

STATEMENT of ROMAN KENT
HOLOCAUST ERA INSURANCE ISSUE

Hearing before House Committee on Financial Services
(February 7, 2008)

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

I also participated in the negotiations involving the German Foundation and am involved in the ongoing Claims Conference negotiations with the German government that have resulted in providing hundreds of millions of dollars annually for Holocaust survivors.

For years, I have been a determined advocate for survivors, struggling to find ways for survivors, both in the U.S. and worldwide, to obtain some measure of justice. For these reasons, I believe that I have a unique perspective from which to comment on the issues which are the subject of today's hearing.

Before proceeding, I would like to express my profound gratitude, as well as that of all Holocaust survivors, to Chairman Frank, to this Committee, and to the U.S. Congress for its critical role in addressing issues of Holocaust-era compensation and restitution. The U.S. Congress and many individual members of this Committee have played a historic role in this just and moral effort – an effort for which we have little time remaining.

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

- First, although the ICHEIC claims and appeals processes have concluded, the insurance companies which participated in the process have committed to continue to accept and process remaining Holocaust-era insurance claims – applying the ICHEIC standards in their decisions – at no cost to claimants. In addition, there are a number of organizations, such as the Holocaust Claims Processing Office ("HCPO") of New York State, which will assist survivors filing such claims with insurance companies. The important work of the HCPO greatly helps claimants, nationwide, pursue their claims and is provided at no charge.
- Second, the proposed insurance legislation may well raise the expectations of survivors only, in the end, to disappoint them. The costs, time and effort required to engage in litigation, as the legislation

provides, will be excessive, if not prohibitive. In addition, the mandatory publication by the insurance companies which participated in the process established by ICHEIC of all policy-holder names will, at this point, yield little new information regarding policy-holders who were victims of Nazi persecution. Even assuming that European data protection hurdles could be overcome, most of the policies which would be disclosed would not have been purchased by victims of Nazi persecution; many of the policies would have been paid out appropriately; and many of those not paid, would have been previously compensated. Thus, the huge expectations that the legislation will generate on the part of survivors will simply not be met – leading to upset, disappointment and frustration.

- Third, I am concerned that the proposed insurance legislation will, by effectively reopening previous agreements, significantly damage critical, ongoing Holocaust-related negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding which is required now for the neediest survivors in the United States and worldwide.

THE CONTEXT IN WHICH ICHEIC WAS ESTABLISHED

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

Insurance companies certainly were not eager to pay or even give a fair hearing to such claims. Indeed, there are chilling examples of companies insisting that claimants produce death certificates, from Auschwitz, of the policy-holders. The statute of limitations, the absence of relevant documentation, and the prohibitive costs and time involved proved insurmountable obstacles to successful recovery for the overwhelming majority of claimants. In addition, many insurance companies that had sold insurance in pre-war Europe no longer existed after the war. Finally, communist control of Central and Eastern Europe prevented the recovery of any property for survivors in those countries.

Clearly, there was a vacuum in post-war insurance restitution efforts. There was no effective way for the overwhelming majority of survivors to obtain payment for their pre-war insurance claims. After struggling to survive Nazi concentration camps, most survivors no longer had the documentary proof necessary to establish the existence of insurance policies or the evidence simply no longer existed as it was destroyed during the war. Therefore, few

survivors or members of their families were able to convert the policies they had purchased into the compensation they were owed.

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

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

ICHEIC's mission was to develop a process and methodology to identify and compensate previously unpaid, individual Holocaust-era insurance claims, at no cost to the claimants. ICHEIC, however, only received funds covering part of the huge European insurance market. Only the five European companies which signed the Memorandum of Understanding, along with the German companies which were part of the German Foundation agreement (collectively, "ICHEIC companies"), provided funding for ICHEIC.

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

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

A continual stream of complications surfaced during negotiations with the insurance companies which participated in the ICHEIC process. One such issue related to the differing data protection or privacy laws of each country in which these companies are located – Germany, Italy, France and Switzerland. In an effort to have as many names of those individuals most likely to have had a life insurance policy during the relevant period and who were thought likely to have suffered any form of Nazi persecution during the Holocaust as possible identified and disclosed, each country's laws needed to be addressed individually. Publication of large numbers of names of individuals, where the overwhelming majority were not Jewish and not Holocaust victims, was of paramount concern to European governments. Yet, in spite of this and many other obstacles, ICHEIC was able to publish the names of over 500,000 Holocaust-era insurance policy holders which were most likely to have been victims of Nazi persecution.

Further, ICHEIC developed and implemented a liberal evidentiary approach which no court of law would follow. No court of law, for example, would or could rule in favor of an individual making a claim based on an insurance policy which was not presented in court. However, as we know, many Holocaust-era insurance policies were destroyed or otherwise cannot be produced. In contrast, ICHEIC agreed to – and did – pay claimants who did (and could) not produce an insurance policy. This is no small matter. If an insurance policy does not exist, how does one ascertain the name of the policy holder, the face value of the policy, the premiums paid and, most importantly, the name of the beneficiary? How can a court rule in favor of any claimant when the beneficiary of a policy is unknown? ICHEIC decided on principle – that the family would receive compensation for the policy – to address such circumstances.

Moreover, in Holocaust-era insurance policy cases it is rare to have definitive proof concerning whether a policy holder continued to pay premiums. If such payments were not made, the beneficiary would receive less than the full face value of the policy. ICHEIC decided in its guidelines – that all premiums were deemed to have been paid if they had been paid as of the start of the war in each country – to address this issue as well.

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

Thus, to address the ineffectiveness of lawsuits and compensation programs in dealing with issues raised by Holocaust survivors related to their pre-war life insurance policies, ICHEIC became the first – and, indeed, the only – organization ever to offer Holocaust victims and their heirs a mechanism to pursue claims against insurance companies, at no cost, with no regard for

any statute of limitations, even if neither the claimant nor the insurance company could produce the policy in issue.

However, only ICHEIC companies disclosed the Holocaust-era insurance policies they had issued and became involved in the claims process established by ICHEIC. Clearly, this did not represent the entire Holocaust-era European insurance market.

THE VALUE OF JEWISH OWNED HOLOCAUST-ERA INSURANCE

An assertion has been made, on a number of occasions, that less than 5% of the total value of Jewish Holocaust-era insurance policies has been paid through the ICHEIC process. It is a figure without any solid basis.

As previously noted, although ICHEIC did make payments to claimants for insurance policies issued by companies in Eastern Europe which had been nationalized, had their assets nationalized, went bankrupt, or otherwise went out of business, no funding was provided by these companies or the governments which benefited from their assets.

For the remainder of the market, a key factor in determining the percentage of the relevant insurance policies that was restituted through the ICHEIC process rests on the valuation of the policies in question.

The determination of the ultimate amount paid through ICHEIC varied widely depending on which out of a broad range of possible values were used for the relevant calculations. And there were profound differences between the Jewish side, on the one hand, and the insurance companies, on the other, regarding what values and percentages were appropriate to use.

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

- (i) the total face value of all life insurance policies at the beginning of the Holocaust period, in the local currency at the time;
- (ii) the Jewish share of the total value of all life insurance policies, based on the percentage of the Jewish population in a given country;
- (iii) the propensity for Jewish individuals to purchase insurance in greater numbers and at a higher value than the rest of the population;

- (iv) an adjustment for policies which have been paid; and
- (v) the system of valuation by which unpaid Holocaust-era Jewish policies (which includes heirless claims and others who did not or could not make a claim) should be converted into today's value.

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

Moreover, a number of the currencies used to buy pre-war policies became virtually worthless. Companies argued, both in ICHEIC and in court cases, that the policies were, therefore, also virtually worthless. We did not accept that argument.

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

In other words, after lengthy arguments on these issues, the parties involved in ICHEIC recognized the virtually endless potential for disagreements over determinations related to the amount of unpaid Jewish insurance claims. As a result, a methodology was developed and accepted by the parties that permitted some discretion, leading in turn to negotiated settlements and compromises, which were essential to moving a slow and difficult process forward.

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

One additional point must be made. Although the Memorandum of Understanding called for ICHEIC to resolve claims against Holocaust-era insurance policies issued by the companies which signed the agreement, ICHEIC's efforts went well beyond that.

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

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

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

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

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

CONCLUSION

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

Was ICHEIC successful? As imperfect as it was, the answer is yes. What ICHEIC accomplished was without precedent:

- First, ICHEIC filled a void by providing a forum to process Holocaust-era insurance claims, even though claimants had almost no documentation. Prior to the ICHEIC process, there was, practically speaking, nowhere to go to recover the proceeds of unpaid Holocaust-era policies;
- Second, the ICHEIC process was at no cost to survivors, and without regard to any statute of limitations;
- Third, ICHEIC paid claims against insurance companies which no longer existed, whether due to nationalization, bankruptcy or other reasons;
- Fourth, the insurance companies which participated in the ICHEIC process will continue to accept and process claims, at no cost to the claimants and regardless of the statute of limitations. Claimants may obtain, at no charge, the assistance of the Holocaust Claims Processing Office in filing such claims;

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

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

My apprehension regarding H.R. 1746 is that it will fail to achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. This is especially the case regarding the five insurance companies which signed the Memorandum of Understanding and the German companies which were part of the German Foundation agreement, as they already have disclosed most, if not all, of their Jewish purchased insurance policies during the period in question. Litigation will be lengthy and the costs of such lawsuits will be excessive and unreasonable for survivors. Moreover, if we are to have the sort of litigation proposed in the bill, my fellow survivors and I will, most likely, not live to see its results.

I am also concerned that such legislation will unjustifiably raise the expectations of survivors only, in the end, to profoundly disappoint them. The proposed legislation mandates the disclosure of **all** policy-holders during the entire relevant period. However, almost all policies which would be disclosed will not be those purchased by individuals who suffered Nazi persecution; many of the policies may have been paid; and many of those not paid, will have been previously compensated. Unmet high expectations will have a tremendously negative impact on survivors.

Finally, I am extremely concerned that the Holocaust Insurance Accountability Act will greatly damage critical, on-going negotiations with governments for the continuation and expansion of funding to meet the vast needs of Holocaust survivors, both in the United States and worldwide. For example, German insurance companies were included in the ICHEIC process as part of the negotiations which ultimately resulted in the formation of the German Foundation, a DM 10 billion fund primarily for former slave and forced laborers. Those negotiations and the working of the German Foundation occurred with the involvement, and under the auspices and approval, of the German and U.S. governments, among others. The proposed legislation threatens to undermine ongoing negotiations with the

German government regarding Holocaust-related compensation which is critical to and affects large numbers of survivors worldwide and is needed now. Moreover, I also worry that the support the U.S. government provides Holocaust survivors will be undermined as the German government loses faith in the ability of the U.S. government to keep its promises.

Accordingly, to the extent that H.R. 1746 includes within its reach the companies with which ICHEIC worked, I believe that it would be detrimental to the well-being of survivors. On the other hand, if H.R. 1746 were to apply only to insurance companies which issued Holocaust-era insurance policies and did not participate in the ICHEIC process, and if the legislation were crafted in a way that is practical, I might have no objection in principle. However, I believe that even such legislation would raise widespread expectations that could not be met. In my opinion, the legislation still would not achieve substantial positive results during our lifetime.

Reimbursement is still being sought from Eastern European governments for claims paid by ICHEIC to claimants who held policies issued by Eastern European insurance companies that were nationalized or had their assets nationalized. We would request the assistance of the U.S. Congress in the effort to recover these funds.

I believe that the U.S. Congress has in the past and will continue to have a major role to play in the current efforts to secure Holocaust-era compensation and restitution. We thank you for your on-going support and assistance in the past and hope that you will continue to provide that help in the future.

Thank you.

February 5, 2008