

RESPONSES TO SENATE JUDICIARY QUESTIONS

David Mermelstein and Samuel J. Dubbin

October 17, 2019

1. For all witnesses, what's your best estimate for the percentage of Holocaust victims that had life insurance policies and how much those policies were collectively valued? How do these numbers compare to our best estimates of how many and how much have been paid out?

Sidney Zabłudoff, a retired Treasury Department, CIA, and White House economist, conducted the research for ICHEIC into the pre-WWII European insurance market, including European regulators' records from the pre-WWII period, to estimate the amount of insurance in force purchased by Jewish families in Europe, for the study known as the Pomeroy-Ferras Report. As Mr. Zabłudoff explained in two Congressional hearings, and in a detailed analysis in the *Jewish Political Review* in 2004, the researchers used the known size of the Jewish populations of each European country, the amount of insurance sold in those countries in the years leading up to World War II, and available data on the propensity of Jewish families to purchase annuities, and life, dowry, education, property, and other forms of insurance. The researchers arrived at a consensus that there were 875,000 estimated life insurance and annuity policies outstanding valued at \$600 million in 1938 owned by Jewish families.

The Pomeroy-Ferras Report did not, however, attempt to apply a current value for the consensus 1938 value of \$600 million. According to Mr. Zabłudoff, by 2007, the year ICHEIC closed, the value of the unpaid insurance policies owned by Jewish families that were in force in 1938 was *conservatively* estimated to be worth \$17 billion, using a 30-year U.S. bond yield to bring the total to current value. As Mr. Zabłudoff notes, the 30-year bond yield is consistent with U.S. government claims processes, such as the Foreign Claims Settlement Commission. Moreover, he explains that this estimate is extremely conservative because insurance companies earned much higher returns in that time period because they invest in equities and real estate. Applying this conservative 30 year bond rate, the same policies represent unpaid obligations of \$25 billion in 2019 dollars.

Consequently, at the time ICHEIC was closing its operations, Mr. Zabłudoff publicly opined that the \$450 million ICHEIC paid between actual claims (\$250 million) and "humanitarian payments" (\$200 million), represented three percent (3%) of the \$17 billion in insurance proceeds owed to Jewish families in the year 2007. *See* Testimony of Sidney J. Zabłudoff before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and before the House of Representatives Foreign Affairs Committee Subcommittee on Europe, October 3, 2007. *See also* Sidney Zabłudoff, "The International Commission of Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation," *Jewish Political Studies Review* 17:1-2 (Spring 2005). These are attached as Exhibits 1, 2, and 3 to these answers.

As discussed at the September 17, 2019 Senate Judiciary Committee hearing, the \$450 million (by 2007) paid by insurers in claims and "humanitarian" payments in ICHEIC, even

brought current to a number closer to \$600 or \$700 million, represents far less than half of the insurers' "best case" valuation scenario for unpaid policies. Therefore, using the updated figure of \$700 million in payouts in today's dollars, compared to the insurers' "best case scenario" of \$2 billion remaining unpaid, or the conservative \$25 billion level estimated by Mr. Zabludoff and confirmed by Mr. Webel of CRS, the insurers have paid far less than half of the amount owed under their "best case scenario" today.¹

As described in detail in response to Question 3, it is well-documented that German, Italian, Swiss, and other Axis insurers collaborated with the Nazi regime to profit from Germany's domination of Europe in World War II as they helped finance the Nazi prosecution of the war. *With all of that is known about the insurance companies' collaboration and profiteering from the Holocaust, it would be unthinkable for the U.S. government to allow them to retain even one dollar of their unjust enrichment, yet that is precisely what the status quo allows. Today, only Congress can remove the insurers' immunity and enable survivors and other heirs of Holocaust victims to recover their family legacies.*

2. Mr. Dubbin and Mr. Mermelstein, would we be right to hypothesize that the rising intensity in anti-Semitic sentiment and violence in the lead-up to the Holocaust likely led to an increase in the number of eventual victims who took out life insurance policies in an effort to ensure that their families were financially protected if any harm should come to the policy holder?

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

It is also correct to hypothesize that the rising intensity in anti-Semitic sentiment and violence in the lead up to the Holocaust likely led to an increase in the purchase of life and other forms of insurance by Jewish families to ensure their families were financially protected. According to Deborah Senn, the Washington State Insurance Commissioner who initiated the National Association of Insurance Commissioners' ("NAIC's") effort to investigate unpaid Holocaust era insurance policies in 1997:

All over the European continent, families--our families--tried to protect their assets as World War II and the rise of Nazism loomed. Families in Austria, France, Germany, Italy, and Poland had the same types of assets as many families hold today.

¹ Mr. Zabludoff explained in his article that the insurance companies on ICHEIC argued that current values should be calculated based on the negotiated valuations arrived at for compensation under ICHEIC's politically determined formulas. Even this framework yielded an estimate of unpaid claims in excess of \$3 billion in 2004-05

First, they had insurance. This included life insurance, health insurance, and property and casualty coverage to protect their homes and businesses. Many European families in the 1930s even had dowry insurance. Like an annuity, dowry insurance was purchased when a baby girl was born. It matured when she was about 21 years old and was used to pay for her wedding.

Insurance policies were also used to protect assets. As the Nazis systematically stripped the Jewish community of its rights and property, insurance was seen as a way to protect those assets. Paper could be smuggled out of a country more easily than cash or jewelry. Gold and dollar-backed policies were purchased from insurers all over Europe--the German company, Allianz; the Italian company, Generali; the Swiss companies, Winterthur and Zurich; among many others.

Deborah Senn, "Are the Heirless of the Holocaust Era Really Without Heirs?" *Avotaynu, the International Review of Jewish Genealogy*, Vol. XIV, No. 2, Summer 1998. See also Deborah Senn, *Private Insurers and Unpaid Holocaust Era Insurance Policies*, *Washington State Insurance Commissioner Report*, April 30, 1999, at 3-4 ("In addition to affording protection against loss or injury to life and property, insurance was widely perceived by Jews as a sound means of saving and investment, an issue of heightened concern to a vulnerable minority group.").

One of the key selling points of many companies was the contractual right to receive policy proceeds "wherever the customer requested" in the world. There is ample evidence that the companies emphasized this feature in their sales to Jews who were increasingly living under the dark clouds of Nazism 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." Exhibit 4.

Generali, of Trieste, was one of the most important insurers in this period, with an estimated 10-15% of policies sold to Jews in force in 1938.² It is estimated to owe survivors and

² Generali was formed, owned, and largely managed by Jews from 1831, until Mussolini dismissed the Jewish leadership in 1938 under Italy's Fascist laws. Consequently, the Jewish managers and agents who had sold the policies to the Jewish customers were no longer able to protect their customers' rights to collect on their policies. See, e.g., "Two Italian Companies Have New Presidents," *The Journal of Commerce*, September 13, 1928 ("The Italian Government is understood to have decided on removal of Italian Jews from the chairmanships of the most important insurance companies, at present in their hands. . . . An official communique said Arnoldo Frigessi, Jewish president of the Adriatica company had resigned . . . Adriatica is one of Italy's strongest insurance companies. . . . The communique announced that Edgardo Morpurgo, president of the equally powerful Assicurazioni Generali of Trieste had resigned. . . . Morpurgo also is an influential Italian Jew."). Exhibit 5. The Connecticut insurance

victims' heirs at least \$2.5 billion in today's value. Exhibits 1, 2, and 3. Generali's policies from the 1930s also provided for payment anywhere in the world the insured requested. Further, its marketing materials specifically referred to all of its real estate and other assets throughout the world, in safe havens such as New York, Mexico, Brazil, and Jerusalem (as well as France, Sweden, Norway, Denmark, and Greece), where its customers would be able to safely collect. This was a very important provision to European Jews in the 1930s, who understood that their futures were not secure, and Generali relied heavily on this feature when it marketed to Jewish customers in Europe at that time. In addition, many of these policies were payable in "dollar check – New York," or "Swiss Franc Check – Zurich, or "English Pounds Check – London" – further evidence the insureds might well attempt to collect in a stable country with a stable currency.

Generali's focus on marketing the customer's ability to receive payment overseas was highlighted in two U.S. lawsuits in the 1940s. Max Buxbaum, a Czech Jew who managed to escape Europe, sued Generali in the New York Supreme Court in 1941 to recover the cash value of policies he bought in Prague. The policies provided that the insured could receive payment of benefits *either* at the Generali office in Prague, *or* the place the claimant requested the proceeds to be sent. Generali, of course, argued Mr. Buxbaum should be required to enforce his policies in Czechoslovakia, which was then under Nazi occupation. Fortunately, the Court held that New York, and not Czechoslovakia, was the proper forum.

The Court cited (1) Mr. Buxbaum's testimony that he bought Generali policies because he could redeem them anywhere in the world, (2) Article 18 of the policy which specifically so provided, and (3) Generali's promotional material which highlighted the company's vast network of offices and assets around the world:

Max Buxbaum testified that at the time the policies were written at Prague he had in mind the wisdom of securing payments by the company in places other than at Prague; that he was informed by the defendant's manager that it had offices at various places throughout the world and that the policies could and would be paid at any of those offices. His attention was called to paragraph 18 of the policies above quoted and particularly the second sentence of that paragraph. He was also in possession of a circular of the defendant to the same effect. . . .

Buxbaum v. Assicurazioni Generali, 33 N.Y.S. 2d 496, 498 (Sup. Ct. N.Y. 1942). Exhibit 7 is a portion of the Court record from the *Buxbaum* case, showing these provisions and marketing materials from the 1930s.³

commissioner was so incensed by the move he wrote the U.S. lawyer for RAS and Generali, and said he considered the removal of their presidents because they were Jewish to be "reason for the revocation of the Company's license." Exhibit 6.

³ The Court came to the same conclusion, based on the same provisions in Generali policies sold in Austria in *Kaplan v. Assicurazioni Generali*, 34 N.Y.S. 2d 115 (N.Y. Sup. Ct. 1942).

3. Mr. Dubbin, can you go into some more detail about the behavior of insurers during the Holocaust? Broadly speaking, what was the character of their relationships with the Nazi regime and the extent of their collaboration? Were there distinctions between different insurers?

Records from the National Archives and other sources show that insurance was a major economic engine of the Nazi war machine, with pervasive interlocking relationships between the Nazi regime and Nazi and Axis-based companies, including German, Swiss, and Italian insurers and reinsurers. These companies profited and profited as they helped finance the Nazi prosecution of the war, and failed to pay hundreds of thousands of policies after the war. *See, e.g., “Axis Penetration of European Insurance,” Board of Economic Warfare, June 15, 1943; “Notes on Current Economic Information,” Board of Economic Warfare, February 24, 1943.”* According to Washington State Insurance Commissioner Deborah Senn: “Allied military intelligence documents and contemporary trade publications confirm that during WWII German and Italian insurers reaped enormous financial benefits from the major consolidation of all lines of the insurance business in the conquered lands of Eastern Europe.” Senn, *Private Insurers & Unpaid Holocaust-era Insurance Claims*, April 30, 1999, at 11.

The Axis scheme to penetrate the insurance market had as its object, and resulted in, the accumulation of the most profitable lines of business by these companies. As the Nazis conquered Europe, the insurance industry and market became subject to Nazi laws. Allied intelligence reports document the systematic transfer of local insurance company portfolios to the companies favored by the Axis powers, including Munich Reinsurance, Allianz Life, Allianz Casualty, as well as Italian giants Assicurazioni Generali, S.p.A., and Reunione Adriatica di Sicurtas (RAS). In turn, these private insurers participated in elaborate, coordinated schemes to confiscate insurance related assets of the Jewish people. Ultimately, these companies further enriched themselves by retaining and not refunding pre-paid or unearned premiums, canceling policies, short rating, confiscating premiums, and refusing to pay death or other benefits due under insurance policies owned by European Jews. As Commissioner Senn reported:

Favored Axis enterprises absorbed the entire portfolios – including the liabilities and obligations – of dozens of domestic insurers across Eastern and Central Europe that were forced by the Nazis to liquidate. Some had a significant number of Jewish policyholders who subsequently perished in the Holocaust. The fate of their policies remains unaccounted for.

Senn, *Private Insurers & Unpaid Holocaust-era Insurance Claims*, April 30, 1999, at 9.

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. This information pointed the way for the Nazi regime to use the Gestapo to target Jews they could now locate by address for forced “assignment” of cash and other assets such as insurance policies. As historian Gerald Feldman wrote in *Allianz and the German Insurance Business, 1933-1945*, Cambridge University Press, 2001:

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

Feldman, at 356.

Professor Feldman’s book and other studies and records clearly document how Allianz and other German, Swiss, Austrian, and Italian insurance companies willingly participated in confiscation activities throughout Europe. According to Commissioner Senn: “Private insurers headquartered in Germany and Italy actively cooperated with Axis regimes (and profited from that cooperation) during the Holocaust to loot insurance owned by Jews and other targeted groups.” Senn, *Private Insurers & Unpaid Holocaust-era Insurance Claims*, April 30, 1999, Executive Summary.

Generali’s Use of IBM Punch Card Technology

Generali employed IBM Hollerith technology at its Headquarters in Trieste, and had that system in full use in the mid-1930s.⁴ The Hollerith technology revolutionized modern business and governmental record keeping in the early part of the century to enable complex organizations to organize and maintain vast quantities of data – up to 80 fields of data on each card. The ability to store large quantities of information on each Hollerith tabulator card, sort, and tabulate the cards was of vital importance for the insurance industry which had so many fields of information to record and track for each customer.

Generali’s use of Hollerith technology to store information about its Eastern and Central European customers was discussed in a 1998 news story in the *Jerusalem Post*. It described how Generali accessed customer data in its Trieste archive from the 1920s and 1930s for its “names publication” in the 1990s. According to the article, Mr. Lucio Bruno, the retired head of Generali’s life insurance department, was brought out of retirement to compile information for Generali about its pre-war policies when state regulators held hearings and pressed for laws to require companies to publish policy holder names to allow survivors, who were teenagers at the time of the Holocaust, to identify family policies. See Marilyn Henry, “A Holocaust paper trail to nowhere?” *Jerusalem Post*, May 12, 1998.⁵

⁴ Generali Web Site, “United to Italy – 1911-1950 – at pages 45, 47, Exhibit 13.

⁵ As Mr. Zabludoff wrote and testified, and as several regulators on ICHEIC observed, Generali’s actual disclosure of policy information in the ICHEIC process was woefully

The Hollerith revelations are significant for many reasons, but for purposes of Question 3, they confirm that Generali compiled a substantial amount of information about each customer, and automated access to the data. In 2001, three years after the discussion of Generali's Hollerith cards appeared in the *Jerusalem Post*, historian Edwin Black published his study *IBM and the Holocaust*, in which he described how the Nazis used IBM's Hollerith punch card and automatic sorting and tabulation machines to execute Hitler's Final Solution and the accompanying Aryanization of Jewish-owned property.

According to Black, the Nazis used information it collected from various sources --from the German census to and including insurance companies -- to locate and begin to dehumanize, deport, and exterminate its Jewish victims: "Beginning in the summer of 1934, [after collecting data of discovering and collecting in great depth information about Jews and those of Jewish bloodlines], the Third Reich took the next step [A]rmed with statistical data and other information collected from medical offices, doctors, and insurance companies across the nation, Germany began organized sterilization." *IBM and the Holocaust*, at 93.⁶

Insurers' Denials of Collaboration or Profiteering

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

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

incomplete. See Exhibits 1, 2, and 3.

⁶ According to Black, the German census had its specific objective to identify the Jewish contamination of persons in its midst, and researched local governmental records over several generations in order to identify not only practicing Jews, but "ancestral" Jews. The German census officials established "a series of grades, such as *fully Jewish*, *half-Jewish*, and *quarter-Jewish*, depending on how many Jewish parents and grandparents could be calculated from their past." See *IBM and the Holocaust*, at 89-93. (Emphasis in original).

their despoliation by the Third Reich by despoliating Switzerland of its national wealth.”

Bergier Report, at 460.

While the Bergier Report exposes the Swiss insurers’ dishonesty, Mr. Zabłudoff’s research and testimony in 2008 described the scope of the concealment they attempted:

Switzerland has paid only 17 claims other than those from Germany and Austria, for \$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.

Testimony of Sidney Zabłudoff, Thursday February 7, 2008, House of Representatives Committee on Financial Services. Exhibit 3, at 3.

Allianz, whose Chairman Kurt Schmitt became Hitler’s second minister of economics in 1935 and wore his SS uniform to Allianz board meetings, provided insurance to the Nazi regime for a number of its criminal activities, including construction of the Auschwitz-Birkenau, Dachau, Sachsenhausen, Buchenwald concentration camps, as well as Lodz Ghetto and other ghettos, at the same time it was selling life insurance policies to European Jews destined for slaughter in those very facilities.⁷ Allianz’s role in the Nazi regime remains, as it should, a source of great public concern, especially because, according to Mr. Zabłudoff, Allianz still owed Holocaust survivors and victims’ heirs over \$2.5 billion. *See, e.g.,* Aaron Kurlloff, “Stadium Ends Talks With Allianz, Auschwitz Insurer,” *Bloomberg*, September 12, 2008 (“The new football stadium for New York’s Giants and Jets won’t carry the name of Allianz SE after protests by Jewish groups that the company once insured Auschwitz.”); Terry Spencer and Curt Anderson, “Holocaust survivors hail Allianz golf tourney sponsor end,” *Associated Press*, April 24, 2017 (“Holocaust survivors say termination of German insurance giant Allianz’s sponsorship of a Florida golf tournament may boost their efforts to collect some \$2.5 billion in World War II-era Jewish policies.”).

Yet in 1998, Allianz AG Board Member Herbert Hansmayer sought Congress’s sympathy for the company’s alleged devastation during and after WWII:

Like the rest of the German insurance industry, life insurance companies, such as our German life insurance subsidiary Allianz Lebensversicherungs AG were bankrupt or near bankrupt at the end of the war after having to invest in

⁷ Professor Feldman wrote that Allianz “had an insurance engagement with SS enterprises in most of the principal concentration camps: Auschwitz, Lublin, Neuengamme, Stutthof, Buchenwald, Ravensbruck, Sachsenhausen, and Dachau.” Feldman, at 409. *See also* Deidre Berger, “Insurer Covered for SS Death Camp Sites,” *JWeekly*, June 6, 1997.

government bonds that became worthless when Germany was defeated. Allianz Leben also held properties that were lost or destroyed in war-ravaged Germany.

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

But Mr. Hansmayer's ploy was contradicted months later in a detailed article in the *Wall Street Journal* in November 1999, which explained that Allianz's immense power in the late 1990s' German financial world originated from its rich cash reserves *available at the end of WWII*:

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

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

Evidence of Insurers' Complicity Denied

ICHEIC never required the companies to produce their files of correspondence with Nazi and Axis authorities in which they turned over names and policy information about their Jewish customers. In order to convince the U.S. District Court to approve a "settlement" with Generali that essentially ratified ICHEIC's 3% results, the class counsel ignored the well-documented collaboration of insurers including Generali in the forced redemption of Jews' insurance policies and other practices whereby the companies assisted in the pauperization of European Jews.⁸ They also embraced Generali's untenable view that there is no way for the company to reconstruct records of policies sold to Jews, or to identify Jewish customers. During the January 31, 2007 fairness hearing, class counsel stated:

Your Honor, it is not surprising that when Generali was keeping its records, it didn't list in the records whether someone was Jewish or not Jewish. *There is no record that Generali or anyone else can go back to determine whether a policy was issued to a Jewish family or to a non-Jewish family or, for that matter, to people who were likely to be persecuted in the years after the policy was issued.*

This statement contradicts evidence that was in the record showing that Generali identified Jewish customers' policies and stripped those customers of their rights, including the following example of one such "transaction" written by Generali to the Prefect of Milan "renouncing" the rights of two of its customers because "both belong[ed] to the Jewish race:

⁸ The class counsel told the media that they believed the Supreme Court decision in *American Insurance Association v. Garamendi* gave them little choice other than to accept what was a defeat for survivors and heirs.

The holder of the policy in the margin is Mr. Arrigo Lopes Pegna of Ettore – the beneficiary is the wife, Mrs. Gemma Servi in Lopes Pegna – 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.

Exhibit 8. The record in the Generali case also included a Memorandum issued by the Republic Prefect of Mantova on August 10, 1944 to the Ministry of Finance, General Administration of Personnel and General Affairs. The subject is “Life Insurance Policies of Jews.” It reads:

You are kindly asked to examine and give instructions about the content of the following note 21 July 1944 of the firm Assicurazioni Generali of Venice.

“With reference to the revocation made by us the receding May 31 of the life policy contracted by a person of the Jewish race, we communicate as follows:

The Ministry of Finance, owing to agreements reached with the National Fascist Confederation of Credit and Insurance Businesses, has established the meaning and effect of Legal Decree January 4 preceding, no. 2, to wit, that companies must revoke the life insurance policies for which the redemption right has matured ‘always establishing, when possible, that the policyholder and beneficiary are of the Jewish race.

Therefore, referring to the policies revoked by us, we note:

- Policy 22615/25054, Engineer Vito Cantoni – The policy is made to the benefit of legitimate heirs and not to a person expressly designated, for whom *it would be established whether he is of the Jewish race or not,*
- Policy 546506, Doctor Pontecorboli Angiol – The beneficiary is the wife Vittona Cantoni, the couple reside at Grosseto and are now abroad; *we are not there in position to ascertain if both are of the Jewish race.*

Exhibit 9.

4. Mr. Dubbin and Mr. Mermelstein, a lot of people might have difficulty wrapping their mind around the situation facing Holocaust victims’ families—especially those who were themselves Holocaust survivors like you, Mr. Mermelstein—by the time the Nazi regime fell. Can you give us a sense of just how difficult and calamitous these circumstances were as people tried to piece back together lives and families in the wake of years of all-out war and a campaign of mass extermination? In some ways, isn’t it a wonder that so many victims’ families have been able to piece together any documentation at all?

This question asks for a description of the difficult and calamitous circumstances Mr. Mermelstein faced after surviving the Holocaust. As he noted at the hearing, given the limited time for him to speak, he submitted his deposition in the Hungarian Gold Train case into the

record to describe how he survived the Nazis, how he survived the aftermath of World War II, the Russians, the DP camps, and the rest. His full deposition is attached to our answers as Exhibit 10. Much of the following information is found in that deposition, but we've attempted to condense it here to address Question No. 4. At the same time, it is impossible to fully address the question without describing the crimes and trauma Mr. Mermelstein faced prior to liberation. The discussion is presented in the first person, like his deposition:

I was born in a town in Czechoslovakia called Kivjazzd in the year 1928. My father was also born there, so our family was there a long time. We lived in a house with my very large family. My parents, five brothers, a sister, grandparents, and an aunt. My father owned a business, similar to a pub, which was part of the house. He sold wine, whiskey, liquor, beer, those kinds of drinks, and food too. As I said in the hearing, there was a plaque on the house saying it was insured by Generali.

My childhood was very normal. I played with my friends and my brothers. I was also always looking for ways to make a little money. I would always save some money to buy something new and different for myself, like a new coat, for the High Holidays.

World War II began when Germany invaded Poland in September 1939. Many Hungarian men were sent away to work as laborers for the Nazis and the Axis countries. In 1941, the Hungarian government, following the Nuremberg laws, started taking away Jewish people's businesses. They came into our houses and opened our cabinets and took away our valuables – silver, crystal, china, including two different sets for dairy and meat, and a set for Passover.

We also had many books. One wall had religious books, which were handed down from generation to generation. We also had regular books, like history books. I never saw any of these artifacts of our life again.

The government forced my family to move into half of our house, and a Christian family moved into the other half. The Christian family was also given half of the pub to operate. Life was not easy in the years before 1944, but the Hungarian government up until that time was not carrying out the deadly deportations of Jews to the camps. That changed in March of 1944, when the Nazis invaded and occupied Hungary. We didn't know what lay ahead at the time, but that is when Nazi Germany planned and implemented the extermination and elimination of Hungarian Jewry in a matter of weeks. In one year, the Nazis murdered some 550,000 Hungarian Jews, out of a total of about 750,000.

In the beginning of April of 1944, a couple of days after Passover, our town was surrounded. We got a notice to pack, that we had to leave. They gave us an hour to pack. We did not consider the possibility of not following these orders because they said if anybody will be missing, they'll shoot the whole family. So we packed whatever we could, and they came from house to house and took us out, sealed the door and took us to the synagogue until they had the whole town together.

Once they had the whole town together at the synagogue, they took us to the train and we were sent to the ghetto in Beregsatz about 35 kilometers miles away from our home town. In the ghetto, we had high -- barbed wire fences. Guards were there. Nobody could come in, nobody could go out. We were told to give the guards any gold, silver, or other valuables or we would be shot, and so everyone in my family had to remove our jewelry and put it in the bucket. Even my mother and grandmother had to take off their wedding and engagement rings. In the ghetto we slept on the ground. All we had was a blanket that we brought along from home. They cooked us soup, one soup a day, and plus we ate -- rationed whatever we brought along, which didn't last long. We were in the ghetto for one month.

One morning they just made an announcement to get ready to leave, and they took us to the train station. They put us on a cattle car with about 100 people in a wagon. They put in two buckets, one bucket for drinking, and one for a bathroom. We did not know how long the water was going to have to last. So the water was rationed a tablespoon at a time. And you can imagine having -- from babies, young children, middle age parents, grandparents; the worst thing was when somebody had to use the facilities.

When we arrived in Auschwitz, the train went right into the camp. I was 15 and a half. When we arrived, they separated the men and the women. My father saw that they were separating us. So he came over and told me I should stay with my two older brothers. So when we came to the front I saw my whole family went to the left and my two brothers to the right. So I kind of stopped for a second, frozen. And then I saw the SS coming with a big stick so I just ran to the right.

The people who went to the left went straight to the gas chambers. That included my mother, my father, my two younger brothers, a sister, my aunt, and my grandfather. I still don't know what made me go to the right with my two older brothers. It was just a decision I made at the moment. At that moment it meant life or death. It was like God made me run to run to the right.

After that, one of the Jewish "trustees" came by, and told me to say I was 17 even though I was only 15 1/2, and to stretch out to make myself look bigger. I ran between my two brothers stepped on their shoes, and stretched out so I would look taller. When they asked how old I was, I said I was 17, which wasn't true. Later on I found out why the trustee told me all of that. Because the only people they allowed to stay alive were the ones that could work. And being that the trustee saw I was so young -- he helped me stay alive.

Then we went to a barrack where they cut our hair, told us to undress and walk through a shower. The only thing we kept our own was the shoes. They gave us a cap, a shirt and pants. That's all we had. When we came to the barrack where we met the commander. He kind of welcomed us with words I will never forget. He said: "You saw the sign on the gate where you walked into the camp, 'Arbeit Macht Frei.'" That was German for "work makes you free." The commander said: "Don't believe it. You came here to die. You came to the deadliest, most efficient death camp of all. You are just waiting your turn." He added: "If I don't like the way you look at me or if I don't like the way you standing, I'll kill you and I don't have to account to nobody." He took out his gun and just shot a guy there in the side.

Some people couldn't take it the first day or the second day. People ran over to the electrified fence and killed themselves. That's when my oldest brother took the two of us, and he made us promise that we would never do anything to help the Germans accomplish what they wanted to do.

When the commander left, we went in the barrack and we asked the trustee what was happening. He said we could ask two questions. When will we see our parents? When will we see our brothers and sisters? He called us to the door. He says: "You see that smoke? There are no parents. There are no brothers. They're all in heaven." Even at that time you couldn't believe that would be true. But being there a few days and seeing all the people go in day and night, and the smoke was terrible, so we figured out what was happening.

I was in only Auschwitz only a few days when they needed people for a work camp. So we were sent out on trucks. My oldest brother was put on a different truck to a different camp, and I never saw him again. My other brother and I went to the same camp. My deposition describes all of the different kinds of work I had to do to survive.

The Germans didn't want to waste money on food for Jews even though we were working. They intended us to die. Our food was very limited. In the morning the menu was a black cup of coffee. Lunch was vegetable soup, green leaves, stuff like that. At night, they fed us a slice of bread and a cup of coffee.

Since we arrived in the middle of 1944, the Germans knew they were going to lose the war but continued to kill Jews. When the Russians were approaching they were so close that we thought we would be liberated any minute. We were locked in the barracks. Nobody could open a window or look out, but the shooting was going on, and we knew it was the Russians. We could tell by the planes. You could hear them further than you could see them. The American, the British planes used to fly quietly in different ways. But the shooting stopped, and the Germans found one way out. So that's when we started on the Death March.

That was around the end of September or beginning of October. We started to walk day and night, under the Nazi guard control. The Germans took us out of the work camp on the march. They never said where we were going. Just, ready? We are going to go. We walked day and night. People were dying. If one of the prisoners couldn't walk, they were shot by the guards. We got to a big farm. There they got some green stuff, cooked it, and ate it.

Then they put us on a train with no top. And in Europe in October it was already very, very cold. It was raining, snowing. We were sitting in one position. There was no room to lie down or stretch out. And all we had was that one shirt and pants, which was wet and cold. Then we arrived at a camp called Mathausen. We stayed there all day in the trucks, and then they sent us to another camp called Ebensee.

This was a death camp for political gangsters. They made us work in the tunnels. My job was to hook up these little wagons when they were filled up and brought out. And in the tunnels there were different clays. And somebody said that it's good to eat, that they make

margarine out of that. So we started to eat the clay. I don't even want to tell you what happened after that. When they ate that clay people were dying.

We hardly had any food. When I was working on the train, I was able to steal some coal, the black coal, and we were eating that. And eating that black coal, not brushing your teeth, my gums and teeth were destroyed. I lost all my teeth on top. I had more gum operations here in Miami than I could count.

And then I smashed my hand doing that work. And if you couldn't work you had to go step out of the lineup in the morning and go to the hospital. So I went to the hospital. The hospital was a barrack with three rooms. They had bunk beds, four people in a bed and two under the bed. When you first came in you went under the bed. And under the bed you couldn't turn over. You had to pull yourself out, turn over and slide back in until somebody died. When somebody died, we took the person out from underneath, and he went in there on the bed.

Since we were given hardly any food, people were dying one after another. The people from the third room, when they died, they just threw them out. There was a double window. You could see stacks up high. The crematorium couldn't burn the bodies fast enough. So as the people came in the first room, the rest of us were moved down. And if they needed room, the one -- the very last ones, they just threw them out alive. And we knew they were alive because we heard them moaning and groaning. I was already at the second door -- second room by the door ready to go in the third room. So it would have been a matter of days. But we were lucky.

One morning we woke up and there were no guards. So those that could walk ran out, and they came back and hollered: "There are no Germans. The gates are open." So three of my friends, who were a year older, and I, we rolled out of our beds, and we pulled ourselves out on our hands and knees to get outside. Then I saw the tanks coming in. They were something to see! American soldiers were the liberators.

And then a soldier came by and tried to pick me up, and he couldn't because everything was just hanging. So he called another guy. And even the two of them were afraid to try to carry me. So they went and got a board and took me to a field hospital that they had, showered, and they fed us every hour on the hour for about six weeks. Then the American Army took us to Czechoslovakia. We spent one night there and the next day we went to Prague, to the capital. I received care in a Czech hospital.

I was there six weeks, until I was able to walk a little, but I was still not in good shape. But I was very anxious to go home. In Prague, two other guys and I used to meet people, at the stations, wherever we could find them. The first thing we asked: "What camps were you in? Did you know anybody from" -- and we would fill in the towns where our families came from, or other places we knew. And this is how we found out who survived.

We didn't know what day it was, but they told us then that the date we were liberated was May 8, 1945. I survived the Nazi death camps, the death march, and the slave labor. But I want to tell you a little bit about what happened next, because like most Holocaust survivors, the world did not welcome us with open arms just because Hitler was gone.

When I was finally able to go home, I was 16 and a half. The town was empty. I went back to my old house. When I got there, all of my family's property was gone. The Christian family that took over half the house and store before the war was now living in the whole house. When I got back, they treated me nice, gave me food, and allowed me to stay in one of the rooms.

I often went over to the next town, Irsaua, which was bigger and they had a public kitchen supported by the Jewish Federations from America. We used to get together there and find out who came home, what camps they were in, if they knew somebody from our town. That's the way we found out who survived and who didn't, going from one station to the next, from one city to the next, always talking only about the same thing, asking three questions: Where are you from? What camp were you in? Was anyone from my town in that camp?

When I went to the next town to the kitchen, I saw two young ladies working there. The younger one was really cute. I was 16 and a half and she was a little younger. We didn't even talk, but she made an impression.

After a little while, people were talking because we didn't see the Czech government. The state was called the Carpathian Mountains. One morning we woke up and there was an announcement. All of a sudden, our town was part of Russia. Nobody could leave town without a permit. You can't sell the house. It's not yours, it belonged to the Russian government. Communist. Now, if you wanted to go the next town, you have to get a permit. There was a group called the NKVD, which was like the police force, only more like an intelligence force, marching down the street, with the teachers right behind them. They came with everything. In one hour, everything was taken over, the money was being changed. No matter how much money you had, you got 200 rubles, something like \$200.

The Communists were very bad to the Jews, and I realized there was no future for me in my old hometown, so I went to get a permit to leave. I went to the station and I was thinking what to do. I had the 200 rubles. saw a clerk in the next office. I went in there. I told them to make me a permit. I want to go to the next town. He couldn't, he said. So I took out 20 rubles and I put that on the table for him. He only made 4-5 rubles a week. He looked around, didn't see anybody, took the money, and made me the permit. So I put it in my pocket, and I took another 20, and said, now make me a paper that says I am a Czech citizen because you know where I was born, and I pointed in the direction of my home, and he made me another paper saying I was a Czech citizen. That way, if I got caught on the way to the border, I would use my local papers, but if I made it to the border, I could use the one that said I was Czech.

I was able to make it to the border. But when the Russian officer there looked at the paper, he tore it up and just threw it away. And there was nobody to talk to. You couldn't go anywhere, and that was it. So I figured, I will wait until at night until it's dark, and I will go way out of town and I will cross the border. I was crossing through the fields in the dark, and the dogs started to bark and the lights came on, and I was arrested by the Russian border police.

They put me in jail overnight, a room with a metal door, no blanket, no window, and a concrete floor, no water, nothing. There were two other guys I didn't know, but we were holding on to each other close because it was already winter. I was charged with treason, trying to leave the country and taking Russian money out of the country. The way it worked at that time was if you got caught that way, there was no trial, no lawyer, no judge, no nothing -- they just put you on a wagon the next day and sent you to Siberia for 10 years. It was automatic. So, I was very concerned.

In the morning they took me to the headquarters. No food, again, nothing. There was one Russian officer sitting there. Five gold stars. I counted them many times. They read out the charges and he asked me what I had to say. Well, naturally, I denied everything. "I wasn't going to cross the border. I love it here."

He said: "What are you doing here at the station?" I had a strong feeling the Russian officer was Jewish and I wanted him to know what I had been through so he would not send me to jail in Siberia. So, I told him I was on my way home from Auschwitz, the camps. I told him I was liberated by the Russian Army, who liberated Auschwitz, even though I was taken away from Auschwitz and liberated by the Americans from Ebensee. But I thought saying I was liberated by Russians would help with this officer, and I also told him that I was stopping in every town and looking to see if anyone in my family survived. Again, I had been already been home of course, but I believed that as a Jew the officer would understand what it meant that I had been in the camps and was looking for any survivors in my family.

The officer looked at me up and down. Then, with his finger, he waved three times to go straight home. "Don't let me ever see you here again because you know what will happen."

So I went back home. There, I got together with my brother's friends. One couple got married, and one got engaged, and they were planning to leave, to go to the capital of the Carpathian state. So I told them "I'm going, too."

This part of my journey is also described in my deposition. But to summarize, we walked for many days and managed to find found shelter and food along the way, thanks to a series of lucky breaks, and the help of some of the remnant Jewish communities. We were basically smuggled past the Russian guards placed throughout these areas. We scraped together bits and pieces of valuable objects like cigarettes, to use as a form of currency to get people's help. We had to fool the Russian NKVD guards on a train to Prague, because I didn't have the money for a ticket. Eventually I arrived in Prague.

I learned about an uncle of mine in a city not far from there, and they told me I have to go back to Prague to apply for citizenship again. So I went there, filled out the papers, and the guy tells me I couldn't sign. I need a father. I said: "I have no father." He says: "You must have a mother." "Don't have a mother." He didn't tell me why I wasn't allowed to sign. I wasn't 18. So I just walked away with the papers. That's the only thing I had. So when I came to that city, 12:00 o'clock at night -- so I laid it on the bench and I slept. In the morning I woke up and a detective was right up -- standing there and waiting for me. Because I was blond, had long blond hair by then, blue eyes, looked just like a German. So I showed him the papers and he said it

was fine. So I started to walk. I figured I'm going to look for one of two things to help me – either someone who looks Jewish or a store with a Jewish name. Walking for a half an hour, and I met a cousin of mine on the street, 7:30 in the morning. So he took me home. And at night I found my uncle, stayed there a week and started to talk.

Russia was asking for the people back. So I wanted no part of that. So I heard people are going to Germany. So they organized groups, and we went to the Czech border to cross into Germany to be under the American zone again. And that's how I got to a displaced person (DP) camp in Landsberg, Germany.

For many months, I lived in a camp with about 160 other young people that was part of the DP camp in Landsberg. Then we went to the part of the camp with the adults. I lived in that camp from November 1945 to March 1947. Life at the camp was, in a word, miserable. We were seven to a room and the food was on a meal ticket.

They finally started sending the children away to other countries. Australia, Dominican Republic, Brazil, Columbia, Canada, Palestine, and other places. I put myself on every list. One day the list was for America, and I was picked. The Hebrew Immigrant Aid Society (HIAS) asked me if I had any relatives in America, and I knew I had an uncle who was also named David Mermelstein, and an aunt. But I didn't even know what cities they lived in, I only knew they were in America. I went with about 20-25 other children on a liberty ship from Bremerhaven, Germany, to the United States. The ship was called Marine Fletcher. I didn't speak English and did not know where I was going or what I would do when I got there, but I was happy to be going to America.

In New York City, they broadcasted names on the radio of the survivors who were coming over on the ships. A friend of my uncle heard my name, and he knew my uncle David Mermelstein lived in Rhode Island, and he told him I was coming. My uncle called my aunt who lived in Brooklyn, and she picked me up from the ship and brought me back to their home. From there, I worked in various jobs in Brooklyn, Rhode Island, and New Jersey. I courted and married another Holocaust survivor, Irene, the cute girl who was serving soup in the next town in Czechoslovakia right after the war and who miraculously moved to Brooklyn because that is where she had an uncle as well. We married in 1951, went to Miami for our honeymoon, and decided to stay in Miami where I worked in the dry cleaning business, eventually owning my own stores, and where we raised a wonderful family.

Our survivor groups in Miami were close because other survivors were the only ones who could truly understand what we had all experienced. We helped each other when someone needed a helping hand, to help with their children's education, to raise money to support Israel, and when a family member was sick, and the like. By the late 1990s, we had fourteen Holocaust survivor organizations in South Florida, and as our brothers and sisters became older and more frail, and as survivors were excluded from any real authority in so-called restitution efforts like ICHEIC, we organized to be a voice for the actual rights, interests, and needs of the survivor community. That is how we worked with the Florida insurance commissioner Bill Nelson back in 1998 for legislation to allow survivors to recover insurance policies, and eventually created

the Holocaust Survivors Foundation USA with similar survivor groups from around the United States.

Like I said at the hearing in September, I would be happy to discuss my experiences with anyone on the Committee, the staff, or whoever is interested.

6. Mr. Eizenstat and Mr. Dubbin, can you give us an overview of the problems encountered in administering the ICHEIC process? In your best judgment, how much more could have been paid out to victims' families had the process gone more smoothly?

A. Overview. Since ICHEIC was created largely at the initiative of the insurance industry, and *excluded* Holocaust survivors or their authorized representatives, the process was not welcomed by the people whose rights were at stake – the people whose loved ones were murdered and who had every right to speak for themselves about their family legacies. However, due to political leverage of the insurance industry and its clever inclusion of non-survivor Jewish NGOs, ICHEIC was formed, promising a fair process with rapid and thorough voluntary publication of policy holder names, a transparent and expeditious claims process, and application of “relaxed standards of proof.” State regulators, who had initiated the investigations into the insurers’ conduct and led the state legislative efforts to pass laws to hold insurers accountable, agreed to join with the express proviso that the process would be voluntary, that their state laws would all remain in force and be enforced, and that no survivor would be bound by the results of any claim decision unless he or she agreed to a settlement and signed a release. Throughout the ICHEIC process, insurers’ promises were never honored, and ICHEIC unquestionably failed to deliver anything resembling a fair process. And in 2003, the regulators and survivors’ understandings were shredded by the *Garamendi* decision, striking down state disclosure laws, which further emboldened the insurers to ignore the “rules” and withhold names and documents and deny claims with impunity.

To most claimants, ICHEIC was frustrating, unresponsive, secretive, inconsistent, disorganized, and insulting. Between 1998 and 2007, it exhausted nine (9) of survivors’ already advanced years, while allowing the insurers to keep 97% of the money they owe to victims’ families. ICHEIC was a great success – for the insurance companies, but it was a catastrophe for the overwhelming majority of survivors and heirs of Holocaust victims.

Yet the bigger disaster has been the Executive branch’s unprecedented and unprincipled betrayal of Holocaust survivors’ and heirs’ rights as U.S. citizens to have access to the courts to enforce private insurance contracts, and the courts’ acquiescence with the Executive branch’s actions in the *Garamendi* and *Generali* decisions. Those decisions made survivors second class citizens under U.S. law, based on the unprecedented application of “foreign policy preemption” where there is no federal treaty, statute, or even executive agreement preempting the claimants’ rights, which is the reason corrective legislation is necessary. These policies are legal contracts and should be enforceable by every generation of traceable heirs. Survivors are asking Congress to reverse those decisions and restore their rights to obtain information and go to court if necessary to enforce their private family contracts.

Question 6 asks: “In your best judgment, how much more could have been paid out to victims’ families had the process gone more smoothly?” The answer is that the lack of

consistent management was only a small part of the reason ICHEIC was a failure for survivors. The larger problems were a result of the structural flaws in the entire system which set the stage for the insurers to dominate and the survivors and heirs to be helpless pawns, enabling the insurers paying “some” money they could argue was “reasonable,” but which bore no relationship to the companies’ actual liabilities or the victims’ losses.

That structure, in brief, was that ICHEIC was a private entity, incorporated under Swiss law and headquartered in London to avoid the reach of U.S. public records and subpoena powers (which Chairman Eagleburger freely admitted). It operated in secret and did not publish any minutes. The most outrageous problem was that no authorized representatives of survivors or heirs were members or even allowed to attend meetings, while the insurers, the ones who owe the money, were full members, paid for the commission and controlled decisions. To be clear, no survivors delegated their insurance rights to any NGO – not the Claims Conference, not the World Jewish Congress, not the American Jewish Committee or the Anti Defamation League – not even to the State of Israel. Those entities supposedly looking out for the claimants had no authority to make any decisions for them, period. Even though some of the non-survivor entities such as regulators wanted to do more to protect the claimants, they had no leverage to do so because decisions were made “by consensus,” which means the insurers had veto power over every decision.

But even with such a fundamentally flawed structure, it would have been “possible” for ICHEIC to have paid out much more money than it did, but in retrospect, that was never in the cards. It became apparent before long that the insurers were going to pay a fixed amount, a maximum of about \$500 million, and that total would inform the basis for all future decisions. Those decisions, including depressing valuations for claims from Germany and Eastern Europe, allowing Generali to employ the ludicrous “negative evidence” rule which actually imposed a greater burden on claimants than they would have faced in the courts, clearly reduced possible payments to claimants. ICHEIC could have enforced rules requiring the companies to provide relevant documents to claimants, but the companies almost never provided them and ICHEIC did nothing to enforce the “rules.” The list goes on and on.

B. Perspective of ICHEIC Economist Sidney Zabłudoff

As noted, survivors were skeptical of ICHEIC from the start, though many attempted to apply based on the promises of openness and liberality promoted by its advocates. Therefore, in examining ICHEIC’s problems, it is useful to review the explanation by a professional who believed ICHEIC was an “excellent” concept at the beginning, and who worked inside the process to try to make it work. Mr. Sidney Zabłudoff, the retired White House, Treasury, and CIA economist, worked for the World Jewish Congress as an expert economic consultant from ICHEIC’s commencement in 1998 until he resigned in 2004 due to frustration with its management and leadership. He wrote this summary in an article in the *Jewish Political Studies Review* in 2005:

The International Commission for Holocaust Era Insurance Claims (ICHEIC) failed to meet its promises to Holocaust victims and their heirs to compensate in a speedy fashion policies that remained unpaid for some sixty

years. When the claims process will have been completed only about 3 percent of the \$15 billion value of unpaid life insurance Holocaust-era claims will have been paid, few unpaid non-life policies will have been considered, and the process will have taken at least eight years instead of the two or so originally anticipated. As of November 2004, ICHEIC plans to complete its operations by mid-2006.

The chief reasons for this failure are inept governance and poor management. Governance became akin to secret diplomacy, in which ICHEIC's chairman and his immediate subordinates 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 problems with the claims process.

To make matters worse, insurance companies did not honor their initial pledges, and political pressure on ICHEIC to initiate reforms faded. Most Jewish and U.S. regulators participating in ICHEIC came to believe that there was no alternative to ICHEIC, having been worn down by the inflexible stance of ICHEIC's leadership. Finally, the U.S. courts recently dismissed suits against insurance companies and ICHEIC.

Sidney Zab Ludoff, "The International Commission of Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation," *Jewish Political Studies Review* 17:1-2 (Spring 2005).

C. Claimants' Perspective On Problems with ICHEIC Structure and Operations

The following is a brief summary of many of the problems claimants and their advocates experienced with ICHEIC and a partial explanation for its terrible results.

1. ICHEIC Was a Secret, Private System that Included Insurers But Excluded Holocaust Survivors and the Public

ICHEIC was chartered under Swiss law and headquartered in London at the insistence of the insurance companies to maintain secrecy, which Chairman Eagleburger admitted. Its meetings were conducted in secret. ICHEIC participants were required to sign "confidentiality agreements." There came a time that the Chairman stopped distributing certain materials because the "confidentiality agreements" were being circumvented. Minutes were not made public or even provided to Congress⁹

⁹ Before holding that dismissal of cases against Generali was "mandated by *Garamendi*," Judge Mukasey found ICHEIC to be a "manifestly inadequate" forum "because it lacks sufficient independence and permanence:"

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

Although the insurers were policy making members and reserved the right to ignore the chairman's decisions, claimants had no authorized representatives on the Commission.

2. Promises of Complete Names Disclosure and Relaxed Standards of Proof Were Not Fulfilled.

The benefits promised when ICHEIC began were (1) publication of policy holder names to enable survivors and heirs to identify family policies, (2) processing of claims under "relaxed standards of proof," and (3) a non-adversarial, voluntary system in which claimants would not need lawyers, but which would not foreclose litigation if a claimant did not accept an offer of payment.

a. ICHEIC and the Companies Only Published a Fraction of the Relevant Policy Names

When it began, ICHEIC's officials estimated the names would be published within one year. The reality did not come close to that. By mid-2003 (5 years later), fewer than 120,000 names from all companies were published. In 2002, Congressman Henry Waxman investigated ICHEIC and wrote: "The main cause of the failure to resolve claims appears to be the actions — and the inaction — of insurance companies. The majority of the companies that have agreed to the ICHEIC process have not lived up to their obligation to disclose policyholder lists. The ICHEIC member companies also appear to have wrongfully rejected, undervalued or left unanswered the claims of many survivors."¹⁰

Generali benefited from the stonewalling and minimal disclosures. In 1998, Generali gave ICHEIC a disk with over 560,000 policies, and the names of some 390,000 policyholders. The disk did not include the names of the policyholders from Generali's 82 European subsidiaries and affiliates. And, it was produced only on the condition that ICHEIC could not publish those names for the benefit of policyholders. Five years later, only 8,740 Generali names were published on the ICHEIC website, at which time the overwhelming majority of claims had already been filed. In late 2003, near the end of the filing deadline, the ICHEIC website added another 36,412 Generali names.¹¹ This was a fraction of relevant Generali policies.

decision-making processes are and can be controlled by the defendants in this case.

In re Assicurazioni Generali, S.p.A Holocaust Insurance Litig., 228 F.Supp.2d 348, 356-57 (S.D.N.Y. 2002). Unfortunately, after *Garamendi*, Judge Mukasey held that ICHEIC's inadequacies were irrelevant as a matter of law, and if claimants were dissatisfied they had to take the matter up with the President or Congress.

¹⁰ Henry Waxman, "Justice Delayed and Justice Denied," *Los Angeles Jewish Journal*, February 25, 2002.

¹¹ See *The View From Washington State, Work of the International Commission on Holocaust Era Insurance Claims (ICHEIC), The Value of Memory "Discounted" – A Status Report July 2002-October 2004* ("Washington State 2004 Report"), at 21.

Mr. Zabłudoff, ICHEIC's economic consultant, told Congress that only 20% of the policy holder names from Eastern Europe – where Generali did most of its business – were published.

German companies also failed to publish names either timely or comprehensively. The German insurers insisted on making their own rules and succeeded. For reasons that were never explained, ICHEIC agreed to allow the German Insurance Association (GDV) to screen the information and submit the names to ICHEIC for publication without publishing the names of the issuing companies. Moreover, although ICHEIC began in 1998, and the German insurers agreed in 2000 to participate in ICHEIC under the U.S.-Germany executive agreement, but 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. Germany did not publish a significant number of names (360,000) until April 2003, almost five years after ICHEIC started, and a few months before the deadline at the time of December 31, 2003.

Mr. Zabłudoff also testified that the German policy names were drawn from a database that represented only 25% of the relevant universe of policies. Finally, since “nearly all of the names of the German names of policy holders did not have the name of the company on the website, Mr. Zabłudoff wryly observed that German insurers’ publication of 360,000 names “was of little value to the claimants.”

With regard to all of the insurers, the Washington State Insurance Commissioner wrote that by dragging their feet, the insurers “succeeded in limiting the number of claims and their resultant potential liability.”¹²

b. ICHEIC Failed to Apply Relaxed Standards of Proof

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

One notorious ICHEIC policy – the “negative evidence rule” -- allowed Generali to deny claims by survivors and heirs with documented policies if Generali *said* they were not in the company’s 1936 ledger. Generali denied claims on that basis but asserted that it did not have

¹² See Washington State 2004 Report, at 21.

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

any records to document the payment, lapse, or surrender. Despite the ICHEIC “rule” placing the burden on companies to prove that a documented policy was not payable, ICHEIC accepted Generali’s position.¹⁴

Instead of “relaxed standards,” ICHEIC allowed Generali to impose a far *more difficult* burden of proof than claimants would have to face in most state litigation, where, once the existence of a policy is established, the burden shifts to the company to prove a policy was paid or lapsed.¹⁵ As NYLAG’s Schulman wrote: “ICHEIC’s decision to allow the use of negative evidence belies the claim . . . that the organization’s principal purpose was to find claimants and pay them.”¹⁶

c. The Generali Trust Fund Was Dismissed for Cause, But its Wrongful Denials Were Never Reconsidered.

The Generali Trust Fund (GTF), which handled half of all Generali claims, was determined by Chairman Eagleburger to have violated ICHEIC processing standards, and was dismissed for non-performance. According to NYLAG:

[I]n late October 2004, the commission terminated its relationship with the [Generali Trust Fund], citing GTF’s gross incompetence. Despite acknowledging GTF’s sub-par performance, *ICHEIC refused to review any of the fund’s final decisions, thereby denying claimants a fair decision-making process.*¹⁷

So, even though the body that handled half of Generali’s claims was dismissed for non-performance, its errors were never corrected.

d. ICHEIC Rebuffed Statutorily Mandated Congressional Oversight

Between 1999 and 2003, Congressional committees held hearings at which survivors raised many of these ICHEIC’s failures.¹⁸ In 2003, Congress required the State Department to

¹⁴ Our exhibits referenced in response to Question 7 include examples of survivors’ and heirs’ claims denied by Generali and ICHEIC’s “negative evidence rule.” Exhibit 12.

¹⁵ See, e.g., *Pan American Bank v. Glinski*, 584 So.2d 52 (Fla. 1st DCA 1991); *Viuker v. Allstate Ins. Co.*, 70 A.D.2d 295, 420 N.Y.S.2d 926 (N.Y. App. 1979); *Sanchez v. Maryland Cas. Co.*, 67 A.D.2d 681, 412 N.Y.S.2d 173 (N.Y. App. 1979).

¹⁶ Yisroel Schulman, “Holocaust Era Claims: Mission Not Accomplished,” *The New York Jewish Week*, May 4, 2007.

¹⁷ *Id.*

¹⁸ See, e.g., Joseph B. Treaster, “Holocaust Insurance Effort Is Costing More Than It Wins,” *The New York Times*, September 16, 2003.

collect information on ICHEIC companies' claims practices and results.¹⁹ However, ICHEIC refused to comply with this requirement every year until it closed in 2007:

The Department requested additional information from ICHEIC in an effort to meet the reporting requirements of Section 704(a)(3)-(7). ICHEIC Chairman Lawrence Eagleburger responded that he would not provide the Department of State any information regarding ICHEIC's undertakings.²⁰

e. Survivors and Heirs Were Not Represented On ICHEIC

One measure of the stacked deck is seen in the "Alpha List" of ICHEIC participants. Each meeting was attended by dozens of insurance company executives, lawyers, lobbyists, and public relations specialists. Yet no chosen representatives or attorneys of survivors, heirs, or claimants were allowed to attend meetings, much less participate in policy-setting decisions.²¹

The role of the Conference on Jewish Material Claims Against Germany ("Claims Conference"), which is not a Holocaust survivor organization, is particularly problematic. Putting aside the scandals and controversies that have embroiled the organization in the past two decades, including most recently the fraudulent looting of over \$57 million in funds earmarked for needy survivors from Germany, which occurred over a 16 year period by its employees without detection,²² the Claims Conference had a conflict of interest in its role on ICHEIC. As an ICHEIC member, it had a vote on claims payment and valuation standards and rules, but *also* decided how "humanitarian" funds would be allocated and distributed. This created a conflict of interest; because ICHEIC worked from a fixed pool of funds from the companies, the less paid out in claims, the more was available for "humanitarian purposes" for the Claims Conference to direct. This conflict was identified by one of the state regulators on ICHEIC but never addressed.²³

¹⁹ Section 704 of the Foreign Affairs Authorization Act of 2003 (as enacted in Public Law 107-228).

²⁰ State Department Bureau of European and Eurasian Affairs, "Report to Congress: German Foundation "Remembrance, Responsibility, and the Future," March, 2006. When ICHEIC closed in 2007, the CEO -- over the objection of at least one state regulator -- announced the destruction of unidentified ICHEIC records.

²¹ See Exhibit 11 (ICHEIC Alpha List).

²² <http://forward.com/articles/176583/claims-conference-officials-were-told-of-massive/?p=all;http://www.jta.org/2013/05/14/news-opinion/united-states/2001-letter-shows-claims-conference-alerted-to-fraud-a-decade-before-it-was-stopped#ixzz2TI6ok6Dk>

²³ Washington State 2004 Report, at 41. Similarly, ICHEIC appellate arbitrator, former New York Insurance Superintendent Albert Lewis, disclosed that he was encouraged to deny meritorious claims so that more money would be available for "humanitarian purposes." See *Amicus Curiae* Brief of Albert Lewis, September 2007 in *Rubin v. Assicurazioni Generali, S.p.A.*, in the United States Second Circuit Court of Appeals, Case No. 07-1380, at 11.

f. ICHEIC Officials and Policies Were Biased Against Claimants

After ICHEIC closed, and after reports surfaced about its dismal record, former New York State Insurance Superintendent and ICHEIC Arbitrator Albert Lewis disclosed that ICHEIC officials pressed him and others to rule *against* survivors even when they had credible claims, if the *survivors* could not produce *documentary* proof of a policy.²⁴ He wrote:

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

Mr. Lewis's report was covered in the *New York Jewish Week*, and he later filed an *amicus curiae* brief in the Generali litigation with some of the correspondence relating to his concerns. Among the many other troubling things he reported was that this pressure and the phantom rule were applied in a systematic way on the appellate arbitrators.

Mr. Lewis submitted a letter to this Committee in June 2012 after it held its previous hearing on the issue, in which he reinforced his observations in the 2007 article: "This new un-adopted rule caused most arbitrators to deny a claim since most claimants did not have documentary proof of their policies and made the burden of proof of the claimant a heavy one to overcome." Letter from Albert Lewis to Senator Chuck Schumer, June 14, 2012.

g. Perspective of New York Legal Assistance Group. The New York Legal Assistance Group (NYLAG), a public interest law firm that represents indigent individuals on a number of legal matters, represented many survivors in their attempts to navigate the ICHEIC process.²⁵ NYLAG wrote the following synopsis of its experience as claimants' legal representative:

In the course of assisting numerous claimants in their attempts to recover unpaid insurance policies under the International Commission for Holocaust Era Insurance Claims ("ICHEIC") process, NYLAG lawyers quickly became aware of

²⁴ Stewart Ain, "Phantom Rule May Have Limited Holocaust-Era Awards to Claimants," *The New York Jewish Week*, June, 29 2007. Mr. Lewis also provided evidence that the "phantom rule" was adopted and applied by several of the appellate arbitrators even though ICHEIC published "rules" were supposed to be more favorable toward claimants.

²⁵ NYLAG is not to be confused with the New York State Holocaust Claims Processing Office (NY HCPO), a government agency of the State of New York, which provided assistance to survivors with bank, insurance, property, and other claims through the years. As we describe in response to Question 7, survivors reject the concept that another "voluntary" process such as bringing claims to the NY HCPO is an acceptable alternative to restoring Holocaust survivors' and heirs' legal rights through legislation.

the serious substantive and procedural irregularities in the claims processing procedures, particularly where Generali was found to be the named insurer.

NYLAG's ability to assist claimants in appeals of denials of claims by Generali and the Generali Trust Fund, which processed Generali claims under agreement with the ICHEIC ("the "GTF"), was obstructed by various practices, including the unfettered disregard by Generali and the GTF of their own processing rules, and those of ICHEIC, and their unilateral refusal to provide documentary evidence supporting allegations of prior cancellation, redemption or surrender of insurance policies or reductions in insured amounts.

Amicus Curiae Brief of the New York Legal Assistance Group in *Rubin v. Assicurazioni Generali, S.p.A.*, Appeal No. 07-1380 in the United States Court of Appeals for the Second Circuit, at 2.

h. ICHEIC Records Destroyed. In its last meeting in 2007, ICHEIC's CEO Mara Rudman -- over the objection of at least one state regulator -- announced the destruction of unidentified ICHEIC records. Ms. Rudman also ordered another important part of ICHEIC's records to be sealed and inaccessible to anyone for several decades. There was never any public explanation of the reasons or authority for this covering up of the ICHEIC records, but considering ICHEIC's refusal to follow the Congressional disclosure mandate, and the problems cited by Mr. Lewis, this kind of records destruction of Holocaust victims' personal histories and legacies is inexcusable.

3. ICHEIC Paid Only 3% of the Policies and Values Owed to Holocaust Victims' Families.

When ICHEIC closed its doors in March 2007, it had paid fewer than 14,000 of the 800,000 pre-WWII life/annuity/endowment policies estimated to be owned by European Jews in 1938 and unpaid when ICHEIC began.²⁶ The total amount paid through ICHEIC on policies was \$250 million, which was less than three percent (3%) of the \$17 billion total in outstanding values. For its part, Generali paid fewer than 5,000 policies out of an estimated 110,000 outstanding policies it sold to European Jews before WWII. In terms of value, Generali offered approximately \$120 million and failed to pay at least \$2.5 billion outstanding on life/annuity/endowment insurance policies. Similarly, Allianz owes over \$2.5 billion today as well.²⁷

²⁶ Today, ICHEIC and its supporters take credit for having "paid 48,000 claims," to inflate the body's alleged success. This total includes 34,000 checks of \$1000 for "humanitarian payments." But survivors and heirs do not regard the 1,000 payments as being for policies; neither did ICHEIC during its tenure. Survivors considered the \$1000 checks transparent attempts at pacification. See Testimony of Jack Rubin, U.S. Senate Committee on Foreign Affairs, May 6, 2008.

²⁷ See Testimony of Sidney Zabludoff, U.S. House Financial Services Committee, February 7, 2008.

