Jack Rubin's case. There was simply no independent advocacy for claimants built into the ICHEIC process.

"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?

Generali, for one, seemed not to be terribly bothered by the horrors that had been inflicted on tens of thousands of its customers during the Holocaust, nor its legal obligation to seek out and pay the victims or their heirs. According to its website, Generali's shareholders managed to convene in 1946 and "approved the 1944 accounts." By 1944, there was no question about the catastrophe that had befallen millions of European Jews. Since Generali had between 10 and 15% of the European Jewish market, tens of thousands of those victims were its customers. *How in the world were the shareholders in 1946 able to "approve the 1944 accounts?"* How were tens of millions

of dollars (in whatever currencies) owed to the Jewish insureds and their families accounted for in 1946?

ICHEIC never probed this conduct, and its true scope will remain hidden from public knowledge or the knowledge of the affected families is HR 4596 is not enacted. This is the kind of information that a judge and jury would take a lot more seriously than ICHEIC evidently did, and one reason Congress should restore survivors' rights to a full accounting of the companies' conduct.

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. How can Congress ratify a "policy" denying survivors access to courts without demanding the companies produce all relevant information about their conduct?

V. Arguments Against HR 4596

Opponents of HR 4596 have coalesced around four (4) 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; (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; and (4) legislation will cause Germany to reduce funding to assist needy survivors.

The Members will see that these arguments are not only irrelevant to the restoration of Holocaust survivors' and heirs constitutional rights, they are not factually correct.

A. HR 4596 estimates are accurate and conservative. 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 in the 110th Congress stated that compared to an extremely conservative estimate of $17 billion in unpaid policies in 2006 values, ICHEIC succeeded in paying only $250 million for policies.

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.

There is no data contradicting Mr. Zabludoff's conservative estimates. The only study conducted by ICHEIC, the Pomeroy Ferras Report, agrees in most material respects 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.[19] That is what Mr. Zabludoff did in his 2004 article, using consensus numbers, to which the Preamble to HR 1746 referred, and supporters of HR 4596 cite.

In his Europe Subcommittee testimony in October 2007, State Department representative Christian Kennedy's argued that the total current unpaid value was $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 not a true economic model; it was a a political *compromise* that allowed the companies to pay 10-15% of the actual economic values in Germany and Eastern Europe.

However, even taking Amb. Kennedy's $3 billion 2003 figure, and updating it to 2010, the highly discounted "ICHEIC valuation" of unpaid policies would be $4.1 billion. So, using the most generous estimate of ICHEIC 'success," i.e. using the total payouts for policies, administration, and humanitarian funds through ICHEIC at $450

---

[19] 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 4596 are incorrect when they defend ICHEIC with such broad and inaccurate statements as the one State Department witness Christian Kenndy made before the Financial Services Committee in February 2008: "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. Contrary to Mr. Kennedy's testimony, there is no such study.

million, that sum would represent less than 12 percent of the lowest valuation total for the value of Jewish owned policies, when measured in the way most politically favorable to the insurers.

HR 4596 opponents also misuse numbers to portray a false picture of ICHEIC's performance and exaggerate its alleged success. They say ICHEIC paid $305 million to "48,000 Holocaust survivors or their heirs for previously unpaid insurance policies." This is not true. ICHEIC paid $250 million for unpaid policies. ICHEIC made an additional 31,000 payments of $1,000 each (totaling $31 million) which were termed and treated as "humanitarian" in nature.

The "humanitarian payments" were neither intended by ICHEIC nor interpreted by survivors as payments on policies. They were viewed as an attempt to give "something" to the tens of thousands of applicants whose family policies ICHEIC or the companies would not acknowledge. ICHEIC paid $1,000 but promised to "keep looking." Holocaust survivors have uniformly 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 4596, 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 4596 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. Moreover, they would extend that immunity to Generali, an Italian company subject to no executive agreement or any other official U.S. government connection.[20]

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 of Holocaust victims' claims,* 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 4596 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

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

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 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."[21]

[21] 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

President Clinton refused to immunize German or any other insurers solely because they participated in ICHEIC, and the agreements are clear on this point. The President did not agree to abolish survivors' right of access to courts, nor could he have done so.

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.

> [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.*

---

on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine)." It adds: "The United States takes no position here on the merits of the legal claims or arguments advanced by plaintiffs or defendants. The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal, . . . "

See September 11, 2000 Letter from Congressman Henry Waxman, et al, to U.S. Solicitor General Seth P. Waxman (Emphasis supplied).[22]

The Justice Department made it clear that under the Agreement, the Government did not purport to eliminate Holocaust survivors' legal claims against German insurers. Assistant Attorney General Raben, correctly stated that the terms of the agreement only required the Government to state "that it would be *in the foreign policy interests* of the United States for the Foundation to be the exclusive remedy and forum for resolving such 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).[23]

And, in the year 2000, its brief in the Ninth Circuit in *Gerling v. Kelso*, the Clinton Administration made it clear to the Court that neither the U.S.-German agreement, nor the policy underlying any agreement, nor any company's participation in

---

[22] Even Roman Kent, Treasurer of the Claims Conference and an ICHEIC participant, 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.

[23] It is also ironic in light of the maximalist position now being taken by Germany and the insurers 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.

ICHEIC, independently justified dismissal of survivors' claims for payment of unpaid insurance policies in lawsuits in U.S. courts.

> -- the United States "has not undertaken a duty to achieve legal peace for German companies against state litigation and regulatory action." (p. 8).
>
> -- "the Foundation Agreement itself does not preclude individuals from filing suit on their insurance policies in court . . . ." (p.8).
>
> -- the Agreement does not "mandate that individual policyholders or beneficiaries bring their claims in ICHEIC." (p. 8-9).
>
> -- the American Insurance Association (AIA) "is mistaken in asserting that the Foundation Agreement is in 'direct conflict' with California law, if by this AIA means to suggest that the Agreement by its terms preempts the California statute." (p.9).
>
> -- the District Court "overestimated the Agreement's ultimate legal effect when it predicted that the Agreement would make the Foundation on 'exclusive remedy' as a matter of U.S. law." (p. 9, note 4).

See Brief for Amicus Curiae the United States of America in Support of Affirmance in *Gerling Global Reinsurance Corp. v. Kelso*, Case No. 00-16163, etc. in the United States Court of Appeals for the Ninth Circuit, at 7-9. ("DOJ Ninth Circuit Brief").

In 2003, the United States Supreme Court in the *Garamendi* case held by a 5-4 vote that even 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.[24] 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

[24] In 2003, when the case went to the Supreme Court, the Bush Administration omitted the above caveats contained in the Ninth Circuit brief.

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

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 4596 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 ICHEIC's promises were never fulfilled is irrelevant; legally it could *never* have preempted state law rights prior to *Garamendi* and the *Generali* decisions.

Unfortunately, the courts have for the moment accepted the sweeping interpretation of Executive Authority that the insurance companies have asserted against survivors, contrary to the executive agreements and their clear interpretation by President Clinton, that ICHEIC alone does not provide immunity from lawsuits by survivors and heirs in U.S. courts. This usurpation of Congress's authority not only makes Holocaust survivors second class citizens under U.S. law, it radically expands executive power and infringes on states' rights. But Congress without question 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 4596 invokes fundamentally Congressional prerogatives, which the Executive Branch's unilateral actions undermine in an intolerable and harmful fashion.

Cost/Benefit Analysis of HR 4596. Another cynical objection raised to HR 4596 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. This argument completely misses the point. HR 4596 is needed to restore Holocaust survivors' legal and constitutional rights. It represents 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. 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 2010.

Moreover, 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. Given the shortcomings in

ICHEIC's names disclosure record and claims payment record, HR 4596 is not only morally necessary, it is a practical imperative to allow all victims' families a fair chance to recover their financial due. No amount of empty diplomatic rhetoric justified second class citizenship for Holocaust survivors.

Further, as Former Congressman Robert Wexler pointed out at a public forum in South Florida on December 10, HR 4596 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 $20.5 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.

4. Argument that passage of HR 4596 will result in reduction of assistance from Germany.

When it became evident that the "legal peace" argument was not defensible on the merits, opponents of HR 1746 in the last Congress adopted a new argument, that passage of insurance legislation would cause the German government to cut some of its limited programs in existence today that help survivors. This argument was formalized in a letter from the Claims Conference to Judiciary Committee Chairman Conyers, which

stated that passage of HR 1746, would "jeopardize critical ongoing negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding, immediately required, for survivors in need in the United States and worldwide."

The first and most obvious response, in the words of the Holocaust Survivors Foundation USA, is that there is no logical or moral connection between allowing individual Holocaust survivors access to courts to vindicate their property rights, and the German government's fulfilling its moral obligation to improve the lives of the remaining thousands of Holocaust survivors whose lives were destroyed by Hitler and who continue to struggle today. According to the HSF, legislation such as HR 4596 would "reinforce the principle that Holocaust survivors, and legal heirs, own the rights to negotiate and make decisions over their own property claims and their families' legacies."

Moreover, as the HSF states, not only is the linkage objectionable in principle, the threat has been completely repudiated in fact. No German official, including Klaus Scharioth, the German Ambassador to the United States, has ever stated in any public forum that passage of legislation restoring survivors' rights to recover insurance policies would threaten the German *government's* commitment to provide funding for various programs for Holocaust survivors.

Further, several members of Congress and Congressional staff privately contacted the German Embassy when this issue was raised in 2008, and the Embassy specifically denied any connection between legislation to restore court access for insurance claimants and Germany's provision of various pensions and other payments for survivors.

However, with insurance companies' supporters continuing to make this claim,

the Holocaust Survivors Foundation USA wrote a letter to German Ambassador Klaus Scharioth in December 2008 asking for clarification of the government's position on the effect of insurance legislation on the German government's provision of funding for survivors' programs. Though the response, dated Feb. 10, 2009, repeats Germany's opposition to insurance legislation because of "legal peace" (clearly invalid based on the Clinton Administration statements and the texts of the agreements), the Embassy stated that there was no truth to the argument that Germany would cut benefits for survivors if insurance legislation became law:

> However, while we continue to oppose HR 1746 and any similar bills, Germany has never threatened to respond by cutting benefits to poor survivors, and we have no intention to do so in the future. Pension payments under the Federal Compensation Act (BEG) and support to existing JCC (Claims Conference) programs, including pensions and one-time payments, will, of course, continue as provided for under the law and international agreements.

February 10, 2009 Letter from German Ambassador Scharioth to David Schaecter, President of the Holocaust Survivors Foundation USA, Inc.

However, this question does raise an additional important policy issue for the Committee and the Congress, which is that the current framework for funding social services for survivors today is totally inadequate. To quote HSF again, the "failure of Germany and the Claims Conference to produce a minimal basket of social services for survivors predates and is completely unrelated to" legislation to restore survivors' legal rights.

Ira Sheskin, the leading American demographer of Jewish communities, found in 2004 that over 40,000 Holocaust survivors in the United States live at or below the official federal poverty level, and another 40,000 have incomes so low they are

considered poor. According to the Greater Miami Jewish Federation, citing data from several Jewish demographers filed with the Federal Court in 2004, the problem of survivor poverty is a worldwide phenomenon.

	Survivor Population	Number In or Near Poverty
United States	175,000	87,500
Israel	393,000	137,300
Former Soviet Union	146,000	126,000

Sources: Sheskin, Estimates of the Number of Nazi Victims and Their Economic Status, January 2004; Brodsky and Della Pergola, Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel, April 2005; American Joint Distribution Committee, Presentation on the Condition and Needs of Jewish Nazi Victims in the Former Soviet Union, January 2004.

It should also be noted that the principal source of funding for social services for Holocaust survivors is not the German government, but funds obtained by the Claims Conference through its acquisition and sale of properties and businesses formerly owned by Jews in East Germany that were not recovered by individual victims or heirs after WWII. HSF and other survivor groups, including a growing movement in Israel, have consistently raised questions about the efficacy, transparency, and adequacy of this system. A few news articles addressing this problem are attached as exhibits hereto. So, as HSF noted, while the German government does periodically augment existing programs for survivors, including $320 million announced in June 2008, the status quo is not doing an adequate job across the board.

In 2008, the Claims Conference announced the addition of $320 million for programs for Holocaust survivors from their negotiations with Germany to augment the

basic reparations pension program (which provides payments to only a fraction of all survivors). First, $250 million was payable over a ten-year period, so it in reality equals $25 million annually. Most of that sum ($166 million) represents an 8% cost of living increase for various existing programs, payable primarily to residents of Eastern Europe. Another $83 million (over ten years) will provide first-time payments to some 2000 survivors who lived in Western Europe during the Holocaust but who were excluded from prior pension programs.

A total of $70 million of the $320 million, representing a two-year budget for home care funds for survivors, would directly augment social services for poor survivors. That is an average of $35 million per year in new home care funding for the entire world. When measured against the actual needs of Holocaust survivors in the United States and elsewhere, these "supplemental" funds made only a small dent in the catastrophic shortfall in funding for survivors, and left tens of thousands of survivors suffering and in poverty without adequate home care and other services.

In 2004, the U.S. Jewish Federation system estimated that the annual budget that would be needed to provide the unmet needs for basic social services for poor survivors in the Untied States alone, *exceeded $70 million per year*.[25] With this population now in their 80s and 90s, and with Holocaust-related trauma a cause of significant medical and other problems, a major component of that shortfall is funding for in-home care for survivors.

---

[25] Economist Sidney Zabludoff, participating in a roundtable for the Bet Tzedek Legal Aid Society in Los Angeles estimated the cost of providing a decent level of social services for poor survivors worldwide, assuming a cost of $25,000 per survivor per year, to exceed $20 billion. Zabludoff, "The International Remembrance Fund for Holocaust Survivors," Bet Tzedek Roundtable Discussion, April 2006.

The average annual cost of in-home care for survivors in an average U.S. city is $9,360. So, assuming for illustrative purposes that all of the "additional" money Germany agreed to provide for home care for the next two years, were spent in the U.S., would serve *fewer than 4,000 Holocaust survivors* per year on average. With tens of thousands of poor survivors living in the U.S. alone, and with similarly dire needs for home care and other vital social services throughout the world, the average $35 million two-year home care fund announced in 2008 by the Claims Conference, was not nearly adequate to care for this special population.

In 2010, the Claims Conference announced an increased amount of home care funding from Germany, of approximately $77 million for the year 2010. Again, this sum is a world-wide figure, and as indicated, compared to world-wide needs is a drop in the proverbial bucket.

The issues of survivor poverty and insurance are related but not in the way suggested by the opponents to HR 4596. With so many insurance policies remaining unpaid, there are undoubtedly a very large number of poor survivors whose families' insurance policies remain unpaid that deserve to have their families' property rights honored. But there is no negative relationship between Congress acting to restore survivors' rights of action to recover family insurance policies and the goal of helping poor survivors achieve a dignified standard of living in their final years.

Again, unrelated to restoring survivors' basic right of access to courts to recover family assets looted by corporations doing business in this country, the HSF leadership has been looking to Congress for leadership in addressing the overarching problems facing survivors as they age. With the level of looted insurance assets in the range of

$20.5 billion, and the value of other unreturned assets exceeding $160 billion,[26] it is puzzling and tragic that so many survivors today have to face their final years in poverty and misery.

In 1997, the United States Senate unanimously passed a resolution co-sponsored by Senators Moynihan, Graham, Hatch, Dodd, and Biden, calling on Germany to provide adequate material and social service support so that *all Holocaust survivors* could live in dignity. S.Con. Res. 39, July 15, 1997. The resolution noted that retired SS officers in Germany and elsewhere receive far more generous health care benefits from Germany than Holocaust survivors. It called for, among other goals, that "the German Government should fulfill its responsibilities to victims of the Holocaust and immediately set up a comprehensive medical fund to cover the medical expenses of all Holocaust survivors worldwide."

Unfortunately, neither Congress nor the United States Government followed through on persuading Germany to live up to these aspirations. Germany, despite its significant commitment to Holocaust education and outlawing Holocaust denial and neo-Nazi movements, and despite what it might have genuinely believed years ago to be a significant set of programs for Holocaust victims, has not committed to meeting this rather minimal standard of decency for all living survivors. *See* correspondence from Holocaust Survivors Foundation USA, Inc. to Chancellor Angela Merkel.

---

[26] This amount, which measures price not value of the looted property, uses the US consumer cost of living index and was calculated by economist Sidney Zabludoff, "Restitution of Holocaust-Era Assets: Promises and Reality", Spring 2007 Issue of Jewish Political Studies. To determine 2007 value of unreturned assets, he uses the US Government 30 year bond yield, which provides for minimal appreciation. The result is that in 2007 a conservative estimate of the value of the unreturned assets would be about $500 billion.

This problem should be met head on. The current framework for providing social services to Holocaust survivors, based principally on funding from the Claims Conference's Successor Organization funds derived from East German properties, augmented by periodic sessions in which the Claims Conference seeks patently inadequate levels of funding to meet the actual needs of survivors worldwide, has allowed tens of thousands of survivors to slip into poverty and live without the dignity of food, medicine, shelter, proper dental care, home care, and other vital needs. It is simply a red herring, and a cynical one at that, for anyone to argue that individuals should have their Constitutional rights to sue unjustly enriched insurance companies eliminated due to the failure of the current restitution establishment and the German government to adequately care for elderly survivors of the Holocaust.

The survivors I represent ask Congress and this Committee to address this problem directly. Perhaps this analysis can form the basis for a constructive discussion about ways to incorporate Holocaust survivors as a special category under the recently enacted health care and insurance reforms, with their full and immediate participation to be funded by adequate grants from the German government.

VI. Executive Branch Withholding of Crucial Information from Courts

As noted above, when the *Garamendi* case was being briefed in the U.S. Supreme Court in 2003, the Department of Justice withheld some of the most important comments that the Clinton Administration had conveyed to the Ninth Circuit during the earlier phase of the appeal, i.e. the part distinguishing between its opposition to California's imposition of stricter disclosure requirements on German insurers, which the Clinton DOJ believed was preempted, and survivors' actual state law claims against German

insurers, which the Clinton DOJ said were not to be interpreted as being preempted by the agreement with Germany or the policy underlying that agreement.

In 2008, when the Second Circuit asked DOJ for its position whether cases against Generali conflicted with U.S. foreign policy, it answered "yes" even though the Clinton Administration had said "no" – yet DOJ did not acknowledge its position was a change in policy. Documents obtained via the Freedom of Information Act (FOIA) show that the State Department was determined in 2008 to support Generali regardless of the actual U.S. policy, and despite the Clinton Administration's previous rejection of Generali's request.

The documents attached are revealing and disturbing because, in response to a direct question from the Second Circuit to explain U.S. government policy, DOJ advanced a position based on vague or highly improbable "foreign policy interests," even though (1) it represented a 180 degree change in policy, and its officials understood that the response would result in (2) affirmance of the dismissal of the plaintiffs claims, and (3) an appellate decision that was inconsistent with the U.S. government's actual foreign policy as expressed in its actual agreements in 2000 and 2001, contrary to prevailing Supreme Court precedent, and which drastically expanded executive authority, far beyond *Garamendi*.

These documents, which are attached as exhibits to this submission, represent the production from only one of the many DOJ components whose records have been requested (including the State Department's 2009 letter), lead to at least three conclusions.

First, when the Second Circuit asked for its position in August of 2008, the State

Department was determined to inform the Court that litigation against Generali conflicted with U.S. foreign policy despite the absence of an executive agreement between the United States and Italy. This marked a major departure from the Clinton Administration.

Second, in 2008, DOJ officials understood that while a statement in Generali's favor would almost certainly result in the Second Circuit affirming the dismissal of plaintiffs' cases, they also understood that such dismissal was *inconsistent with the actual undertakings of the President, which expressly provided that dismissal of claims could not be based solely on the notion of ICHEIC as the "exclusive remedy."* They also "had reservations" about the reasoning of the district court in dismissing the cases, and realized that the district court decision (and, logically, any affirmance) represented was a "substantial extension of existing precedent."

Third, in 2009, State Department Legal Adviser Harold Koh understood that the Court's decision in the appeal would hinge on what DOJ said about whether the cases conflicted with U.S. foreign policy. In a letter to DOJ, he warned that the 2008 DOJ letter brief was *too weak* in its justification of the U.S. foreign policy interests to persuade the Court. He urged DOJ to "*more persuasively explain why the absence of an executive agreement with Italy does not affect the relative strength of U.S. foreign policy interests in this case*," casting about for new reasons DOJ might assert to justify support for Generali, and even suggesting others that were fictional. For example, Mr. Koh stated that the filing of a statement supporting Generali was "an essential element of securing the cooperation of those key partners as we pursued a measure of justice for Holocaust victims through cooperative mechanisms," which is not accurate.

What is also astonishing is that these officials not only expressed serious

reservations about the merits of the district court's decision and its inconsistencies with the actual U.S. government "policy," their concerns mirror the precise arguments that I had been making in my trial and appellate filings, as well as in our direct communications with DOJ after the Court's inquiry.

For example, in the Solicitor General Office's memorandum of September 25, 2008, Douglas Hallward-Driemeier recommends that DOJ tell the Second Circuit that there is a foreign policy conflict, but not to address whether that policy actually has the effect of preempting plaintiffs' claims. The memo discusses the problems of the Mukasey-Generali position in detail.

> On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiffs' common law claims. To begin with, the district court holds that the Executive Branch's foreign policy can preempt state law claims even when that policy is not embodied in some formal action that carries the force of federal law. As a general matter, "Executive Branch actions" that "express federal policy but lack the force of law" do not preempt state law. Barclay's Bank PLC v. Franchise Tax Bd., 512 U.S. 298, 329-330 (1994)(dormant Commerce Clause). While Garamendi may reflect an exception to that general rule, that principle is still subject to some doubt. Moreover, Garamendi involved preemption of State laws that imposed peculiar burdens with respect to Holocaust claims, and in the Executive Agreements, the United States had expressly undertaken to work to eliminate such state burdens. In contrast, the district court here held preempted [sic] the claims of individuals to enforce their common law contract rights. Yet, the Executive Agreements expressly stated that the United States' statements of interest would "not suggest that its foreign policy interests concerning the Foundation in themselves provide an independent basis for dismissal" of individual claims. 39 I.L.M. at 1304.

September 25, 2008 Memorandum of the Solicitor General's Office, at 10-11.

Similarly, Civil Division's September 25, 2008 Memo, at pages 12-13, states:

> Arguing for federal preemption in this case would require an extension of the holding in *Garamendi* to a setting in which there is no

> executive agreement to support the assertedly preemptive foreign policy, but merely public statements of State Department officials. Furthermore, we would be required to argue that federal foreign policy preempts not only state laws specifically targeted at the problem of post-war reparations for insurance claims – a context in which the Supreme Court viewed the state's interests as minimal, see 539 U.S. at 4250426 – but also common law claims seeking to enforce traditional tort duties. Although we have argued in other federal preemption cases that the fact a claim arises under state common law rather than positive enactment does not preclude application of conflict preemption, *see, e.g. Riegel v. Medtronic, Inc.*, No. 06-179, Brief for the United States as Amicus Curiae 16-19, it would nevertheless mark a further step beyond *Garamendi* itself.
>
> . . . .
>
> An argument for dismissal on these grounds [i.e. political question doctrine] would also pose potential problems, however. Even in cases in which the United States has filed a Statement of Interest pursuant to a Foundation Agreement, there is considerable tension between the position that foreign policy requires dismissal of an action and the express recognition in the Foundation Agreement that the agreement does not itself provide an independent basis for dismissal. . . .

In 2009, in spite of these reservations, the same career people during the Obama Administration persisted in following the Bush position, based (at a minimum) on the State Department Legal Adviser's determination to support Generali.

Finally, there are handwritten notes on both of Hallward-Driemeier memos, by "ESK." Under the circumstances, these initials likely denote senior career Deputy SG Edwin Kneedler. In 2008, in addressing the question of "the legal consequence" of the foreign policy urged by State [i.e. that the Commission is the "exclusive remedy" for Holocaust victims' claims], ESK acknowledged that in the Statement of Interest filed in the German Foundation cases, the U.S. set forth a similar foreign policy but said that the Statement of Interest does not itself furnish a basis for dismissal – although the U.S. urged dismissal on any valid legal ground. . . . "My position . . . is that we should say at

least that – both because it would be consistent with what the U.S. said in Statements of Interest filed pursuant to the Executive Agreement, and because *I think we should get that much on the record now so that we would not appear to have been hiding the ball if this case later goes to the Supreme Court."*

The DOJ briefs in 2008 and 2009 both failed to make this point with the kind of clarity the Department understood was crucial. And, to no one's surprise, the Second Circuit relied squarely on the DOJ's language that plaintiffs' common law actions against Generali conflicted with U.S. "foreign policy," which established ICHEIC as the "exclusive remedy" for insurance claims, which the Court held was sufficient, by itself, to require dismissal of plaintiffs' claims. This holding was a direct result of the fact that that DOJ "hid the ball."

This only represents the production from one DOJ component. More is due from other components, as well as from the State Department. It is imperative that Congress to independently gather the relevant documents from all participants – the State Department, the Justice Department, and any of the potentially affected insurance companies or any person or entity who had contact, whether paid or unpaid, with any office of the U.S. executive branch, in connection with survivors' access to courts to recover their family insurance policies, to ensure that all relevant communications and influences – internal and external – are fully exposed and understood. The stakes are far too high to settle for back-room deals when Holocaust survivors' rights are in the balance.

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.

The insurers perpetrated a massive theft of Jewish peoples' property during and after WWII, and has never been held accountable to any serious degree. As Generali's court papers remind us, it was a Jewish-owned and- managed company up until the enactment of Italy's anti-Jewish racial laws in 1938 whereby Jews were relegated to second class status, and the company then dismissed the Jewish owners and managers. It targeted sales to Jewish communities in the Austro-Hungarian Empire since 1804 and was one of the most successful insurance companies in the world, with vast real estate holdings on six continents and reinsurance treaties in several safe haven countries. The same is true for RAS, Reunione Adriatica de Sicuritas, which was another Jewish-owned and –managed insurance company based in Trieste with a similar clientele as Generali.[27] And, like Generali, RAS used the symbol of the Griffin – a well-known symbol of the Jewish faith to European Jews of that era, as its marquee logo. The message could not have been more obvious – it meant that Jews could safely do business with these

[27] RAS was acquired by the German insurer Allianz in recent years, and its policies were fully within the ambit of what ICHEIC was supposed to recover.

companies and Jews indeed patronized them handsomely. Wealthy, middle class, and even tradesmen-headed households who trusted Generali's and RAS's good name and powerful image indeed trusted them to secure their families' futures.

Their futures turned out to be anything but secure, and between 1938 and 1945, tens of thousands of the insurance companies' Jewish customers became victims of history's most brutal, murderous, thieving crime. Yet, as Generali's website currently reports, as early as 1946, the Generali board *convened its regular meeting and settled all accounts through 1944.* Maybe the fact that the Jewish managers and agents who were removed from their posts, with many killed, explains why Generali acted with such callous disregard for the Jewish customers who had decided to trust the company's supposed integrity. Maybe this is just the way insurance companies act from decade to decade, exploiting successive catastrophes. But the status quo would allow this information and its consequences to remain concealed forever.

There has to date been no accounting of what happened to all of Generali's and RAS's Jewish owners and their shares from 1938. What occurred is essentially a private escheat, or conversion of the Jewish owners' and shareholders' ownership rights in the company. Under the common law, Generali and RAS would be required to divulge the provenance of its assets, and its treatment of its insurance customers. The U.S. government has never taken any informal action, much less any formal action such as a treaty or executive agreement, to impede Petitioner's common law rights to seek the truth.

Other than the extraordinary manner in which Generali's, RAS's, Allianz's, and the other culpable insurers' customers were separated from their normal lives and

property during the Holocaust, those insurers' obligations to pay today, and to pay in the countries where the beneficiaries and heirs demand payment, is a matter of contract, and is quite routine and ordinary. It is the very kind of obligation that the U.S. justice system was created to enforce, with the benefit of discovery, due process, and an independent judiciary.