

Testimony of Sidney Zabludoff
Thursday February 7, 2008
House of Representatives Committee on Financial Services,

Thank you for allowing me to present the facts relating to restitution of Holocaust era assets. My basic conclusion after examining the issue for more than 10 years is that extraordinary events require extraordinary resolutions. Clearly, the murder of two-thirds of continental European Jewry and the confiscation of nearly all Jewish assets by the Nazis and their collaborators was such an event. Despite such extraordinary circumstances only about 20 percent of the stolen property and other assets has been returned through 2007.¹

Two bold actions could be taken to help rectify this sizable and unconscionable shortfall. They are the passage of HR 1746 and ensuring that the remaining unpaid stolen assets are used to assist needy Holocaust survivors.

In the first case, HR 1746 would help restore to Holocaust victims or their heirs the value of policies never paid by insurance companies or countries. Conservatively estimated this amounts to \$17 billion in today's prices. It is conservative because it uses the 30 year US government bond yield to move from the pre-Holocaust to the 2007 value, whereas insurance company portfolios earn a much higher yield because they contain stocks, corporate bonds and real estate. It also should be noted that my estimates of pre-Holocaust policy values and the post-war amounts repaid are consistent with the Pomeroy-Ferras Report published by ICHEIC. That Report makes no attempt to determine the current value of unpaid life insurance.

HR 1746's important first step is to ensure that the names of policyholders are published. ICHEIC started this process and some 500,000 names of policyholders were placed on its website (now available on the Yad Vashem website). Germany provided about 80 percent of these policyholder names. Some 360,000 resulted from an ICHEIC agreement with the German Foundation and 42,000 were developed via ICHEIC archival research. In the ICHEIC context the published German Foundation list was of little use, since it was made public only a few months before ICHEIC's filing deadline. Even so Germany has largely met its obligation to provide policyholder names under HR 1746.

For the other countries, the number of Jewish policyholders published is minimal. The most notable shortcomings are in Hungary, Poland and Rumania, all of which had large pre-Holocaust Jewish populations. Even in most west European countries the number of published names is extraordinarily small. To deal with this shortcoming, non-German archives need to be further examined and, most importantly, companies doing business outside of Germany should publish the names of their Holocaust era policyholders. HR 1746 has provisions to do both.

The proposed legislation also provides victims and their heirs a means to receive a fair value for policies taken out in the pre-Holocaust period. This recognizes that there is still a long way to go for life insurance companies to meet their Holocaust era obligations. Indeed, at most only about 11 percent of the fair value of outstanding policies was paid during the post-war and ICHEIC years. HR 1746 provides an opportunity to increase that percentage.

Again there are differences between Germany and other countries. Germany is the only entity that has pledged to continue to accept claims and pay them under ICHEIC guidelines. There are, however, very serious negative aspects of this seemingly benevolent action. The German insurance association (GDV) will not accept new claims that do not name companies. This is an enormous drawback. Nearly all the 400,000 German names of policyholders listed on the website do not indicate a company name, and ICHEIC experience demonstrates that two-thirds of the claimants did not know the company name. Thus, this German action is of little benefit to the claimant. Also, on the downside is the method Germany insisted upon to determine a policy's current value. It produces an amount that is only about 15 percent of similar valued policies paid under ICHEIC guidelines for all other west European countries.

The extraordinarily low German payments are caused mainly by the inclusion of the 1948 German monetary reform in their asset restitution systems. At that time, the Allied powers insisted on a monetary change in which 10 Reichsmarks were made equivalent to one Deutschmark. This was done in order to save the post-war German economy from the vast deluge of Reichsmarks the Nazi regime had dumped on the market to pay for the war effort. Indeed, without this Allied action, the German economic miracle that followed would not have taken place or would have been much delayed. The problem is that the Jews, who were not responsible for the Nazi war effort, along with many non-Jewish Germans, had to suffer in terms of reduced values of assets for the war-time economic policies of the Nazi regime. The non-Jewish Germans, however, benefited from the economic miracle while few Jews were left. If the German companies were paying at the rate every other west European country was paying, it would have paid ICHEIC claimants about \$500 million rather than the \$74 million it actually paid.

It should also be pointed out that the Foreign Claims Commission of the United States provides strong precedent to use the foreign-US exchange rate at the time of confiscation. It therefore excludes currency changes between the time of confiscation and claim payment, such as the 1948 German monetary reform. An example is Commission claim #CZ-2,832, which was decided during the year ending June 1961. It involved a Jewish family who owned property and financial assets (including life insurance policies) in Czech Sudetenland which was occupied by the Nazis in 1938. The assets were soon taken over by the Nazis. The decision calls for paying the claims at a "sum converted into United States

Dollars at the 1939 exchange rate of 2.5 Reichsmarks for 1 United States Dollar..."²

Among the other issues are:

--The east European valuation rate set by ICHEIC amounted to only about one-third of the conservative realistic current value. The companies argued that they were nationalized. They did, however, receive partial repayment from east European governments. More importantly, many insurance contracts indicated that payments to policyholders were backed by company funds outside the country in which the policy was written.

--Austria, which had by far the poorest post-war insurance restitution record in western Europe, allocated \$25 million in 2001 for repaying outstanding policies. The result is that it can reimburse claimants only about 15 percent of the ICHEIC valuation. ICHEIC discussed paying the difference but nothing was resolved.

--Holland never paid for small-valued burial policies, a form of life insurance. There were some 8.5 million such policies in a country with a pre-war population of 10 million. In current prices, the Jewish portion of these burial policies would be valued at some \$300 million.

--Switzerland has paid only 17 claims other than those from Germany and Austria for some \$90,000, according to ICHEIC statistics. Swiss company sales of life insurance elsewhere to Jews in Nazi occupied Europe amounted to some \$440 million in 2007 prices. In addition, Swiss companies played a major role in the European reinsurance market and thus had a portfolio of Jewish policies likely amounting to some \$2 billion in 2007 prices.

--Belgium paid one policy worth \$15,000 according to ICHEIC statistics even though it had some \$120 million (2007 prices) still unpaid in the case of Jewish life insurance.

--AXA France—an ICHEIC company--paid 131 policies worth some \$5 million according to ICHEIC statistics. Non-ICHEIC companies operating in France were supposed to pay claims via the Drai Commission. It is not known how much of the \$420 million (2007 prices) still owed by French companies to Jewish life insurance policyholders were paid by the Commission.

--Generali stated in court it had a total of 89,000 life insurance policies held by both Jews and non-Jews in 1936. But based on hard historical evidence, it had several hundred thousand and more likely several million. This enormous undercounting raises serious doubt about Generali's denying claims because it had a full list of policyholders (for more details see annex).

--The ICHEIC system rejected claims or paid too little because it failed to deal with the many unforeseen issues that naturally arise in any complex restitution process. For example, the only known original value of numerous policies was at the cash surrender value which is roughly 25 percent of the face or pay off value. ICHEIC refused to develop a reasonable methodology to get from the cash surrender value to the face value. Thus, the lower cash surrender value was used. In addition, ICHEIC never dealt with the vast number of non-life insurance policies although it had pledged to do so in its charter.

The chief reasons for such ICHEIC problems were inept governance and poor management. Governance became akin to secret diplomacy, in which those who ran ICHEIC relied heavily on dealing only with those who favored their views while making promises to others that were never fulfilled or too long delayed. ICHEIC management mainly ignored the numerous studies pinpointing the serious problem with the claims process. Judge Michael Mukasey succinctly summed up the problem when he described ICHEIC as “in a sense, the company store.”³

But no matter what steps are taken to find claimants, many policies will remain unpaid. Those working on ICHEIC and other restitution efforts recognized this outcome from the start. This is because whole families were wiped out by the horrific events of the Holocaust, leaving only distant relatives with little knowledge of the policyholders, especially when dealing with events that occurred more than a half century ago. It was also understood that many records no longer exist. An example is the extensive search for life insurance records in Germany. Only about eight million or a quarter of the 31 million policies outstanding in the late 1930s was found.

Recognizing this fact, ICHEIC attempted at one time to calculate the overall value of policies—called the “top down approach.” The companies would then pay the difference between this overall estimate and the amounts actually paid to claimants to a fund that would support needy survivors and other causes. This approach, however, was forgotten as ICHEIC proceeded, and only relatively small amounts were provided for such a humanitarian fund, mostly under the accord with Germany. Insurance companies failed completely to deal with this issue.

This brings me to my second point. Besides pressing individual claims, I would suggest an International Remembrance Fund to support needy Holocaust survivors who are in their autumn years. Currently there are approximately 600,000 Holocaust survivors worldwide and actuarial data indicate their number will diminish sharply during the next ten years. A review of the available studies indicates that there are numerous survivors who lack adequate income to meet their daily living expenses and health requirements. For example, one study of the United States indicates that the income of more than half the survivors falls within the poverty or near poverty bracket. My first rough approximation is that

between \$20 and \$40 billion will be required during the next ten years to sustain needy survivors.

Clearly, what is urgently required is an in-depth study to determine more precisely the likely financial requirements of needy survivors. This would take into consideration funds they are already receiving through various governments as well as private assistance. Simultaneously, we must reach a global accord to establish an International Remembrance Fund. This will require an innovative financial structure. But again extraordinary measures are essential in dealing with an extraordinary event such as the Holocaust.

¹ For more details please see my articles from the Jewish Political Studies Review; *ICHEIC: Excellent Concept but Inept Implementation* (Spring 2005); *Restitution of Holocaust-Era Assets: Promises and Reality* (Spring 2007). Both articles can be found at the website JCPA.org. On the home page under JCPA projects click on "Jewish Political Studies" and look for the date and title of the article.

² Foreign Claims Settlement Commission of the United States: Report to Congress for the period ending June 30, 1961; page 168.

³ *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litigation*, 228 F. Supp. 2d 348, 356-57 (S.D.N.Y. 2002)