Statement of Samuel J. Dubbin
United States House of Representatives
Committee on Financial Services
February 7, 2007

My name is Samuel J. Dubbin. For the past decade I have had the privilege of representing Holocaust survivors and family members of Holocaust victims in attempting to recover assets looted by a variety of governments and global businesses. My firm was one of three that successfully represented Hungarian Holocaust survivors in the Hungarian Gold Train case against the U.S. Government. We also represented a coalition of American survivors who attempted to make sure that U.S. survivors received a fair share of the Looted Assets funds from the Swiss bank settlement to deal with the crushing poverty among American survivors. I have also represented several survivors and heirs and beneficiaries with claims against European insurance companies, through the grass-roots Holocaust Survivors Foundation USA, Inc.. In fact I was in this room in February 1998 when Chairman Jim Leach held the first hearing on Holocaust survivors' insurance rights.

It would have been inconceivable at that time to believe we would be back here talking about the very same problem that incensed so many members of Congress in 1998. Yet here we are, and despite the justified outrage over the insurers' avaricious conduct toward the victims of history's greatest crime, the insurers have retained over 97% of their unjust enrichment, and hundreds of thousands of policies remain unpaid, and worse yet, they remain hidden in the vaults of the insurers never to have been disclosed even to the families of those who entrusted these financial giants with their families' financial security. The final indignity for survivors is that the American court

system by no legislative action become closed off to survivors whose insurance companies failed to pay. This most basic right – to hold businesses accountable for their breach of contracts to provide insurance – has tragically been held not to be available for one class of human beings in America – Holocaust survivors.

HR 1746 is essential to require the insurers who wish to do 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 so many survivors and heirs have no knowledge of the fact that these companies sold their parents or grandparents or aunts or uncles insurance in the dark days before WWII. Yes, even darker days would come.

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

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

HR 1746 would require insurance companies doing business in the United States who sold policies (directly or through an affiliate) must publish the names of policyholders from that era. It would also restore state court rights of action and provide a right of action in federal courts for survivors and heirs when companies refuse to settle on acceptable terms, with treble damages and attorneys' fees and costs for successful claimants. The legislation 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 had 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, the hundreds of thousands of unpaid policies worth $17 billion in 2007 dollars sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Generali, Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, and others.

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 the background of the creation and operation of ICHEIC. That unhappy story is

rooted in the tragic events intertwined with the Holocaust, the greatest crime in human history.

History

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

One of the key selling points of many policies was that the insured contracted for the right to receive policy proceeds "wherever they 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 is abundant in the record that has developed, limited though that is considering ICHEIC's secrecy.[1]

[1] Generali's marketing including its sales brochures and the policies themselves, highlighted the availability and value of overseas assets – including assets in America – that would ensure the customers' ability to collect their benefits outside of

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

The rape of Jewish insureds in Europe was exacerbated by the fact that German and Austrian census data identified Jewish residents and their assets, together with the collection of such data in territories that became occupied, and pointed the way for the Nazi regime to use the Gestapo to target certain individuals in certain towns to be forced into signing over their cash and other assets such as insurance policies. The plaintiffs who sued the twenty or so major European insurance companies in the late 1990s alleged that the insurers and their affiliates (including reinsurers) participated in and benefited financially from the confiscation of Jewish-owned insurance policies ("short-rating").

After World War II, as Holocaust survivors and their families struggled to reconstruct their lives, insurers refused to honor the policies it had issued to insure property the Nazis seized and the lives of those who perished before firing squads and in

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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).

Holocaust death camps. They 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 the children of Holocaust victims for decades.[2]

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 and profiteering from Holocaust victims. Its report on insurance is disturbing but not surprising. For example, despite the fact that Swiss insurers had nine (9) percent of the German market, "In 1950 the Association of Swiss Life Insurance Companies reported that its members could not find a single policy whose owner had been killed as a result of the machinations of the Nazi regime so that their entitlement to claim under the policy had become dormant." Bergier Report, at 465. 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."

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

Bergier Report, at 460.

When testifying before this Committee in1998, Allianz AG Board Member Herbert Hansmayer sought the committee's compassion for Allianz's 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 I war-ravaged Germany." Transcript of February 12, 1998 Hearing before the House of Representatives Committee on Financial Services.

But Mr. Hansmayer's plea was contradicted not long after that hearing by a detailed article in the Wall Street Journal in November 1999, which explained how the company had attained such power in the German financial world: "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

began examining the conduct of insurers in the U.S. market who did business during the Holocaust. 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 from their parents. Others described reticent post-war recollections by parents who survived Auschwitz only to be "beaten" by insurers out of large sums of money.

ICHEIC Formed

In 1998 several States passed legislation requiring European insurers who did business in their states 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. Congress was poised to pass similar legislation when the foreign governments and industry persuaded non-survivor Jewish organizations and insurance commissioners to create an "international commission" to standardize the process and avoid "costly, protracted litigation, etc." It was called the International Commission for Holocaust Era Insurance Claims (ICHEIC). The Commission consisted of six companies, three "Jewish organizations" (the Claims Conference, the WJRO, and the State of Israel), three state regulators. Former Secretary of State Lawrence Eagleburger was appointed Chairman.

Mr. Eagleburger has stated that ICHEIC was chartered under Swiss law and headquartered in London to avoid the reach of U.S. courts' subpoena powers.

Decisions were to be made "by consensus," with Chairman Lawrence Eagleburger breaking any ties when necessary. Congress stayed its hand from enacting legislation.

Five years later, after several reported scandals 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 claimant could be expected to know; and denials even in the face of evidence that policies existed because the companies maintained, without proving, that they had no evidence of an active policy; etc. Again, Congress took no action.

These prior legislative efforts apparently were overcome by the argument that the ICHEIC should be allowed to complete its work. When Congress mandated (Section 704 of the 2003 Foreign Relations Reauthorization Act) that ICHEIC provide certain information about its operations to the U.S. State Department, ICHEIC refused to cooperate. Remarkably, State took no further action. Neither did Congress. Unfortunately, ICHEIC completed its "mission" in March 2007 and the results are catastrophic.

There were 875,000 estimated policies outstanding 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 the $600 million in value in force in

1938 was conservatively estimated to be worth $17 billion. This 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.

When ICHEIC closed its doors in March 2007, ICHEIC had paid less than 3% of the value of the policies outstanding. Several hundred thousand policies remain unaccounted for. The body paid out $250 million in recognition of insurance policies, it paid $31 million in $1,000 "humanitarian payments" (which insulted survivors and made them feel like ICHEIC was calling them liars), and allocated another $165 million for "humanitarian projects" through the Claims Conference, which included funds for summer camp programs and college programs in addition to social services for survivors in need. So, even if you aggregate all of the money to about $450 million, ICHEIC generated in total less than 3% of the money stolen from European Jews' insurance funds.

ICHEIC's costs of operations exceeded $100 million, but the exact cost has not to my knowledge been widely published. Even 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. Particular concerns about ICHEIC's operations are examined below.

Litigation Stymied

As noted above, prior to ICHEIC's creation, dozens of survivors filed lawsuits against about twenty (20) European-based global insurance companies including several class actions that were consolidated in federal court in New York.

In 2003, the United States Supreme Court held in the *Garamendi* case that Executive Branch actions supporting ICHEIC preempted traditional state law powers to regulate insurers' practices for their handling of survivors' policies. In that case, several members of Congress filed *amicus curiae* brief with the Supreme Court which opposed the extension of Executive power urged by the Administration. Subsequent court decisions have dismissed survivors' suits against Italian insurance giant Generali, even though there is no executive agreement between the United States and Italy. However, in ruling in favor of the industry and against survivors' interests, the courts have noted that Congress had not legislated on the subject of Holocaust era insurance policies.

HR 1746 is therefore Congress's chance to exercise its proper role , under its authority to regulate international commerce and prescribe Federal Court jurisdiction, in the recognition of Holocaust survivors' rights (and the rights of heirs) to sue insurers who fail to pay policies they sold to Jews in Europe before WWII.

Without legislative relief, the hundreds of thousands of unpaid policies worth $17 billion in 2007 dollars sold to Jews before WWII would evaporate – and be inherited by multinational insurers such as Generali, Allianz, Munich Re, AXA, Winterthur, Swiss Re, Swiss Life, Zurich, and others.

Arguments Against HR 1746

Opponents of HR1746 have coalesced around three (3) major arguments: (1) it is premised on inaccurate estimates of the unpaid value of Holocaust victims' policies; (2) it violates "deals" to provide "legal peace" for German and other insurance companies who participated in ICHEIC; and (3) it isn't likely to produce enough successful claims by

survivors to justify the political costs of the ill-will it will engender among foreign governments whose insurance companies profited from the Holocaust.

HR 1746 estimates are accurate and conservative. Led by ICHEIC Chairman Lawrence Eagleburger's October 15, 2007 Statement to the House Foreign Affairs Committee, opponents claim the legislation is based on the "erroneous allegation" that ICHEIC paid less than 5% of the total amount owed to Jewish Holocaust victims and heirs. The Preamble to HR 1746 states that of the conservative estimate of $17 billion in unpaid policies in 2006 values, ICHEIC succeeded in paying only $250 million for policies. The $260 million is indeed less than 5% of the total owed. It also paid $31 million, in the form of $1,000 "humanitarian payments" to 31,000 individual claimants. So, for purposes of this analysis, the generous ICHEIC payment estimate is $281 million.

When "humanitarian" payments nearing $200 million are counted, ICHEIC's tally is around $450 million.

Eagleburger then says bill sponsors Ileana Ros-Lehtinen and Robert Wexler do not provide substantiation for the figures cited. He is incorrect. In fact, the Preamble to HR 1746 cites experts' estimates of the value of unpaid insurance policies owned by Jews at the start of the Holocaust, as ranging from $17 billion to $200 billion.

The $200 billion estimate was published in 1998 in the *Insurance Forum*, the widely respected and quoted insurance consumer newsletter published by industry expert Professor Joseph Belth of the University of Indiana Business School.

The $17 billion estimate is based on an article 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 is testifying

again before the Financial Services Committee today. Mr. Zabludoff used a base total value of nearly $600 for the total value of Jewish policies in force in 1938. He then subtracted out the amount of policies repaid from the end of World War II to the start of ICHEIC in 1998 (some 70 percent for most west European countries and 10 percent for east European countries) and 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 over $17 billion in 2006 prices.

Zabludoff's estimate is very conservative because insurers such as Generali, Allianz, Munich Re, Swiss Re, Swiss Life, etc undoubtedly earned higher returns on their money than the U.S. bond rate, as they invested in much higher-yielding assets such as real estate and stocks, as well as bonds.

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

The Pomeroy Ferras Report actually agrees in large part with 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 pre-Holocaust value using a common currency such as the dollar or the current value of the life insurance policies still owed to Jewish victims of the Holocaust or their heirs prior to

the Holocaust. That is what Mr. Zabludoff did in his 2004 article, using consensus numbers, which the Preamble to HR 1746 describes.

Therefore, with ICHEIC having paid $281 million to claimants and $169 million for Humanitarian purposes for a total of $450 million out of the $17 billion current value of the Jewish policies, it left 97% of the values unpaid.

In his Europe Subcommittee testimony, State Department representative Christian Kennedy's argues that the total current unpaid value is $3 billion, as opposed to the $17 billion estimated by HR 1746. Although Amb. Kennedy gives no explanation for his $3 billion number, the number would appear to be an estimate of the 2003 value of policies using the "ICHEIC valuations" as a base. The ICHEIC valuation system was, everyone concedes, a compromise that allowed the companies to take advantage of post-war currency devaluations and political events in Germany and Eastern Europe. This was the basis on which claims were actually paid via the ICHEIC process. It was not based on the economic value of Jewish policies in 1938, brought up to current value, but instead used the compromise ICHEIC values before any multiplier was applied.

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

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

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

In fact, these payments were neither intended by ICHEIC nor interpreted by survivors as payments on policies. They were viewed as an attempt to give "something" to the tens of thousands of applicants whose family policies ICHEIC or the companies would not acknowledge. ICHEIC paid $1,000 but promised to "keep looking." Claimants have stated that they considered the $1,000 as tantamount to calling them liars. This was the position of survivors who testified on HR 1746, and this is the description applied by one ICHEIC appellate arbitrator, former New York Insurance Superintendent Albert Lewis, who went public with very damning documentation about the "phantom rule" by which ICHEIC's lawyers tried to influence appellate judges to deny appeals.

"Legal Peace." The insurance industry, the German Government, the State Department, and certain organizations that were part of ICHEIC (and their affiliates) oppose HR 1746, saying that "a deal is a deal," and the insurance companies were promised "legal peace" if they participated in ICHEIC. The short answer to this argument is that the U.S. Government did not agree to waive survivors' rights to sue insurance companies in any Executive Agreement or other action arising out of the Holocaust restitution cases and negotiations. Moreover, the U.S. Executive Branch does not have the authority to negotiate away any citizen's right of access to the courts of this country in the absence of a truly catastrophic foreign policy crisis and express Congressional authority. Today, opponents of HR 1746 want to give German insurers

more than they were able to negotiate for in 2000, and more than the U.S. government could constitutionally agree to.[3]

Unfortunately, the unprecedented court decisions making it impossible today for survivors to sue insurers over Holocaust era policies make HR 1746 necessary. Notably, even those decisions limiting survivors' access to courts today recognize that the absence of Congressional action in the field was influential in their decisions, an obvious acknowledgement of Congress's authority to provide access to courts through appropriate legislation. *American Insurance Association v. Garamendi*, 123 S.Ct. 2374 (2003), *In re Asscurazioni Generali, S.p.A., Insurance Litigation*, 240 F.Supp.2d 2374 (S.D.N.Y. 2004). HR 1746 would restore survivors' rights to their position noted above prior to *Garamendi.*

The background for the "legal peace" argument arose from the "$5 billion" German Foundation Agreement. In 1999 and 2000, federal courts dismissed class action lawsuits filed by Holocaust survivors against German industry seeking compensation for slave labor they were forced to perform during WWII. The courts held that international treaties settling the war had to be interpreted to preclude 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

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[3] 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.

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. In the process, German insurers' (and non-German insurers who sold in the German market) total potential "liability" through ICHEIC was limited, without ever having any independent audit or investigation or analysis of the actual amount of insurance theft the German companies committed, at the absurdly low amount of $200-250 million.

Several members of Congress have been concerned about ICHEIC from the outset, and the Executive Branch's "commitment" to include survivors' insurance rights within the German Foundation settlement. In September of 2000, forty-six members of the United States House of Representatives expressed their dissatisfaction with the German Agreement and with the failures of the ICHEIC specifically. They wrote ICHEIC Chairman Eagleburger "to express [their] concern about the alarming rate of rejection of claims processed through the International Commission for Holocaust Era Insurance Claims ("ICHEIC"), which has prevented many of [their] constituents from reclaiming their Holocaust-era policies." *See* Letter of September 29, 2000, from Henry Waxman, et. al. to ICHEIC Chairman Lawrence Eagleburger, Exhibit N. They expressed strong disagreement that the German-U.S. Agreement over slave labor was expanded to include any kind of limits on insurance regulations or liabilities:

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

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

Several of these Representatives also wrote to the Solicitor General of the United States to protest the Justice Department's efforts to undermine states' authority over Holocaust survivors' insurance claims.

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

See September 11, 2000 Letter from Congressman Henry Waxman, et al, to U.S. Solicitor General Seth P. Waxman.

In response to concerns raised by U.S. Congressmen, the U.S. Government clarified the position that the German agreement did not purport to eliminate Holocaust survivors' legal claims against German insurers. According to Assistant Attorney General Raben, the Government would only state "that it would be *in the foreign policy interests* of the United States for the Foundation to be the exclusive remedy and forum for resolving such claims," and "*that the United States does not suggest that its policy*

interests concerning the Foundation in themselves provide an independent legal basis for dismissal of private claims against German companies." *Id*. (Emphasis supplied).

It is also ironic in light of the position now being taken by the U.S. State Department and others that at the time of the agreement, the Justice Department acknowledged that if ICHEIC did not prove to be an effective forum for solving Survivors' claims, even the limited protection 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 ("Raben Letter").

It should be added that even the Department of Justice added in the year 2000 – before ICHEIC's colossal failure was final, that the U.S. Government's agreed-upon limited support for ICHEIC was contingent on ICHEIC's successful functioning: "[S]hould 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 [i.e. the California commissioner's subpoena power.]" September 29, 2000 Letter from Assistant Attorney General Robert Raben to Henry Waxman, et al.

In the *Garamendi* case, the United States Supreme Court held by a 5-4 vote that even without expressly preempting the California Insurance Commissioner's power to subpoena records fro German insurance companies doing business in that state, the court found and relied upon a separate "federal policy" favoring "nonadversarial resolution" of

Holocaust victims' claims against insurers who sold their families' insurance before WWII. So, if ICHEIC required less disclosure from Germany than the California Insurance Commissioner requested under its state law allowing it to examine insurers' market conduct, state law was preempted. Several members of the United States Congress filed an amicus brief in the *Garamendi* case confirming that states had primary jurisdiction over insurance regulation such as the subpoenas issued by the Commissioner, and opposing the expansion of executive authority represented by Germany's position in the litigation. Their position was not adopted by the Court.

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' money as a sacred investment 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, and independently historic, injustice.

It is indisputable that Congress, not the Executive Branch, has the constitutional and statutory authority to regulate international commerce, and to define the jurisdiction of the federal courts. Therefore, HR 1746 relates to fundamentally Congressional prerogatives, which the Executive Branch's unilateral actions undermine in an intolerable and harmful fashion.

Survivors throughout the United States (and the world) have experienced ICHEIC's failures first hand, and call upon Congress to follow through and correct the shortcomings in the process, while the survivors still have life and hope.

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

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

Inadequate Disclosure of Policy Holder Names. ICHEIC was supposed to begin with a comprehensive dissemination of names of policy holders in order to inform survivors and family members about the possibility of an unpaid policy in their family, but only a fraction of policies were published. Only a fraction of the policy holder names from that period of time, including only 20% from Eastern Europe, were published. Most were published in mid-late 2003, after the filing deadline had been extended twice.

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 *AIA* decision. Several members of the Committee, and the Survivors and Survivors advocates who testified, expressed their continued dismay with the ICHEIC. The concerns raised included the inadequacies in the dissemination of policy holder names that had occurred after nearly five (5) years, as well as the endless, frustrating, nontransparent, and unaccountable claims handling practices conducted under ICHEIC's auspices. *See* Treaster, "Holocaust Insurance Effort is Costing More Than It Wins," *The New York Times*, September 16, 2003, Exhibit 11. ("Lawrence Eagleburger . . . said today that his organization had spent 60 percent more for operations than it had persuaded insurers to pay in claims. . . . Independent Holocaust experts asserted at the hearing that the commission had been outmaneuvered by the insurers.").

For example, 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.
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> 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, Exhibit 12.

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 Generali was most active:

> 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 400,000 names were added to the ICHEIC website, including some 360,000 from the German insurers. However, these were published long after the vigorous publicity that had occurred fully three years earlier, and after most who had been interested had simply become frustrated and disgusted. In October 2004, the Washington State Insurance Commissioner wrote:

> The deadline for filing claims was December 31, 2003. Despite the terms of the MOU (Memorandum of Understanding), up until the very end of the claims filing period the companies continued to resist releasing and having the names of their policyholders

> published, in some cases citing European data protection laws. By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability. Had the companies released the number of policyholder names that could and should have been published over the entire ICHEIC claims filing period, it is likely the number of claims would have been significantly higher than the present 79,732.

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

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

For example, the researchers reported that they had access to the Slovakian Central Property Office, which contained "more than 700 boxes of records dealing with the 'aryanization' of Jewish firms in Slovakia. Those files contained information about "the assets of the firms and of their Jewish owners .. . . declared on a special form." However, the researchers searched only "a small sample" of those 700 boxes, which provided information about "18 policies."

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

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

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

ICHEIC Operated in Secrecy and Ignored Congressionally Mandated Reporting Requirements. It is ironic that Mr. Eagleburger begins his "statement" to the House Foreign Affairs Committee by complaining that "no one representing ICHEIC was invited to testify at the October 3 hearing." In fact, for several years, Mr. Eagleburger and ICHEIC ignored congressionally mandated information requests from the State Department about ICHEIC's practices and performance under the Foreign Relations Authorization Act of 2003.

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

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

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

It is also important for the members to understand the extremely limited nature and validity of the of ICHEIC audits was in any event, i.e. what the audits did and did not purport to do. Under ICHEIC rules, the companies decided what the relevant scope of investigation and analysis would be in searching for names to publish, and in determining

whether claims were "valid." All the audits did was test whether the companies did what they said they were going to do. Therefore, even the audits that "passed" under this extremely limited ICHEIC mandate do not offer any comfort to claimants who were rejected, much less any basis for Congress in evaluating the process. For example, the Deloitte & Touche LLP Stage 2 audit "passing" Generali Trieste, which was not even *issued* until March of 2007, states:

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

Appeals Were Biased Against Claimants.

Another ICHEIC "safeguard" on which the process depended was the availability of an appeal mechanism for claimants who were dissatisfied with company decisions. However, after ICHEIC closed, one of the ICHEIC appellate judges, former New York State Insurance Superintendent Albert Lewis, disclosed that he was pressured by the ICHEIC legal office to deny appeals by survivors and heirs that he considered valid, based on a "phantom rule" that violated the published ICHEIC rules. He disclosed, after ICHEIC's official closure, that he was pressured by ICHEIC's legal office that even survivors with persuasive anecdotal evidence must overcome a "heavy burden" in order to be awarded money for a policy where the claimant could not produce documentary evidence.

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

> In my experience as an arbitrator I witnessed bias against the claimants by ICHEIC's London office and especially as manifested by the administrator, Ms. Katrina Oakley. She demanded that ICHEIC arbitrator apply an erroneous and phantom burden of proof rule in deciding appeals, a rule that would force ICHEIC's arbitrators to deny an otherwise valid claim.

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

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

(Emphasis by Mr. Lewis).

ICHEIC Failed to Apply "Relaxed Standards of Proof"

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

Mr. Rubin filed a claim with ICHEIC stating that the building that housed his family home and his father's general store in Vari (Czechoslovakia, later Hungary) had a

sign affixed stating the building and premises were insured by "Generali Moldavia." [SUP-41]. Mr. Rubin's family was forcibly removed from their home in April of 1944 and taken to the Beregsastz Ghetto, and then deported to Auschwitz. His parents perished in the Holocaust but he survived. *Id*. Mr. Rubin filed two claims with the ICHEIC, which named his parents Rosa Rosenbaum-Rubin and Ferencz Rubin, with their years of birth. He noted that when he returned from the camps, his family home and business were destroyed and he could not locate any records. His even noted that "[t]he agent's name was Joseph Schwartz. He did not survive the Holocaust." *Id.*

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

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

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

> Where no written record of a policy can be traced by the Member Company, *the burden upon the Appellant to establish that a policy existed is a heavy one,* even when the burden is to establish that the assertion is "plausible" rather than "probable." Where the Appellant is not able to submit any documentary evidence in support of the claim, as in this case, the Appellant's assertions must have the necessary degree of particularity and authenticity to make it entirely credible in the circumstances of this case that a policy was issued by the Respondent.

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

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

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 it "could not identify who was Jewish" among its customers after WWII, hence it shouldn't be viewed as a monster for failing to pay policies of Jews who were Holocaust victims. However, contrary to such statements, records have surfaced that reveal one company's Italian portfolio had data entries including:

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

This source of the information is an "examination of the collected data on unpaid policies shows that *some of the insured had to specify their 'Jewish race*.'" This revelation contradicts statements made over the last decade by the companies and their representatives. How much more information like that lies in their records? No one knows because ICHEIC did not probe that issue.

See, e.g. letter to the "Prefect of Milan," in which the company did indeed identify its Jewish customers to authorities.

> "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?

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

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

Florida's Legislature and Insurance Commissioner have consistently rejected the notion that the ICHEIC should be treated as a substitute for Florida's Holocaust Victims Insurance Act and traditional remedies under Florida law. In 1998, when Florida's Insurance Commissioner agreed to execute the Memorandum of Understanding which created the ICHEIC, he did so subject to several specific conditions, including the

express acknowledgment that Florida laws would not thereby be diminished. He wrote: "The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens." *See* April 29, 1998 letter from Florida State Treasurer and Insurance Commissioner Bill Nelson to The Honorable Glenn Pomeroy, NAIC President.

Commissioner Nelson again rejected the idea that ICHEIC participation created a "safe harbor" from Florida law in a subsequent letter to the members of the ICHEIC: "*Participation on the Commission should not be seen by any company as a means to shield itself from Florida's laws.* When I signed onto the Memorandum of Understanding establishing the International Commission, as every one knows, I stated: 'The Florida Department of Insurance expressly reserves the right to enforce all applicable Florida laws and regulations to protect the interests of Florida citizens. This has always been and continues to be my position."[4]

The principal Senate sponsor of the Florida Holocaust Victims Insurance Act and Senate Resolution 2730, State Senator Ron Silver, recently explained that claimants' rights to go to court in Florida are part of the bedrock of the State's common law and statutory scheme to protect the rights of Holocaust victims and heirs. In a letter to the Honorable Michael Mukasey, he wrote: "One of the key elements of our legislation was to establish a right for Survivors, heirs, or beneficiaries to go to court in Florida to enforce their rights in relation to insurance policies sold before the Holocaust." Senator Silver's letter explains:

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

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

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

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

The provisions of HR 1746 represent common sense and common decency in allowing Holocaust survivors and families access to the United States court system to control their own right to obtain information from the culpable insurers, seek the truth about their families financial history, and recover the funds they might be owed. Given the shortcomings in ICHEIC's names disclosure record and claims payment record, HR 1746 is necessary to allow all victims' families a fair chance to recover their financial due. The status quo creates one subclass of Americans who cannot go to court to sue

insurers that pocketed their hard-earned money – Holocaust survivors. This is an untenable position for America in the year 2008.

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

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

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

Conclusion

As Holocaust survivor Jack Rubin stated before the Europe Subcommittee in October, it is indeed possible and even likely that tens of thousands of Jews' insurance policies went up in the smoke of Auschwitz. But why should the companies be able to retain the billions in unjust enrichment due to their greed and cynicism? Even if only a few additional policies are repaid to individuals, there is no plausible reason to allow the

financial culprits from the Holocaust rest easy in 2007 or ever, until they have disgorged their ill-gotten gains. Their unjust enrichment is tainted and must be returned, to the owners or to survivors in need if necessary.