

The Honorable Lindsey Graham
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Graham:

Thank you, Mr. Chairman and members of the committee for giving me the opportunity to briefly tell my family's story here today.

I am the son of Holocaust survivors. My mom and dad were teenage boyfriend and girlfriend in Munich Germany in 1938. In November of that year, the Nazi regime gave their official approval to begin sanctioned actions against Germany's Jews which resulted in Kristallnacht- the night of broken glass. That night, as thousands of Nazi's roamed the streets destroying Jewish stores and homes, my father was taken to the Dachau concentration camp. There, his head was shaved, his clothes and belongings were taken and he was placed in a barracks with 300 other frightened, bewildered citizens of Germany, who also happened to be Jewish.

My mother, who's family owned a clothing store, watched in horror as the display windows were broken and the inventory looted. By the grace of God, my parents were ultimately able to leave Germany together and by the grace of the United States of America, they were able to immigrate here. My father's mother and uncle, who he was forced to leave behind, were not so graced and were murdered by the Nazis.

My parents made a good life for themselves and for my brother and me in Miami. Through the years they were very frank and open about their previous lives and shared details with us and their grandchildren.

In their later years, I began doing research on their past lives and discovered in the year 2011, among other things, that my mother's parents had taken out an

insurance policy in the 1930's. The source was a list published by Yad Vashem, and was originally accumulated by the International Commission for Holocaust Era Insurance Claims ("ICHEIC"). I found my grandfather's name, Heinrich Seitz, my grandmother's name, Elfriede Seitz, and my mother's name, Lilly Seitz, all listed together. Needless to say, I was very happy and I immediately called my then 92 year old mother and told her the news. My mom confirmed my findings and was enthused when I explained that we would pursue it. To her, it would have been an affirmation of her father's foresight and thoughtfulness.

I learned that ICHEIC had ceased operations, but someone suggested that I contact the New York Holocaust Claims Processing Office (NYHCPO), because it was advertised to be willing and able to assist survivors and heirs collect policies even though ICHEIC was closed. To say this experience was disappointing and frustrating would be a dramatic understatement. Following a lengthy series of conversations with two employees of the Office, it became apparent to me that their goal was to discourage participation and complicate the process – anything except help me obtain payment on my mother's and her parents' policies.

I have attached my correspondence with the NYHCPO, which documents the tortured process it followed. I immediately filled out all the forms requested. A month later I was told they would ask Germany to obtain my family's restitution files. Hearing nothing for nearly four months, I asked for a status report and was told that my family's German restitution files had no information about insurance. Then they said they would submit my mother's information to the German Insurance Association who would then research German company records for a match. I heard nothing again for another four months, when further emails from me finally prompted them to give various excuses that made no sense.

First, the office told me that the list from ICHEIC "may or may not" be the names of people who "may" have had insurance policies with unnamed German insurance companies.

My question as to how these three people got on a list if they only "maybe" had a policy was answered this way: "Your grandfather's name was very common in Germany."

“And besides,” she continued. “Your mother’s name is listed as Lilly, which is obviously a nickname for Lillian. That would never appear on a policy.”

For the record: my mother’s given name, appearing on her birth certificate, is Lilly.

In addition, my mother recalled that she and my father visited an office in Munich in the 1970s (she could not remember the name of the company) to inquire about the dowry policy she KNEW her family had. Her recollection was that the clerk disappeared behind a door and re-emerged some time later and stated that Heinrich Seitz had “cashed in this policy.” No dates, no documents, just a clerk’s word. This certainly does not sound like the efficient German bureaucracy that actually has records of where and how my father’s mother was machine gunned on her way to a concentration camp!

In sum, it was painfully obvious that this process reflected the inherent dishonesty of a system that’s been designed to protect the interests of the ICHEIC defenders such as the Claims Conference and the State Department, and the insurance companies. Still later, the NYHCPO sent another email to me with a lengthy discourse on European economic history which, amazingly, looked like an attempt to convince claimants that the insurance industry did not profit from the Holocaust. This is what the New York Holocaust Claims Processing Office was doing when Stuart Eizenstat and the State Department were touting it as a resource for recovering survivors’ and heirs’ unpaid policies? It is a disgrace.

In a free and open society, that would leave a claimant with the option of seeking relief in the judicial system, but that too has been thwarted in this instance.

My mother died three years ago never having had the opportunity to seek relief. Yet the insurance companies in question continue to conduct business in this country, very successfully I might add, without fear that they have to do what their charters mandate: That they collect premiums and pay claims.

My parents taught me that the sins of the fathers not be visited on the children. I'm sure we can all agree on that. But the inherent responsibilities of a company that is in the business of trust should be challenged in this great American judicial system if they breach that trust.

I ask that this committee begin the process to allow that to happen.

Thank you very much.

Harry Rose

Miami, Florida

September 15, 2019

Support Us | Subscribe | Press Room | Friends | Store | Contact Us

Yad Vashem | Names | Holocaust - Shoah | Education | Exhibitions | Remembrance | Righteous | Visiting | Search

Search Listing

About the Project

Search Results

Last Name	First Name	Last Known Residence	Birth Year	Where Policy was Issued	Insurance Company
Bachseltz	Ignaz	Germany	1896		List A
Perseltz	Veronika	Germany			List B
Proestler [Seltz]	Frieda	Germany	1910		List A
Seltz	Agathe	Germany			List B
Seltz	Alfons	Germany			List B
Seltz	Anna	Germany			List B
Seltz	Anny	Germany			List B
Seltz	Anton	Germany			List B
Seltz	August	Germany			List B
Seltz	Auguste	Germany			List B
Seltz	Bernhard	Germany			List B
Seltz	Berta	Germany			List B
Seltz	Betty	Germany			List B
Seltz	Brigitte	Germany			List B
Seltz	Eduard	Germany			List B
Seltz	Elfriede	Germany			List B
Seltz	Elisabeth	Germany			List B
Seltz	Else	Germany			List B
Seltz	Elly	Germany			List B
Seltz	Eise	Germany			List B
Seltz	Emma	Germany			List B
Seltz	Erich	Germany			List B
Seltz	Erna	Germany			List B
Seltz	Ernst	Germany			List B
Seltz	Erwin	Germany			List B
Seltz	Erwin				
Seltz	Eugen	Germany			List B
Seltz	Eva	Germany			List B
Seltz	Ferdinand	Germany			List B
Seltz	Franz	Germany			List B
Seltz	Franziska	Germany			List B
Seltz	Franziska	Germany	1893		List A
Seltz	Frida	Germany			List B
Seltz	Friedrich	Germany			List B
Seltz	Georg	Germany			List B
Seltz	Georg	Germany	1908		List A
Seltz	Gertrud	Germany			List B
Seltz	Hans	Germany			List B
Seltz	Heinrich	Germany			List B
Seltz	Heinz	Germany			List B
Seltz	Hermann	Germany			List B
Seltz	Hildegard	Germany			List B
Seltz	Hugo	Germany			List B
Seltz	Irmgard	Germany			List B
Seltz	Jakob	Germany			List B
Seltz	Johann	Germany			List B
Seltz	Josef	Germany			List B
Seltz	Josefa	Germany			List B
Seltz	Josepha	Germany			List B
Seltz	Karl	Germany			List B
Seltz	Katharina	Germany			List B
Seltz	Kunl	Germany			List B
Seltz	Kunl	Deutschland			
Seltz	Kurt	Germany			List B
Seltz	Kurt	Germany	1904		List A
Seltz	Lilly	Germany			List B
Seltz	Lore	Germany			List B
Seltz	Ludwig	Germany			List B
Seltz	Lulse	Germany			List B
Seltz	Magdalena	Germany			List B
Seltz	Margarete	Germany			List B
Seltz	Marla	Germany			List B
Seltz	Marianne	Germany			List B
Seltz	Marie	Germany			List B
Seltz	Martha	Germany			List B
Seltz	Mathilde	Germany			List B
Seltz	Max	Germany			List B
Seltz	Michael	Germany			List B
Seltz	Michel	Germany			List B
Seltz	Otto	Germany			List B
Seltz	Otto	Germany	1902		List A

[Search Listing](#)

[About the Project](#)

Search Results						
Last Name	First Name	Last Known Residence	Birth Year	Where Policy was Issued	Insurance Company	
Bachseitz	Ignaz	Germany	1896		List A	
Perseitz	Veronika	Germany			List B	
Proestler [Seitz]	Frieda	Germany	1910		List A	
Seitz	Agathe	Germany			List B	
Seitz	Alfons	Germany			List B	
Seitz	Anna	Germany			List B	
Seitz	Anny	Germany			List B	
Seitz	Anton	Germany			List B	
Seitz	August	Germany			List B	
Seitz	Auguste	Germany			List B	
Seitz	Bernhard	Germany			List B	
Seitz	Berta	Germany			List B	
Seitz	Betty	Germany			List B	
Seitz	Brigitte	Germany			List B	
Seitz	Eduard	Germany			List B	
Seitz	Elfriede	Germany			List B	
Seitz	Elisabeth	Germany			List B	
Seitz	Elise	Germany			List B	
Seitz	Elly	Germany			List B	
Seitz	Else	Germany			List B	
Seitz	Emma	Germany			List B	
Seitz	Erich	Germany			List B	
Seitz	Erna	Germany			List B	
Seitz	Ernst	Germany			List B	
Seitz	Erwin	Germany			List B	
Seitz	Erwin					
Seitz	Eugen	Germany			List B	
Seitz	Eva	Germany			List B	
Seitz	Ferdinand	Germany			List B	
Seitz	Franz	Germany			List B	
Seitz	Franziska	Germany			List B	
Seitz	Franziska	Germany	1893		List A	
Seitz	Frida	Germany			List B	
Seitz	Friedrich	Germany			List B	
Seitz	Georg	Germany			List B	
Seitz	Georg	Germany	1908		List A	
Seitz	Gertrud	Germany			List B	
Seitz	Hans	Germany			List B	
Seitz	Heinrich	Germany			List B	
Seitz	Heinz	Germany			List B	
Seitz	Hermann	Germany			List B	
Seitz	Hildegard	Germany			List B	
Seitz	Hugo	Germany			List B	
Seitz	Irmgard	Germany			List B	
Seitz	Jakob	Germany			List B	
Seitz	Johann	Germany			List B	
Seitz	Josef	Germany			List B	
Seitz	Josefa	Germany			List B	
Seitz	Josepha	Germany			List B	
Seitz	Karl	Germany			List B	
Seitz	Katharina	Germany			List B	
Seitz	Kuni	Germany			List B	
Seitz	Kuni	Deutschland				
Seitz	Kurt	Germany			List B	
Seitz	Kurt	Germany	1904		List A	
Seitz	Lilly	Germany			List B	
Seitz	Lore	Germany			List B	
Seitz	Ludwig	Germany			List B	
Seitz	Luise	Germany			List B	
Seitz	Magdalena	Germany			List B	
Seitz	Margarete	Germany			List B	
Seitz	Maria	Germany			List B	
Seitz	Marianne	Germany			List B	
Seitz	Marie	Germany			List B	
Seitz	Martha	Germany			List B	
Seitz	Mathilde	Germany			List B	
Seitz	Max	Germany			List B	
Seitz	Michael	Germany			List B	
Seitz	Michel	Germany			List B	
Seitz	Otto	Germany			List B	
Seitz	Otto	Germany	1902		List A	

Grandmother

Grandfather

Mother

Ms. Anna Rubin
New York State Banking Department
The Holocaust Processing Office
One State Street
New York, NY 10004-1511

April 25, 2011

Dear Ms. Rubin:

I am writing on behalf of my mother, who at 90 is still capable, but prefers that I do the writing. In addition, I was encouraged to write to you by a prominent South Florida attorney who has taken up the cause of survivor insurance benefits and steered me (hopefully) in the right direction.

My mother Lilly Rose, nee Seitz left her mother and father behind in Munich in 1938 after her then-boyfriend and eventual husband of 65 years (my dad), was released from Dachau and told to get out of The Reich. Her parents owned a successful clothing store and considered themselves good German citizens up until their store was taken. Her father died in 1943 and her mother went into hiding, emerging from a farmer's barn in 1945.

My mother and fathers journey took them to London, New York and eventually Miami, where they raised my brother and I in a solid middle class home. During those years I often heard the stories and we went back to Munich several times.

As the years passed, and particularly since my father died 5 years ago, my mother has grown more and more wistful and resentful of what was taken from her as a girl. I have taken those emotions to heart and began a process to identify any thing that can be "returned" to her while she still understands and can benefit. That led me to the ICHEC and contact with the attorney.

My grandfather Heinrich Seitz, my grandmother Elfriede Seitz and my mother Lilly appear on the list. Conversations with my mother confirm at least some recollections of insurance, but no details. I have attached the forms from your website and request that the process begin for my family. I want to do WHATEVER it takes to move this process along while my mother is still here. I trust you will help me in this endeavor.

Sincerely

Harry Rose
14535 SW 95 Ave
Miami, FL 33176
hrose@mindspring.com
305-803-7014

Harry Rose

From: Anna.Rubin@banking.state.ny.us
Sent: Wednesday, May 25, 2011 10:40 AM
To: hrose@mindspring.com
Subject: Insurance Claims

Dear Mr. Rose,

Thank you for your letter dated April 25, 2011 regarding possible insurance policies owned by your relatives, please accept my apologies for the delay in responding to you. The Holocaust Claims Processing Office (HCPO) would be very happy to be of whatever assistance possible with respect to restitution/compensation claims.

The completed claim forms which you provided will serve as a basis for our investigation and submission of claims to appropriate companies/organizations. We have already sent out inquiries to archives in Germany for documentation concerning your family's prewar assets and the postwar disposition of their possessions. This part of the process can take some time, though the German archives are quite responsive to us (having worked closely with us for over a decade) and so it is my hope that we will have something from them shortly. Before we submit a claim to an insurance company we do our utmost to obtain as much documentation as possible about an individuals lost assets, this way claims can be more focused and processed more speedily.

As soon as we receive information/documentation from the archives I will be sure to share a copies with you. In the meantime if you have any questions or concerns regarding the HCPO, our methodology, or your inquiry please do not hesitate to contact us.

With kind regards,
Anna

- - -

Anna B. Rubin, Esq.
Director
Holocaust Claims Processing Office
State of New York Banking Department
1 State Street
New York, NY 10004
US Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.claims.state.ny.us

No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1375 / Virus Database: 1509/3659 - Release Date: 05/25/11

Harry Rose

From: Connie.Walsh@dfs.ny.gov
Sent: Tuesday, August 16, 2011 3:08 PM
To: hrose@mindspring.com
Subject: Re: Fw: Insurance Claims
Attachments: Post-war comp. docs.pdf

Dear Mr. Rose,

As Anna is out of the office, she asked me to respond to your email.

Please allow me to provide you with a brief update on your mother's claim. We received post-war compensation documents from German with reference to Heinrich and Elfriede Seitz (see attached). Although the file does not provide any information concerning insurance, I am confident the documents are invaluable with reference to your family history.

Had there been details concerning post-war compensation of a policy, it would not be necessary to submit a claim today. In the alternative, had there been mention of an uncompensated insurance policy it would have possibly provided us with information to guide us as to where to submit your mother's claim.

Given that we have no specific information beyond the name matches for your family on the Potential Holocaust Era Insurance Policyholders List, we will submit your mother's claim to the German Insurance Association. In turn, they will circulate her claim to their member companies. This ensures that all companies that did business review their records to determine if your family had an insurance policy. It is a very comprehensive search so this too will take some time, therefore we ask for your continued patience.

Kind regards,
Connie Walsh

Connie Walsh, Esq.
Deputy Director
Holocaust Claims Processing Office
New York State Banking Department
One State Street
New York, New York 10004-1511

U.S.Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.banking.state.ny.us

Please note my e-mail address has changed to Connie.Walsh@dfs.ny.gov

----- Original Message -----

From: "Harry Rose" [hrose@mindspring.com]
Sent: 08/16/2011 11:55 AM AST
To: <Anna.Rubin@banking.state.ny.us>
Subject: Insurance Claims

Ms Rubin:

Following up on your email from May 25, 2011 regarding our claims for unpaid insurance, please provide me with an update concerning the German government's "documentation concerning your family's prewar assets and the postwar disposition of their possessions".

It has been about 4 months since our last correspondence and an update would be greatly appreciated. I have included your initial email to me below as reference.

Thank you

Harry Rose
HBRose Associates, LLC
305-476-6039
305-476-1519 (fax)

Wed 5/25/2011 10:40 AM

Dear Mr. Rose,

Thank you for your letter dated April 25, 2011 regarding possible insurance policies owned by your relatives, please accept my apologies for the delay in responding to you. The Holocaust Claims Processing Office (HCPO) would be very happy to be of whatever assistance possible with respect to restitution/compensation claims.

The completed claim forms which you provided will serve as a basis for our investigation and submission of claims to appropriate companies/organizations. We have already sent out inquiries to archives in Germany for documentation concerning your family's prewar assets and the postwar disposition of their possessions. This part of the process can take some time, though the German archives are quite responsive to us (having worked closely with us for over a decade) and so it is my hope that we will have something from them shortly. Before we submit a claim to an insurance company we do our utmost to obtain as much documentation as possible about an individuals lost assets, this way claims can be more focused and processed more speedily.

As soon as we receive information/documentation from the archives I will be sure to share a copies with you. In the meantime if you have any questions or concerns regarding the HCPO, our methodology, or your inquiry please do not hesitate to contact us.

With kind regards,
Anna

- - -

Anna B. Rubin, Esq.
Director
Holocaust Claims Processing Office
State of New York Banking Department
1 State Street
New York, NY 10004
US Toll Free: 1-800-695-3318

International: 212-709-5583
Fax: 212-709-5592
Website: www.claims.state.ny.us

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1392 / Virus Database: 1520/3838 - Release Date: 08/16/11

Harry Rose

From: Harry Rose [hrose@mindspring.com]
Sent: Friday, December 02, 2011 5:33 PM
To: 'Connie.Walsh@dfs.ny.gov'
Subject: RE: Fw: Insurance Claims

Ms Walsh:

It has now been 31/2 months since our last correspondence regarding my mother's claim.

I would appreciate an update or any other news you might share with me.

I am following the current activities in Washington with great interest and continue to remain in contact with the attorney here in Miami, who is following my mother's case with great interest.

Thank you.

Harry Rose
Marketing, Advertising, Communications
HBRose Associates, LLC
305-476-6039
305-476-1519 (fax)

From: Connie.Walsh@dfs.ny.gov [mailto:Connie.Walsh@dfs.ny.gov]
Sent: Tuesday, August 16, 2011 4:10 PM
To: Harry Rose
Subject: RE: Fw: Insurance Claims

Dear Mr. Rose,

We have everything we need. I have prepared the claim and will be submitting it tomorrow to the GDV (German Insurance Association).

As soon as I hear anything, I will be sure to contact you.

All the best,
Connie

Connie Walsh, Esq.
Deputy Director
Holocaust Claims Processing Office
New York State Banking Department
One State Street
New York, New York 10004-1511

U.S.Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.banking.state.ny.us

Please note my e-mail address has changed to Connie.Walsh@dfs.ny.gov

"Harry Rose" <hrose@mindspring.com>

To <Connie.Walsh@dfs.ny.gov>
cc

08/16/2011 03:50 PM

Subject RE: Fw: Insurance Claims

Dear Ms. Walsh

Thank you for your timely reply. From what I can see from these documents, they seem to be focused on the property my grandparents owned in Munich, including the department store and the apartments.

Since there is no mention of insurance, I would agree that your office should now proceed with claims against the insurance companies.

I am again convinced that there is something to pursue since all three names (Grandfather, Grandmother and Mother) appear on this list.

As I had indicated in my initial contact with your office, a prominent attorney involved in Holocaust issues here in Miami urges me to continue on with this claim.

I trust you will contact me if you need anything else to continue, and that you will contact me as you get information.

Again, thank you for your efforts.

Harry Rose

HBRose Associates, LLC

305-476-6039

305-476-1519 (fax)

From: Connie.Walsh@dfs.ny.gov [<mailto:Connie.Walsh@dfs.ny.gov>]

Sent: Tuesday, August 16, 2011 3:08 PM

To: hrose@mindspring.com

Subject: Re: Fw: Insurance Claims

Dear Mr. Rose,

As Anna is out of the office, she asked me to respond to your email.

Please allow me to provide you with a brief update on your mother's claim. We received post-war compensation documents from German with reference to Heinrich and Elfriede Seitz (see attached). Although the file does not provide any information concerning insurance, I am confident the documents are invaluable with reference to your family history.

Had there been details concerning post-war compensation of a policy, it would not be necessary to submit a claim today.

In the alternative, had there been mention of an uncompensated insurance policy it would have possibly provided us with information to guide us as to where to submit your mother's claim.

Given that we have no specific information beyond the name matches for your family on the Potential Holocaust Era Insurance Policyholders List, we will submit your mother's claim to the German Insurance Association. In turn, they will circulate her claim to their member companies. This ensures that all companies that did business review their records to determine if your family had an insurance policy. It is a very comprehensive search so this too will take some time, therefore we ask for your continued patience.

Kind regards,
Connie Walsh

Connie Walsh, Esq.
Deputy Director
Holocaust Claims Processing Office
New York State Banking Department
One State Street
New York, New York 10004-1511

U.S.Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592

Website: www.banking.state.ny.us

Please note my e-mail address has changed to Connie.Walsh@dfs.ny.gov

----- Original Message -----

From: "Harry Rose" [hrose@mindspring.com]
Sent: 08/16/2011 11:55 AM AST
To: <Anna.Rubin@banking.state.ny.us>
Subject: Insurance Claims

Ms Rubin:

Following up on your email from May 25, 2011 regarding our claims for unpaid insurance, please provide me with an update concerning the German government's "documentation concerning your family's prewar assets and the postwar disposition of their possessions".

It has been about 4 months since our last correspondence and an update would be greatly appreciated. I have included your initial email to me below as reference.

Thank you

Harry Rose
HBRose Associates, LLC
305-476-6039
305-476-1519 (fax)

Wed 5/25/2011 10:40 AM

Dear Mr. Rose,

Thank you for your letter dated April 25, 2011 regarding possible insurance policies owned by your relatives, please accept my apologies for the delay in responding to you. The Holocaust Claims Processing Office (HCPO) would be very happy to be of whatever assistance possible with respect to restitution/compensation claims.

The completed claim forms which you provided will serve as a basis for our investigation and submission of claims to appropriate companies/organizations. We have already sent out inquiries to archives in Germany for documentation concerning your family's prewar assets and the postwar disposition of their possessions. This part of the process can take some time, though the German archives are quite responsive to us (having worked closely with us for over a decade) and so it is my hope that we will have something from them shortly. Before we submit a claim to an insurance company we do our utmost to obtain as much documentation as possible about an individuals lost assets, this way claims can be more focused and processed more speedily.

As soon as we receive information/documentation from the archives I will be sure to share a copies with you. In the meantime if you have any questions or concerns regarding the HCPO, our methodology, or your inquiry please do not hesitate to contact us.

With kind regards,
Anna

- - -

Anna B. Rubin, Esq.
Director
Holocaust Claims Processing Office
State of New York Banking Department
1 State Street
New York, NY 10004
US Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.claims.state.ny.us

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1392 / Virus Database: 1520/3838 - Release Date: 08/16/11

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1392 / Virus Database: 1520/3838 - Release Date: 08/16/11

From: Harry Rose [<mailto:hrose@mindspring.com>]

Sent: Tuesday, December 13, 2011 3:07 PM

To: 'Connie.Walsh@dfs.ny.gov'

Subject: RE: insurance claim- Seitz

Dear Ms Walsh

I have read and re-read your explanation, and the response from the GDV since receiving them last week, and I must confess, I am confused and bewildered by the response.

The names of my relatives appear on this list WITHOUT any actions on my part or the part of my family. They were added by some process which, if your explanation is to be believed, was based on the religion of the listees and then culled by date of birth. I guess that this would beg the question as to why no one from my father's side of the family appear on any list, since they were all Jewish and German. Add to this the fact that my grandfather (Heinrich Seitz) was born a Catholic and married my grandmother, a Jew, and the entire process seems to be based on a random set of criteria. In addition your explanation that Lilly is (or could be) short for Elizabeth, reveals nothing. My mother's name ON HER BIRTH CERTIFICATE is Lilly. If this is a list prepared by and for the insurance companies, I find the odds that all three of my relatives would appear on this list without a solid basis in fact to be overwhelmingly remote.

Another point. My mother and father visited an office in Munich in the 1970's (she cannot remember which office) to inquire about the dowry policy she KNOWS her family had. Her recollection was that the clerk disappeared behind a door and re-emerged some time later and stated that Heinrich Seitz had "cashed this policy in." No dates, no documents, just a clerk's word. This certainly does not sound like the efficient German bureaucracy that actually has records of where and how my father's mother was machine gunned on her way to concentration camp!

When I began this process for my mother I was confident that this would result in a fair review. I deliberately held back the information regarding the dowry policy to see if it would be revealed, but it was not. Naturally this makes the entire process suspect and confirms the warnings given to me by local activists that the ICHEIC process is, shall we say, suspect.

I have not had the courage to tell my mother the results of the GDV "decision", but the GDV has just created a new activist (me). I have already sent information to my Congresswoman Ileana Ros-Lehtinen and pledged to support her initiative to allow policy holders to bring suit in U.S. state courts. I suppose that Allianz, AXA and the other companies have done their cost benefit analysis and determined that they can ride this issue out. Perhaps they will but they may be underestimating the power of public opinion in a righteous cause.

Thank you for reading this and please let me know if there is an appeals process or other steps I may take at this time.

Harry Rose
Marketing, Advertising, Communications
HBRose Associates, LLC
305-476-6039
305-476-1519 (fax)

From: Connie.Walsh@dfs.ny.gov [<mailto:Connie.Walsh@dfs.ny.gov>]

Sent: Wednesday, December 07, 2011 2:27 PM

To: Harry Rose

Subject: insurance claim

Dear Mr. Rose,

Thank you for your emails. While your congratulations are kind, you have our agency confused with the Claims Conference. They are a separate agency and were responsible for the negotiations that you noted. It is a common mistake so not to worry.

With regards to the insurance claim your mother submitted, please find attached a copy of GDV decision our office received. Though I am sure this is not the answer you were hoping for, I would like to reiterate that the companies have indeed done a thorough search but they were unable to find a match to your family.

Permit me to provide some additional background information for you on the International Commission on Holocaust Era Insurance Claims (ICHEIC) policyholders' list. The names Heinrich Seitz, Elfriede Seitz and Lilly Seitz do appear on the ICHEIC policyholders' list, however as you may know "Seitz" is a very common German name. In addition, these "name matches" have a "List B" notation which indicates it is a low possibility that an insurance policy for this individual Jewish policyholder existed. This is due to how the matching exercise was conducted during the ICHEIC process.

The matching process through ICHEIC was extensive and took approximately two years. In brief, there were approximately 2 million potential "Jewish" resident names from Germany (the last 1933 census however stated that only approximately 550,000 Germans of Jewish faith lived in Germany) that were matched with more than 9 million policyholder names of whom nobody knew the religious faith. Two lists were created: "List A" included individuals where the last name, first name and date of birth (with some variations) matched and "List B" included individuals where only two criteria matched with a much wider range of criteria variations.

For example, on List B if you had a "Jewish list last name entry" "Black" it would be matched with a "policyholder list last name entry" "Schwarz" (German for Black) and it would be considered a "match". So, if in this case a second criteria (e.g. first name, year of birth, etc.) "matched" (even with variations in the second match) the name would be included in "List B".

List A included approximately 160,000 names and List B included approximately 200,000 names. Together these two lists comprised the "German contribution" of 360,000 names to ICHEIC's overall name list of 520,000 individuals.

Given that not only the last name "Seitz" is common, the first names "Heinrich", "Elfriede" and "Lilly" ("Elisabeth") are also very common in Germany, it is highly plausible that the first and last name are an identical match and thus there is a "2 criteria match" for List B but when the companies did their research with the 3 criteria (last name, first name and date of birth) they did not come up with a positive match for your family.

I trust the above information is helpful. If you have any additional questions, please do not hesitate to contact me.

Sincerely,
Connie Walsh

Connie Walsh, Esq.
Deputy Director
Holocaust Claims Processing Office
New York State Department of Financial Services
One State Street
New York, New York 10004-1511

U.S.Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.dfs.ny.gov

"Harry Rose" <hrose@mindspring.com>

To <Connie.Walsh@dfs.ny.gov>

cc

12/06/2011 05:16 PM

Subject Congratulations

rsion: 2012.0.1873 / Virus Database: 2102/4665 - Release Date: 12/07/11

Harry Rose
Marketing, Advertising, Communications
HBRose Associates, LLC
305-476-6039
305-476-1519 (fax)

From: Connie.Walsh@dfs.ny.gov [mailto:Connie.Walsh@dfs.ny.gov]

Sent: Thursday, December 15, 2011 4:32 PM

To: Harry Rose

Subject: RE: insurance claim- Seitz

Dear Mr. Rose,

There is no appeals process, however if we were able to obtain new documentation concerning a policy our office can submit this information to the insurance company for further review. With the additional details you provided we will do our utmost to continue our research efforts.

Indeed the compensation and restitution of Holocaust-era insurance policies is confusing at best. Even the most well-intentioned claims process can never fully compensate an individual for his/her loss. With that said, I am sure that you can also appreciate the difficulty faced by those working to ensure resolution of these claims.

Please permit me to provide you with some additional background on the period. The moderate economic growth that bloomed in the wake of the First World War was quickly curtailed by the decline in agricultural prices, which were disastrous for the predominantly agrarian central Europe, and the Great Depression which followed the collapse of the New York stock market in 1929. As a result, in 1936, the largest insurance company within Austria, Phoenix, went bankrupt. Its collapse caused major upheavals in the insurance industry all across Europe.

In the first years of the Nazi regime, Aryanization of the private insurance industry proceeded for the most part at the highest levels among the board members and top executives. After 1938, dismissal of Jewish employees of insurance companies became pervasive. Deprived of their livelihoods, many policyholders cashed in insurance policies to pay their bills or to pay off mandated taxes before they could emigrate.

The passage of the 11th Decree of the Reich Citizenship Law of November 1941 ultimately stripped all Jewish "emigrants" of their assets and the seizure of Jewish insurance assets proceeded with greater rapidity.

The situation in Poland and the Baltics was still more complex because Soviet occupation preceded Nazi invasion and the Soviets carried out their own seizures and confiscations based on the principle of class warfare. Therefore, many individuals had already lost many of their assets by the time the Germans occupied these territories.

After World War II, all foreign and domestic insurance companies in Poland, Czechoslovakia and Hungary were nationalized. Since there is no successor to a nationalized domestic company there is nowhere to turn unless the claimant can establish the existence of the policy independently from the company.

As you know gaps in post-war programs of restitution, prompted negotiations between the National Association of Insurance Commissioners, European insurance regulars and insurance companies and Jewish groups led to the creation of ICHEIC to investigate and resolve unpaid insurance claims of Holocaust victims, survivors and their heirs. Although ICHEIC closed in 2007, every company that was a member of commission as well as companies of the German Insurance Association, through its partnership agreement reaffirmed their commitment to continue to review and process claims sent directly to them.

I must reiterate that a name match from the ICHEIC policyholders' list does not necessarily translate into an award. Because the account holder list published on the ICHEIC website was pulled from multiple sources the same name may appear more than once on the list. In addition, the fact that a name appeared on the list did not guarantee that the individual named or his or her heirs or beneficiaries would have qualified for payment under ICHEIC guidelines. For example, there may have been instances where there was a name match but it was not the same individual that a particular claimant had filed for. Moreover, additional research may have also indicated that the claim was previously settled or paid which then precluded it from further consideration under ICHEIC.

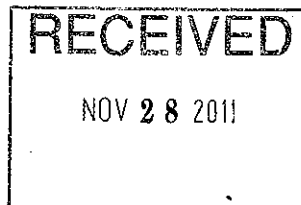
Again, I know this is not the answer you had hoped for but I do trust the information is helpful. I will forward your mother a copy of the GDV decision next week.

Sincerely,

Connie Walsh

Connie Walsh, Esq.
Deputy Director
Holocaust Claims Processing Office
New York State Department of Financial Services
One State Street
New York, New York 10004-1511

U.S.Toll Free: 1-800-695-3318
International: 212-709-5583
Fax: 212-709-5592
Website: www.dfs.ny.gov



Via E-Mail

Mrs. Connie Walsh
State of New York Banking Department
Holocaust Claims Processing Office (HCPO)
One State Street
New York, NY 10004-1511
USA

Ref
V 1.3

Phone extension
- 5108 / - 5109

Date
16th November 2011

Inquiry of Mrs. Lilly Rose regarding insurance policies of Mr. Heinrich Seitz, Mrs. Elfriede Seitz and Ms. Lilly Seitz
REFERENCE NO.: 156/U

Dear Mrs. Walsh,

We refer to the inquiry of Mrs. Lilly Rose concerning insurance policies for Mr. Heinrich Seitz, Mrs. Elfriede Seitz and Ms. Lilly Seitz.

Based on the information that Mrs. Rose has provided, all our member companies and we have comprehensively researched in all relevant archives and records for information regarding the existence of life insurance policies for Mr. Heinrich Seitz, Mrs. Elfriede Seitz and Ms. Lilly Seitz.

As this investigation has now been completed, we have to inform you that despite a market wide research by all our member companies, no indication regarding the existence of a policy for Mr. Heinrich Seitz, Mrs. Elfriede Seitz or Ms. Lilly Seitz could be established. The comprehensive research by our member companies and us was based on relaxed standards of proof which means that every available indication which might have established the existence of a policy had been considered.

We have also matched Mrs. Rose's inquiry with information regarding policies that have already been addressed within the compensation process established by the "International Commission on Holocaust Era Insurance Claims" (ICHEIC) in cooperation with the German Foundation "Remembrance, Responsibility and Future" and us, based on a Trilateral Agreement that was signed in October 2002. All our companies had actively participated in this process and had reviewed more than 86,000 names in this context. One of our members had already conducted a prior research during the ICHEIC process with no match found.

ICHEIC was founded in 1998 by U.S. insurance regulators, European insurance companies, representatives of international Jewish and survivor organizations and the State of Israel to establish a process for the investigation and compensation of insurance claims which had remained unpaid

Gesamtverband der Deutschen
Versicherungswirtschaft e. V.

German Insurance Association

Wilhelmstraße 43 / 43 G, D-10117 Berlin
Phone: +49 30 2020-5000
Fax: +49 30 2020-6000

60, avenue de Cortenberg
B - 1000 Brussels
Phone: +32 2 28247-30
Fax: +32 2 28247-39

E-Mail: avho@gdv.de

www.gdv.de

or were confiscated by the Nazi Government and its allies during the Holocaust period.

The Foundation "Remembrance, Responsibility and Future", an institution of the Federal Republic of Germany, was established and financed in half by German industry and in half by the German government and vested with funds of more than 5 billion Euros. It was meant to be the final capstone to more than 30 years of compensation proceedings under several laws in effect from the early 1950s to the 1990s and established by the Federal Republic of Germany after World War II to address crimes committed by the Nazi regime. As part of its charter, the Foundation also made available funds for the compensation of unpaid and uncompensated insurance policies of German insurance companies and for general humanitarian purposes. All these funds in the amount of over 300 million US-Dollars had been contributed by our member companies and had been transferred to the "International Commission on Holocaust Era Insurance Claims" (ICHEIC) when the compensation process started. With the full endorsement of major Jewish compensation organizations and the US, German and Israeli governments and authorities, this compensation process was closed in March 2007 after all claims that had been filed worldwide over a period of 5 years had been thoroughly addressed and all eligible claims had been compensated.

However, no indication for the existence of any insurance policies for Mr. Heinrich Seitz, Mrs. Elfriede Seitz or Ms. Lilly Seitz was identified during that compensation process.

Based on the information provided by Mrs. Rose and after the intensive research in all relevant archives of all our participating member companies, the existence of life insurance policies taken out by Mr. Heinrich Seitz, Mrs. Elfriede Seitz or Ms. Lilly Seitz could not be established, even under relaxed standards of proof.

We are confident that you will understand our decision not to submit an offer for compensation under the given circumstances.

Please do not hesitate to contact us, if you have any further questions.

Yours sincerely,


(Dr. von Fürstenwerth)


(Dr. Gütersloh)

September 15, 2019

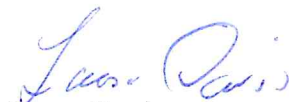
Samuel J. Dubbin, Esq.
Dubbin & Kravetz, LLP
1200 Anastasia Avenue
Suite 300
Coral Gables, Florida 33134

Re: Letter and Supporting Documents regarding Sello Fisch

Dear Sam:

Please forward my letter to Chairman Graham's staff for consideration during the Senate Judiciary Committee's upcoming hearing on legislation to restore survivors' rights to recover unpaid insurance policies purchased by their parent, grandparents, and other relatives. In addition, I authorize you to include my letter and supporting materials in your submission to the Committee.

Very truly yours,



Laura Davis
Director, Holocaust Compensation
Assistance Project
New York Legal Assistance Group
7 Hanover Square, 7th Floor
New York, New York 10004
(212) 613-5040

September 15, 2019

Honorable Lindsey Graham
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 201510

Re: Legislation to restore Holocaust survivors' and families' rights to unpaid
insurance policies

Dear Senator Graham:

As a lawyer in the Holocaust Compensation Assistance Project at the New York Legal Assistance Group, I am writing on behalf of my client, Mr. Sello Fisch ("Mr. Fisch"), who has spent the last 19 years attempting to be fairly compensated by Assicurazioni Generali, S.p.A. ("Generali") with regard to a policy bought by his late father, Mr. Herman Fisch, years before the start of World War II. Unfortunately, to date, Generali, abetted by the International Commission on Holocaust Compensation ("ICHEIC"), has not offered Mr. Fisch fair compensation.

Mr. Fisch was born in Berlin, Germany in 1935, where he lived with his parents and older sister until 1939 when conditions in Germany became so brutal that the family sought refuge in Shanghai, leaving behind all their assets, including his father's and maternal grandfather's successful business. Mr. Fisch spent the war in the Shanghai ghetto, where he experienced deprivation, and suffered the death of his mother at an early age. After the war, Mr. Fisch immigrated to the United States, joined the army, and made a successful life for himself in New York.

ICHEIC provided Mr. Fisch with a vehicle to seek compensation for the Generali policy that his father had purchased in his native Poland. As soon became known, in 1928, Generali issued his father a life insurance policy (policy number 6.119) with a duration of 18 years, and for the sum of \$1,500.00. Despite these specific, undisputed facts, over the ensuing years, Generali and ICHEIC concocted excuse after excuse to refuse Mr. Fisch compensation.

I became involved in Mr. Fisch's ordeal in 2003, after the General Trust Fund ("GTF") had informed him that his father's policy was either "cashed or cancelled" prior to 1936 as it did not appear on the company's so-called mechanized records as of that year. The GTF then considered the alleged absence from mechanized records as "negative evidence" to be used to deny Mr. Fisch compensation. However, the GTF and later ICHEIC conveniently ignored the exception to such negative evidence – *i.e.*, if the Holocaust was deemed to have begun in the country in which the purchaser lived prior to the year when the policy was missing from Generali's mechanized records, negative evidence would not attach. It is indisputable that the Holocaust began in Germany in 1933, when Jews became subject to the seizure of their domestic and foreign assets.

Even when ICHEIC acknowledged that the start of the Holocaust in Germany preceded the 1936 date, that organization, allegedly formed to help survivors and their heirs, steadfastly

continued to deny Mr. Fisch compensation. In 2004 to 2006, I wrote to everyone in a position of authority to advocate on behalf of Mr. Fisch, including Ms. Jody Manning, ICHEIC's Chief of Staff; Ms. Mara Rudman, its Chief Operating Officer; the Hon. Lawrence S. Eagleburger, its Chairman; and the Hon. Elliot Engel, Mr. Fisch's Congressman. Mr. Eagleburger, in particular, had a creative interpretation of the exception to negative evidence rule. In that regard, he stated that a determination is "governed not by the country of residence but by the country in which an insurance policy was purchased, which for [this] policy . . . was Poland [where the Holocaust was deemed to have started in 1939]." My only conclusion was that ICHEIC would use any excuse to deny Mr. Fisch compensation.

Over the next years, Mr. Fisch continued to rightfully seethe at the injustice done him and his sister, who was, by this time, in very poor health. Then, in 2010, Mr. Marco Schnabl, a lawyer in New York with the firm of Skadden, Arps, Slate, Meagher & Flom, LLP, conveyed to Mr. Fisch that Generali would offer him and his sister \$9,382.02 to settle their claim. Mr. Fisch rejected the offer, and continued to do so until January 2016, when he wrote to Gernerali stating that he, with great regret, would accept the \$9,382.02 offer, primarily because his late sister's children wanted closure to their family's ordeal.

The above recitation demonstrates only a small fraction of what Mr. Fisch had to undergo at the hands of Generali, GTF and ICHEIC. I hope that your Committee will carefully review my letters to personnel at ICHEIC, Generali and GTF when considering the injustice Mr. Fisch has been consigned to live with for so many years. At every turn, these entities denied him his due. After 19 years, Mr. Fisch, now 84 years old, has still not been fairly compensated.

Thank you for your consideration of this matter. Perhaps justice can now be forthcoming to Mr. Fisch and the many others who suffered at the hands of ICHEIC and insurance companies.

Very truly yours,



Laura Davis
Director, Holocaust Compensation
Assistance Project
New York Legal Assistance Group
7 Hanover Square, 7th Floor
New York, New York 10004
(212) 613-5040

DUBBIN & KRAVETZ, LLP
220 ALHAMBRA CIRCLE
SUITE 400
CORAL GABLES, FLORIDA 33134
(305) 357-9004 (TELEPHONE)
(305) 357-9050 (FAX)

June 5, 2000

Kenneth Bialkin, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, NY 10022

Re: Generali Policies for Family of Thomas Weiss, M.D.

Dear Mr. Bialkin:

As a follow up to our prior correspondence concerning Dr. Thomas Weiss, the following names appeared on the Web site of the International Commission for Holocaust Era Insurance Claims which we believe may represent members of Dr. Weiss's family:

Weisz, Fulop-Sevulson
Weisz, Fulop-Surany
Weisz, Fulop-Komarna
Weisz, Fulopne, Helen-Moravice
Weisz, Lajos-Roznava
Weisz, Jeno-Seviljus
Weisz, Jeno-Sevulson
Weisz, Hermann-Velky Sevlus
Weisz, Hermann-Seviljus
Weisz, Eugen-Surany
Weisz, Erno Nathan-Tokaj
Weisz, Alexander-Dunajska Streda
Weisz, Josef-Surany

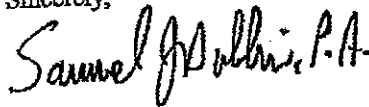
You will recall that we requested information about policies in the names of Dr. Weiss's father, Pavel Felipe (Paul Phillip) Weiss, and Mr. Weiss's brothers and sisters who all died in the Holocaust. Considering the variety of spellings of names and towns which have been revealed on the various databases, including Generali's, the appearance of these names suggest possible solutions to Generali's previous unsuccessful searches.

For example, the name "Fulop Weisz" in the town of "Sevulson" indicates a possible match for Mr. Weiss, of Sevlus, who was also known by his middle name "Felipe" or "Phillip."

Therefore, we would greatly appreciate your expeditious efforts to locate and provide us with the policies associated with the above names on an expedited basis.

Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Samuel J. Dubbin, P.A." The signature is written in dark ink and is positioned above the typed name.

Samuel J. Dubbin, P.A.

Birnbaum David(1), Desider (2)	Svaljava	Generali
(Generali agent in Munkatch, Mucacevo)		
Birnbaum Markusz	Svaljava	Generali
Lebovits Hermann	Tiacevo (compare Tekehaza)	Generali
Neuman Hermann	Seviljus	Generali
Neumann Emanuel	Seviljus	Generali
Neumann Emanuel	Sevluson	Generali
Neumann Emanuel	Sevljusun	Generali
Weiss Paul	Lobositz	Generali
Weiss Paul	Lobositz	Generali
Weisz Fulop	Sevluson	Generali
Weisz Fulop	Surany	Generali
Weisz Herman	Seviljus	Generali
Weisz Hermann	Velky Sevljus	Generali
Weisz Jeno	Sevluson	Generali
Weisz Jeno	Seviljus	Generali
Weisz Jeno	Surany	Generali
Weisz Lajos	Roznava	Generali
Weisz Marton	Seviljus	Generali
Weisz Fulopne Helen	Moravice	Generali



SALANS HERTZFELD HEILBRONN CHRISTY & VIENER

ROCKEFELLER CENTER
620 FIFTH AVENUE
NEW YORK, NY 10020-2457
TEL 212 632 5500
FAX 212 632 5555
www.salans.com

FRANKLIN B. VELIE
PARTNER
DIRECT DIAL 212 632 5503
DIRECT FAX 212 307 3303
fvelie@salans.com

May 23, 2001

BY FACSIMILE AND BY MAIL

Samuel J. Dubbin, P.A.
Dubbin & Kravetz, LLP
220 Alhambra Circle
Suite 400
Coral Gables, Florida 33134

Re: Weiss, et al. v. Assicurazioni Generali, S.p.A., et al.
00 Civ. 9415 (MBM)

Dear Mr. Dubbin:

We have reviewed the complaint in the above-referenced action, and are writing to reiterate the outstanding requests of our client, Assicurazioni Generali, S.p.A. ("Generali"), for additional information relating to the policyholders alleged in the complaint, and to request substantiation of plaintiff's claim for payment under a fire insurance policy allegedly issued by Moldavia Generali.

As you have been advised previously, in order for Generali to conduct a meaningful search for policies issued to members of Dr. Weiss's family, additional information relating to such individuals must be provided (to the extent available), including date and place of birth, place of residence prior to 1945, profession and approximate date of death. This information is essential for Generali to be able to confirm that a policyholder was, in fact, related to Dr. Thomas Weiss. Specifically, Generali needs additional information regarding the following alleged policyholders: Lenke Weiss, Haynal Weiss, Ethel Weiss, Marton Weiss, David Birnbaum, Berta Weiss, Isidor Weiss, Serena Weiss, Charlotte Neumann Weiss, and Emil Roth.

Please provide the requested information as soon as possible.

Very truly yours,

Franklin B. Velie

DUBBIN & KRAVETZ, LLP

220 ALHAMBRA CIRCLE

SUITE 400

CORAL GABLES, FLORIDA 33134

(305) 357-9004 (TELEPHONE)

(305) 357-9050 (FAX)

September 17, 2001

VIA FAX AND REGULAR MAIL

Kenneth Bialkin, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
919 Third Avenue
New York, NY 10022

Franklin V. Veile, Esquire
Salans, Hertzfeld Helbrom Christy & Viener
Rockefeller Center
620 Fifth Avenue
New York, NY 10020-2457

Re: Second Post-Litigation Request for Generali Policies and
Information for Family of Thomas Weiss, M.D.

Dear Mr. Bialkin and Mr. Veile:

On June 5, 2000, I sent a letter to Mr. Bialkin asking for the policies listed below which appeared on the Web Site of the International Commission for Holocaust Era Policies ("ICHEIC"). On November 22, 2000 I sent a follow-up letter to Mr. Bialkin and Mr. Mancini, reiterating our interest in the names and associated policies.

This letter follows up on my previous requests, as well as Mr. Veile's May 23, 2001 letter to me. You can consider the information I request herein to be formally demanded pursuant to Federal Rules of Civil Procedure 26 and 34.

Fulop Weisz Policy. After two years of denials from our requests through Mr. Vayer, and following decades of denials of Dr. Weiss's and his father's previous inquiries, Generali has now produced one policy which it admits belonged to Dr. Weiss's father. This policy appeared on the website last fall under the name "Fulop Weisz." Leaving aside for the moment the question of why Generali failed to produce this policy in response to our previous inquiries, we request that you intensify your analysis because, considering Mr. Weiss's wealth in prior to World War II (for which I have substantial documentation), we have no doubt that there are more policies purchased by Paul Phillip Weiss in Generali's archives.

Mr. Kenneth Bialkin and Mr. Franklin Veile

September 17, 2001

Page 2

There is another major concern with the policy produced. First, unlike every other Generali policy I have seen in this process, there is no face sheet on the "Fulop Weisz" policy. This omission is very curious. Where is the face sheet of the "Fulop Weisz policy?" In addition, the number 90526 appears on the upper right-hand corner. To what does that number refer?

In addition, there are many portions of the policy which are illegible. The number "8358" appears on the inside of the policy. To what does that entry refer? Please recopy the document so that it is completely legible. In this regard, we request a more legible copy of the policy.

There are other curiosities on the instrument produced. Interestingly, Generali's "offer" also suggests there was a loan taken out on this policy. It is difficult to believe Mr. Weiss, considering his wealth, would have used this policy for a loan. But Generali's response only highlights the need for full production of the entire policy file in Generali's possession. We hereby request that Generali produce the entire file, i.e. all information in Generali's possession relating to the policy (and other Weiss family policies) forthwith.

In this regard, we are aware that Generali has in its possession comprehensive information about every policy issued in Czechoslovakia (and most of Central Europe) during this period of time, including not only the names and numbers of policies, but the reserve registers with complete data on the premiums received, payments made, accumulated cash balance, loans, and the like. Generali admitted as much to Florida Insurance Commissioner Nelson in May of 1998, and subsequent information confirms the existence of the comprehensive database. Please supply me with the *entire files* in your possession relating to the Weiss and Birnbaum family members discussed herein.

Disability Benefits Were Wrongfully Withheld. We have also had an opportunity to review the translation of the Fulop Weisz policy Generali produced in connection with its Motion to Dismiss the cases before Judge Mukassey. The translation indicates that in addition to a life and annuity policy, Generali sold Mr. Weiss a disability policy as well. We would like the opportunity to discuss this aspect of the coverage with you, because there is substantial documentation by German and American physicians of Mr. Weiss's medical disabilities beginning with his liberation in May of 1945, and continuing until his death in 1985. Accordingly, please produce all schedules and other information relating to the disability feature of the Fulop Weisz policy "no. 90526" (or, if pertinent, "no. 8358").

Undoubtedly, Generali was obligated to Mr. Weiss for disability payments during his lifetime, and we hereby demand satisfaction of this unpaid obligation today.

Weisz/Weiss Family Policies on ICHEIC Website. In addition, for reasons we explained in our June and November 2000 letters, we believe there are several other names on the ICHEIC website that represent policies of the Weiss family members. As in the foregoing correspondence cited, we again demand you supply us with copies of the policies relating to the following names

Mr. Kenneth Bialkin and Mr. Franklin Veile

September 17, 2001

Page 3

on the ICHEIC website, and all associated information, about these policies, forthwith. As a reminder, the names are:

Weisz, Fulop-Sevulson
Weisz, Fulop-Surany
Weisz, Fulop-Komarna
Weisz, Fulopne, Helen-Moravice
Weisz, Lajos-Roznava
Weisz, Jeno-Seviljus
Weisz, Jeno-Sevulson
Weisz, Hermann-Velky Sevhus
Weisz, Hermann-Seviljus
Weisz, Eugen-Surany
Weisz, Erno Nathan-Tokaj
Weisz, Alexander-Dumajska Streda
Weisz, Josef-Surany
Sholom Weisz (Weis, or Weiss) (deceased child)
Judith Weisz (Weis or Weiss) (deceased child)
Alice (Rachel) Weisz (Weis or Weiss)(deceased child)

Request for other Weiss Family Members' Policies. We also question the purpose of Mr. Veile's letter dated May 23, 2001 suggesting that the company needs more information from Dr. Weiss. That letter names the individuals who Dr. Weiss has for many years claimed were close relatives of his father and mother, in direct correspondence with Generali (including to Mr. Vayer), as well as in the Complaint. Mr. Veile's letter requests "additional information relating to such individuals (to the extent available), including date and place of birth, place of residence prior to 1945; profession and approximate date of death. This information is essential for Generali to be able to confirm that a policyholder was, in fact related to Dr. Thomas Weiss."

In short, as our prior correspondence dating back over three years to Generali, as well as Dr. Weiss's Complaint make clear, Lenke Weiss, Haynal Weiss, Ethel Weiss, Marton Weiss, Berta Weiss, and Isidor Weiss were the brothers and sisters of Dr. Weiss's father, Paul Phillip Weiss. See Complaint, Paragraphs 34-39, and Exhibit 10. They all died in the Holocaust. Inasmuch as Dr. Weiss was born in 1949, it is really quite remarkable (not to mention disingenuous) that Generali continues to evade Dr. Weiss's simple, clear inquiries under the guise of a request for "additional information."

Similarly, Generali's request for more information about Charlotte Neumann Weiss and Emil Roth is unreasonable. Charlotte Neuman Weiss was Dr. Weiss's mother; she survived the Holocaust. See Complaint, Paragraphs 52, 53. Her first husband was Emil Roth, who died in the Holocaust. See Complaint, Paragraph 41. Prior to her death, Charlotte Nuemann Weiss was Emil Roth's rightful heir, if he had any inheritable property. Dr. Weiss is her legal heir today.

Mr. Kenneth Bialkin and Mr. Franklin Veile

September 17, 2001

Page 4

In addition, you request "additional information" about David Birnbaum. David Birnbaum was the brother of Mr. Joseph Birnbaum, the father of my clients Marth Birnbaum Younger and Erna Birnbaum Gottesman. The Plaintiffs' relationship to Joseph Birnbaum is spelled out in Paragraphs 62-66 of the Complaint. We learned about Mr. David Birnbaum after the Complaint was filed. However, my clients are sure (1) he was a general agent employed by Generali, and (2) he died in the Holocaust. Therefore, it would be unreasonable to require "additional information" of the kind mentioned in Mr. Veile's letter. We demand the policies and associated information be produced, forthwith.

Demand for Information Concerning Agent Schreiber. As noted in paragraphs 30 and 59 of the Weiss Complaint, Paul Phillip Weiss informed Dr. Weiss during his lifetime that he purchased his Generali policies from an agent named Joseph Schreiber. We have independently confirmed that Mr. Schreiber indeed was an agent who produced substantial business for Generali during this period of time. We hereby request *all* information in Generali's possession relating to each and every policy sold by Mr. Joseph Schreiber, on behalf of Assicurazioni Generali, S.p.A., or any affiliate, parent, or subsidiary thereof, in the region that included Nod Sevlus (Sevlus) and Munkac, as well as all other regions. This request includes all commission statements or schedules relating to transactions in which Mr. Schreiber served as agent for Generali (or any affiliate, parent, or subsidiary).

Policies Issued to Weiss and Birnbaum Family by Generali Affiliates. Dr. Weiss's demands for Generali policies extends (and has for several years extended) to policies issued by Generali's affiliates, parents, or subsidiaries to Paul Philip Weiss, Joseph Birnbaum, or their family members as described above. For example, inasmuch as Mr. Weiss was known as a "volksdeutsch" due to his German schooling, it is possible that he purchased policies from Generali subsidiaries Deutscher Lloyd Lebensversicherung, or Deutscher Lloyd Versicherung that remain unpaid. See paragraph 59 of the Weiss Complaint.

We are, of course, well aware that the information published on the ICHEIC website does not include information from Generali subsidiaries such as Deutscher Lloyd Lebensversicherung, or Deutscher Lloyd Versicherung. Nevertheless, we regard those obligations, if they exist, to be binding on Generali today. Therefore, please supply me with all information relating to any policies issued to Paul Philip Weiss (or Fulop Weisz, or any other spelling permutation), Joseph Birnbaum, and all family members as outlined above.

Moldavia Generali. With respect to Moldavia Generali, we are pleased that someone has finally acknowledged a representation of that company. The policy under which my clients claim was attached to the complaint as Exhibit 4. Previously, Generali's lawyer M. Scott Vayer stated: "As you know, I represent Assicurazioni Generali, S.p.A. of Trieste, Italy. I do not represent Moldavia-Generali." See Letter of October 26, 1998, attached to Complaint as Exhibit 14. The policy in question, attached to the Complaint as Exhibit 4, was issued to Mr. Joseph Birnbaum. We demand the contents of the company's entire file concerning this policy.

Mr. Kenneth Bialkin and Mr. Franklin Veile

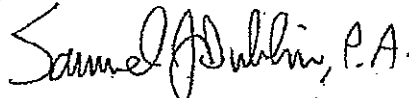
September 17, 2001

Page 5

Generali's Change in Character and Ownership. As a final matter, we understand the very real possibility that the Assicurazioni Generali, S.p.A. which sold Paul Philip Weiss, Joseph Birnbaum, and other family members various insurance policies and products in the 1920s and 1930s, may have undergone a dramatic change in ownership and character as a result of the removal of its Jewish owners and managers during World War II. Perhaps the fact that the Jewish owners and executives were no longer part of the company after the War accounts for its remarkable and deplorable repudiation of its obligations to the thousands of European Jews who had previously been the backbone of its clientele. This is an issue which has not received a great deal of attention to date, but which will undoubtedly be explored in the near future. Needless to say, such a transformation does not justify a company's abandonment of its customers, especially considering the trust and dependence inherent in the relationship.

Please contact me at (305) 357-9004 to discuss these matters at your earliest convenience. I suggest that we meet in person to address the Weiss and Birnbaum family policies as a matter of urgency.

Sincerely,



Samuel J. Dubbin, P.A.

FROM :

FAX NO. : 385 9358947

May. 07 2007 11:00AM P5

5

does not apply to Mr Joseph Karlhara's life insurance as the surrender value was paid and the policy was compensated in the course of compensation proceedings.

We hope you will understand that we cannot comply with your wish for further settlement.

All applicants have the possibility to appeal against the decision of the insurance company. The appeal has to be sent to the Appeals Panel established by ICHEIC and the German Foundation "Remembrance, Responsibility and Future" within 120 days after receipt of the German insurance company's decision. It has to be submitted on the enclosed form and include an explanation why the applicant believes the claim has been wrongfully decided. Please send the form to the Appeals Panel. The address of the Appeals Panel can be found in the form.

The decision of the Appeals Panel is final.

A copy of this letter was sent to the International Commission. Another copy was sent to the German Foundation "Remembrance, Responsibility and Future" which, since October 2002, has been involved in the settlement of outstanding insurance claims of victims of the Holocaust.

We will gladly be at your disposal for any question you may have.

Yours sincerely

I. A. Jol

Enclosures

**THE STATUS OF INSURANCE RESTITUTION FOR
HOLOCAUST VICTIMS AND THEIR HEIRS**

HEARING

BEFORE THE

COMMITTEE ON

GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

NOVEMBER 8, 2001

Serial No. 107-47

Mr. SHAYS. Well, I want to thank the patience of our witnesses and just say that in speaking with other members, it's a very important issue and members did want to address it before you spoke.

We will now hear testimony from the first panel which includes Dr. Jack Brauns, Israel Arbeiter, Arthur Faulk, and Daniel Kadden. And I would ask that you stand and we administer the oath as we do in this committee, and then we will hear the testimony. If you will stand and raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. Just note for the record that we have sworn in all of our witnesses. The only one who has never been sworn in, and chickened out, was Senator Byrd.

We will start with Dr. Brauns.

STATEMENTS OF DR. JACK BRAUNS, COVINA, CA; MR. ISRAEL ARBEITER, NEWTON, MA; MR. ARTHUR FALK, BOCA RATON, FL; AND MR. DANNY KADDEN, OLYMPIA, WA

Mr. BRAUNS. Thank you very much for inviting me. I'd like to take the opportunity of giving you the mosaic of the situation of my tragedy, and I would also ask you to give me 2 extra minutes. I time myself and—

Mr. SHAYS. Well, we'll hit the clock and then we will roll it over for 2 extra minutes.

Mr. BRAUNS. OK. Thank you very much. Now, the mosaic of life in 1930, Europe was already in turmoil and most of the parents tried to do one thing: to get an insurance for the education of their children because this was extremely important, and my father was not a pioneer. There were many other people who turned to insurance companies. This was the only way of providing, the funds for the education of the children. So my father turned to Riga Insurance Co. and Assicurazioni Generali. Why Assicurazioni Generali? Assicurazioni Generali was one of the biggest companies in Europe and they enticed people with two items. The first item, that the premiums have to be paid in dollars. That was the requirement, to have the maturity of the insurance to be paid in dollars, and my father got this special permission of the Lithuanian—where I was born, I'm Lithuanian by birth—to get a special permission to obtain dollars to pay the insurance company.

The second enticement was that during the war the premiums didn't have to be paid. They kind of abolished the premiums to be paid during the war. So the premiums were paid until 1940, when the Russians came and occupied Lithuania. That was a year after the war already started. The war started in 1939. So the premiums were paid. This enticement in the insurance that I know that I had was for my education. Nobody had to die. I didn't need a death certificate.

Now, I was liberated after 4 years of concentration camps. I was liberated in Dachau on April 29, 1945, by the Third American Army. My father went back to Lithuania to look for my mother and my brother. He found my mother and my brother was unfortunately killed in Stuttgart Concentration Camp.

Before he went to look for my mother, my father told me "Go to Italy. Your education is paid in Italy." And it was a very difficult time after the war to go to Italy. We had to go to Hungary, and

then we had to go to Austria and cross the border. It was a nightmare, but I got to Italy and I enrolled in the University of Medicine at the University of Torino, Faculty of Medicine. The problem was my whole income was \$10 which was given by UNRA, United Nations Refugee Administration. And this \$10 I learned to live on, but it was not enough as soon as I joined the faculty of medicine.

In the policy—and I'm one of the fortunate. I have the policy with me here, I will show you a little later. At that time I didn't have the policy. My father went back to Lithuania and he—it was buried, and fortunately he found it and it had only the number 332, and with this number I went to Rome and visited the Assicurazioni Generali headquarters on Piazza Venetia. When I got there, they looked at the number and said, "Well, we will look at it. Give us your address, you're studying in Italy. We will contact you as soon as we found out." I never heard from them.

In 1960 I was very fortunate that Vice President Nixon gave a letter to Mrs. Kruschew to let my parents out of Lithuania. Maybe some of you know, maybe you don't. And in 1960 my parents were the only people who left Lithuania. And my father and mother came to live with us in California. He brought with him the original policy. So I'm fortunate that he had the foresight to bury it and that it wasn't found by people who were trying to look for peoples buried things in the ghetto.

Well, in 1960, I went back to Italy, I went again to the Assicurazioni Generali the original policy. They looked at it. They were very excited to see it. The policy was issued in Trieste and has a stamp of Trieste—I mean the original was issued in Trieste. They shook their head. They took my address in California. I never heard from them.

Then I was very fortunate that Rabbi Cooper, the dean of the Weisenthal Center in Los Angeles, went to Trieste and I asked him personally to stop at the headquarters of Trieste. He's a good friend of mine and he did it. He went down and he presented them a copy of the original. He didn't want to take the original. And they shook their head and said they will contact us. Well, 2 years later, we didn't hear anything. Two years later, I got the letter from ICHEIC, and this is the biggest tragedy. You're talking about ICHEIC. In the policy—and you will read it, how it's written, not only in numbers but only spell them out. It's only a \$2,000 policy. That was the money that they were supposed to pay me.

Now, I want to tell you that I was starving in Italy as a student because \$10 was not enough for me. So the money that I had to substitute for books and other things came from my food. And after 4 years of camps, it was not a big pleasure to cut the amount of food that was available to me. But anyhow, Rabbi Cooper went, and 2 years later I got a letter from ICHEIC with a big explanation.

Please help me to understand the letter. It says that my policy basically is worth nothing because it was written in Lats, which is Latvian money, and Lith, Lithuanian money; but they haven't read my policy, because I would like you to read it today and see what it says. My conclusion is that ICHEIC never read my letter and made a judgment somehow saying—and they offered \$5,000, said that would be enough because it's worth nothing. And I didn't even

get it, Rabbi Cooper got it. Anyhow, the maturity in the policy is written and we will see it, that on September 25, 1945, the policy is mature, and the value of \$2,000 will be paid in dollars. See, the Italian company is counting on not to have a lawsuit. I have lived in Italy for 6 years and I got to know a lot of very important people.

And just to make an answer to the comment that I heard before at Generali's headquarters which is in Trieste. They have a building for records. There were no floods there, no earthquakes, and no fires. And I was told by a very close friend of mine, the director of Generali who just finished his duty of being director 2 years ago, not one document is missing. Why did they deny me when I was so hungry? I mean, \$10; I mean, it's hard for you to understand to live on \$10 and go to school. But I finished. In spite of that, I finished by determination. Maybe later I'll give you more answers if you ask me, but anyhow—

Mr. SHAYS. Let me just encourage you to kind of wrap up because we're almost going into 10 minutes.

Mr. BRAUNS. Yeah. What I'm asking is ICHEIC has interfered in my lawsuit. I filed a lawsuit, and I cannot pursue it because ICHEIC said it would interfere in the commerce between Italy and United States. And the insurance company broke the trust that my father took on himself. He trusted them. He's not the only one, and this is a big trust breaking by an insurance company.

In my family alone, there were four physicians and two doctors in chemistry. I know they had insurance, but I cannot prove it. With my parting from this world, the insurance company is the winner. They have never released the name, and they engaged in fraud. What did they do in fraud? Because they gave the list to Yad Vashem and Yad Vashem, a clause that says—they had to find the Jewish names, but they couldn't release the names because they paid them for the contract. The contract says you cannot release the names. So they go around and say, well, we gave the names to Yad Vashem. But you call up Yad Vashem now, they say, yes, we have the names but we cannot release in the contract.

So I beg you not to interfere in the lawsuit. Let me sue them. And the reason they're afraid from a lawsuit because Generali has just applied and has gotten from them, Italian Government, the funds for retirement that they administer, and they didn't want any lawsuit or any negative feelings. And I feel that ICHEIC has contributed for them achieving something which is fraud.

And I want to say one more thing. My father said a woman can either be pregnant or not. There is nothing in between. And the same thing goes with honesty. Either you're honest or you're not honest. You cannot be honest in the morning and dishonest at night or vice versa. Thank you very much.

Mr. SHAYS. Thank you very much, Dr. Brauns.

Mr. BRAUNS. I will be glad to answer any questions.

Mr. SHAYS. And I think you will have an opportunity to make any other point you wish. The committee really values your testimony and—

Mr. BRAUNS. I did it in 5 minutes.

Mr. SHAYS. No, you did it in 10. And I was thinking you did a perfect job, and we were delighted to hear from you.

ASSICURAZIONI GENERALI

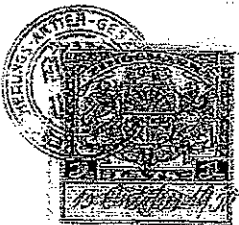
TRIESTE

MDCCCXXXI

Zu dem zwischen Herrn (Name) Dr.med. NOISEJUS BRAUNAS _____
wohnhaft in Kaunas, _____ und der
RIGAER UNION VERSICHERUNGS-AKTIEN-GESELLSCHAFT in RIGA abgeschlossenen
und mit Polizze Nr. 332 _____ bezeichneten Lebensversicherungsvertrage über
U.S.A.Doll.Sch.W.Y.2000. in Worten U.S.A.Dollars Scheds New York Zweitausend _____
bestätigen wir hiedurch, dass wir für die Erfüllung sämtlicher Verbindlichkeiten, die sich aus
dem Vertrage für die obengenannte Gesellschaft ergeben, die volle Haftung übernehmen.
Zugleich verpflichten wir uns auch für den Fall, dass infolge politischer Ereignisse oder einer
vis major die RIGAER UNION VERSICHERUNGS-AKTIEN-GESELLSCHAFT nicht mehr die
Möglichkeit bzw. die Pflicht haben sollte, ihren Verbindlichkeiten aus dem Versicherungs-
vertrage nachzukommen, diese Verbindlichkeiten in ihrer Gesamtheit zu erfüllen, voraus-
gesetzt dass der Versicherungsnehmer in solchem Falle die fälligen Prämien der Assicura-
zioni Generali direkt abgeführt hat.

Trieste, den 8. Oktober 1930.

ASSICURAZIONI GENERALI



Mary C. Flanner
Robert W. Stack*
Thomas R. Fahl
Elizabeth Bagley

Therese A. Flanner
Legal Assistant
Jeanne E. Jablonowski
Legal Assistant

Flanner, Stack, Fahl & Bagley, LLP

Attorneys and Counselors at Law

Suite 230, Squires I – 16535 W. Bluemound Road, Brookfield, WI 53005
Telephone: 262-754-3700 • Facsimile: 262-754-3731

**Also Admitted in Tennessee*

tfahl@fsflaw.com

May 1, 2008

URGENT

Sent via facsimile – 202-224-2725

Honorable Russell Feingold
506 Hart Senate Office Building
Washington, DC 20510-4904

RE: Senate Subcommittee on International Operations and Organizations, Democracy
and Human Rights

Dear Senator Feingold:

I represent the Estate of David David whose family includes Holocaust survivors. Mr. David's widow and children are your constituents. Mr. David passed away in 2004. His great uncle, Aron Sanel Schapira, was his maternal grandmother's brother. Mr. Schapira lived in what at the time was Poland but is now a part of the Ukraine Republic. Mr. Schapira ran a business and so had purchased insurance to protect both his business and his family. The insurance was purchased from the Italian insurance company Assicurazioni Generali S.p.A. ("Generali"). Mr. David's children are the only known surviving members of this family. Many of the others perished in the Holocaust.

In the mid 1990s, when the area where he grew up became safe for travel by Jews, Mr. David travelled to the area of his birth and the place where Mr. Schapira had lived. Through a person he knew in that area, Mr. David learned that his great uncle kept several valuables stored in the walls of the house where he had lived. Storage in this fashion was common at that time and place. The house was still standing and occupied when Mr. David visited and so, Mr. David asked his acquaintance to retrieve his great uncle's items. The items retrieved included a life insurance policy that Mr. Schapira had purchased in 1920. The terms of the policy provide for the payment of benefits to the bearer of the policy and Mr. David and his family are in possession of it.

Mr. David knows that his great uncle was alive at the outbreak of World War II.

Efforts by Mr. David to file a claim for benefits proved futile even though every effort was made to collect what was due after the catastrophe suffered by his family. His contacts with Generali proved futile.

May 1, 2008
Honorable Russell Feingold
Page 2

Mr. David then filed a claim with the International Commission for Holocaust Era Insurance Claims (ICHEIC) on March 20, 2001. Notwithstanding ICHEIC's rules to respond within ninety (90) days, ICHEIC response was dated December 22, 2006 offering him \$1,000.00. Generali also responded to him by letter dated May 25, 2005 and denied the claim because it claimed the policy left its portfolio prior to 1936.

Mr. David then decided to pursue his rights in court but the courts have said that non-official executive branch statement of interest revoked his access to U.S. Courts. As one who was personally touched by the Holocaust, he was mystified and hurt to witness how the American justice system came to such a confusing and illogical result. It is a sad day for American justice for Mr. David to have passed away during this fight of his for simple justice. We believe the District Court is wrong and are pursuing the claim of the David family in the Second Circuit Court of Appeals.

There is now legislation pending in Congress that will remove all doubt and require that insurers who sold policies to Jews before WWII open their records and be accountable in U.S. Courts for failing to honor the policies of Holocaust victims. This is no small problem. Over 800,000 life insurance policies of European Jews were in force at the beginning of WWII with an unpaid value today of **\$17 billion**. In fact after nine years ICHEIC has only succeeded in paying a tiny fraction of the total. It paid fewer than 15,000 policies, and less than 3% of the value (\$260 million). However well-intended the process, it failed.

Next week the Senate Subcommittee on International Operations and Organizations, Democracy and Human Rights of the Senate Foreign Relations Committee will hold a hearing on the Holocaust insurance situation. I am writing to ask that you take an active role in assisting Holocaust survivors recover what the courts have inexplicably denied them – the basic right to sue an insurance company doing business in this country that failed to honor an insurance policy it indisputably sold to the victims of the Holocaust. Although Mr. David does not know when Aron Schapira died or the circumstances of his death, he does know that he was alive at the outbreak of World War II. This is when Mr. David left his home and began his journey to America.

I also am asking that you sponsor and seek immediate passage of Senate legislation mirroring HR 1746, the Holocaust Insurance Accountability Act of 2007, introduced by Congresswoman Ileana Ros-Lehtinen and Congressman Robert Wexler. There are several dozen co-sponsors in the House, and it passed the House Foreign Affairs Committee on unanimous consent at the behest of the late Chairman Tom Lantos.

The bill would allow survivors and heirs to bring an action in the U.S. Courts against insurers who fail to honor a policy issued before the Holocaust. The courts so far have held that Executive Branch statements supporting ICHEIC preclude U.S. citizens such as Mr. David from being able to sue an insurance company that took advantage of the Holocaust to keep money paid

May 1, 2008
Honorable Russell Feingold
Page 3

by Mr. David's family member in good faith prior to WWII. This is shocking enough, but the courts have also sited the fact that so far Congress has been silent on the question. So this is Congress's chance to define Holocaust survivors' rights to make claims in court against the insurers in question. We cannot believe that our elected representatives would accept such a denial of rights to a class of citizens – any citizens but certainly not Holocaust survivors - who only want the companies to pay what they owe.

HR 1746 will also require insurers doing business in the U.S. who sold policies in pre-war Europe to publish its policyholders' names from that period. Unfortunately, ICHEIC's publication of names was voluntary, and woefully incomplete. As an example the name of Aron Sanel Shapira does not appear on any list of policy holders supplied by Generali. Only the name "A Schapira" appears notwithstanding that Generali has this man's full name. Less than 20% of the names of policy owners from Eastern Europe were published. Full disclosure, under a legal requirement, is a must so all families can learn about their families' rights.

How can Congress stand by silently in the face of this result when we hear so much rhetoric about learning the lessons of the Holocaust? Why should the corporations who profited from that great crime, who do business in the U.S. today, be allowed to retain this unjust enrichment? It is time for all institutions including Congress to hold the insurers accountable for their profiteering in the Holocaust.

The David family and I look forward to working with you and your office on this issue.

Sincerely,

Thomas R. Fahl

cc: Edward N. David
Special Administrator of the Estate of David David
4003 N. Downer Avenue
Milwaukee, WI 53211-2127



GENERALI
Assicurazioni Generali S.p.A.

Direzione Centrale
Policy Information Center

Mr. DAVID DAVID
c/o Mr. THOMAS FAHL
DENNY & YANISCH LAW OFFICES
13500 Watertown Plank Rd., PO Box 683
ELM GROVE, WI 53122
UNITED STATES

Trieste,
dm No. 1219/PIC

Re: Your ICHEIC claim no. 16209
Life Insurance policy no. 529.060 of Aron Sanel Schapira

Dear Mr. David,

We wish to inform you that we have received and reviewed the above application that you submitted to the International Commission on Holocaust Era Insurance Claims (ICHEIC).

However, as this application concerns life policy no. 529.060, issued by the Polish branch of Assicurazioni Generali to Aron Sanel Schapira, we wish to stress that all information available regarding this policy has already been provided and explained in full in our prior correspondence. That is, policy no. 529.060 left our Polish portfolio before 1936, i.e. before the Holocaust era as defined by the International Commission. Consequently, we regret to inform you that it does not qualify for any payment according to final ICHEIC guidelines.

We wish to point out that our historical records (i.e. both policy copies and relevant accounting records) have been audited by two outside firms, one of which was appointed by and reported directly to the International Commission. On the basis of this examination, our records have been deemed complete and correct and our Company has been declared compliant with all ICHEIC claims processing rules and standards.

Please be advised that if you do not agree with our final decision you are entitled to file an appeal via the International Commission. We have enclosed the *Appeals Tribunal - Guide to the Rules of the Procedure*, which provides an overview of the ICHEIC Appeals Process, as well as an Appeals Submission Agreement (ASA). If you choose to file an appeal, the ASA must be signed within 120 days of receiving this letter, and sent to the following address, together with a written statement with the reason(s) for your appeal:

Direzione Centrale - Trieste, piazza Duca degli Abruzzi, 2 - cap. 34132 - c.p. 538 - tel.: 040 671 111 - teleg.: Generali Trieste - fax 040 671600
sito Internet: www.generali.com - per indirizzi e-mail: www.generali.com/contact.html



Società costituita nel 1831 a Trieste - capitale sociale € 1.275.999.458,00 int. vers. - Sede Legale in Trieste
Codice fiscale e Registro Imprese 00077700320



GENERALI
Assicurazioni Generali S.p.A.

ICHEIC Appeals Office
PO Box 18230
London
EC1N 2XA
Great Britain

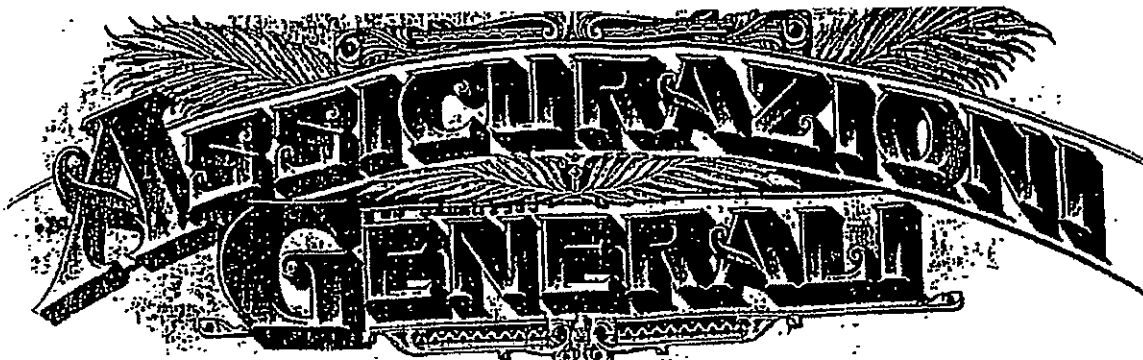
We wish to stress that all correspondence you submit regarding your appeal, and/ or any questions related to the appeals process, must be directed to the ICHEIC Appeals Office at this address.

Yours faithfully,

ASSICURAZIONI GENERALI

Encl.

cc: ICHEIC



TRIEST

ERRICHTET IM JAHRE 1891

G. A. L. E. H. B. E. R. O.
P. N. 438550

Versicherungsurkunde

Nr. 524100

Tabelle: 17
Alter und Dauer: 29/20

über folgenden auf Grund des Antrages d. Csorkow, den 1. Mai 1920 und der sonstigen schriftlichen Erklärungen des Versicherungsnehmers und des Versicherten abgeschlossenen Versicherungsvertrag auf das Leben des Herrn Aron Sanel (Sanie) S O H A P I R A, Kaufmannes in Mielno, geboren laut Angabe in Ugie biskupie am 28. Februar 1891.

Die ASSICURAZIONI GENERALI verpflichtet sich unter den in dieser Urkunde enthaltenen allgemeinen und besonderen Versicherungs-Bedingungen die Summe von polnischen Mark F U N F H U N D E R T A U S E N D (50,000.-) auszuzahlen und zwar sofort beim Ableben des Versicherten an den Überbringer dieser Versicherungsurkunde oder spätestens am 5. Juni 1940 (vierzig) an den Versicherten selbst, wenn er diesen Tag erlebt.

Für diese Versicherung ist eine ganz jährliche Prämie von polnischen Mark Z W E I A U S E N D H U N D E R T Z E H N (2,510.-) nebst staatl. Gebühr zu leisten, zahlbar am 5. Juni eines jeden Jahres, solange der Versicherte lebt, längstens jedoch 20 Jahre hindurch. Nach Ablauf des dritten Versicherungsjahres nehmen die Prämien nach Maßgabe des umstehenden Nachtrages ab.

Die Versicherung beginnt, unbeschadet der Bestimmung des § 2 der allgemeinen Versicherungsbedingungen, am 5. Juni 1920 mittags 12 Uhr.

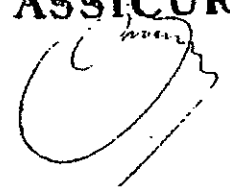
Als Versicherungsnehmer wird Herr Aron Sanel (Sanie) S O H A P I R A, wohnhaft in Mielno von der Gesellschaft anerkannt. Auf gegenseitige Versicherung finden auch die beigegebenen "Ergänzende Bedingungen für die Erhebung von der Prämienzahlung im Invaliditätsfalle" Anwendung. (siehe Anhang N. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20).

Prämie bis 5. Juni 1921	poln. M. 2,510.-
Einmalige Gebühr	100.-
Staatl. Gebühr	55.20
Zusammen bar bezahlt	poln. M. 2,715.20

TRIEST, am 31. Mai 1920

ASSICURAZIONI GENERALI

Handwritten signature
ASSICURAZIONI GENERALI



Handwritten signature

P.O. BOX 4037
BUFFALO, NY 14240-4037

Ordered By:

INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS

Beneficiary:

DAVID DAVID

000636-01/01-27462 US00870220081226-8AU00048528C0001

DAVID DAVID
3958 NORTH PROSPECT AVENUE
MILWAUKEE WI 53211
UNITED STATES OF AMERICA

CLIENT ID: 27462
REF. NUMBER: 8AU00046636C0001
ISSUE DATE: DECEMBER 28, 2006
CHECK NUMBER: 034676952
AMOUNT DUE: USD ***** 1,000.00

We are writing in regard to your claim(s) submitted to the ICHEIC and are pleased to offer you an award under ICHEIC's humanitarian process. ICHEIC has been unable to match your claim(s) to any insurance company or archival records to date. However, you provided information that enabled ICHEIC to conclude that the individual(s) named in your claim possibly held some form of insurance. As a result, ICHEIC would like to acknowledge this likelihood with a humanitarian award. Recognizing that some claims cannot be established due to the ravages of war and the passage of time, ICHEIC established a broader, "humanitarian" award category, under which you have been determined eligible to receive a payment. Although you are receiving this award now, we will continue our efforts to identify unpaid or uncompensated policies, and, although unlikely, if we match your information with a named company policy, we will be in touch. We fully recognize that no amount of money could compensate for the suffering and injustices of the Holocaust. Nonetheless, we sincerely hope that you will regard this as a small acknowledgement of those injustices.

ICHEIC

CHECK NUMBER: 034676952
CLIENT ID: 27462

CHECK DATE: DECEMBER 28, 2006

Pay to the order of: DAVID DAVID

USD ***** 1,000.00

OR ORDER

THE SUM OF ONE THOUSAND AND 00/100 U.S. DOLLAR

Payable at CITIBANK N.A.
THROUGH CITIBANK (NEW YORK STATE)
ABA 0220 00868

For: Citibank Europe plc

AUTHORIZED SIGNATURE

034676952 022000868

99 27462

EXHIBIT 7

Der Oberfinanzpräsident Berlin-Brandenburg

— Außenstelle —

Berlin C 2,

Neue Königstraße 61/64

1. Vermerk: Es ist anzunehmen, daß der Jude Heymann Hermann seine deutsche Staatsangehörigkeit auf Grund der 11. Verordnung zum Reichsbürgergesetz vom 25. November 1941 verloren und die Staatsangehörigkeit eines feindl. Landes nicht erworben hat; sein Vermögen ist deshalb voraussichtlich dem Reich verfallen. Weitere Bearbeitung unterbleibt gem. Amtsverfügung 6/42 vom 3. Juli 1942.
2. Laufzettel betr. Juden (zu 188548 - 61)

Erfuchende Stelle	Datum	Erfuchte Stelle	Erfuchen	Erledigungsvermerk	Datum
Platz		Kartei	Gegen weitere Anmeldungen vor?	<i>19.2.43</i>	<i>19.2.43</i>
Kartei	<i>15.2.43</i>	Regist.	Erfuchen zur Beifügung		
Regist.	<i>18.2.43</i>	Platz	Entscheidung ob beigelegte Bogen Judenbogen sind		
Platz		Kartei	Vermerk auf Karteikarten	<i>19.2.43</i>	<i>19.2.43</i>
Kartei		Statist.	Abhebung der erfaßten Beiträge		
Statist.	<i>19.2.43</i>	Regist.	Ablegung der Bogen gem. Amtsverfügung 6/42		

Im Auftrag

(Sachbearbeiter)

19.2.43

3. *3.2.43*

Allgemeine Assekuranz

(Assicurazioni Generali)

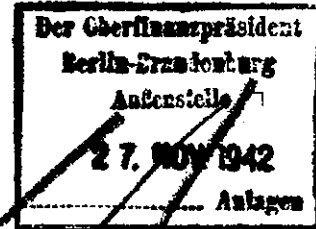
Gegründet 1831.

Direktion
für das Deutsche Reich:
Wien 1, Bauernmarkt 2.

Telegramme: 17295-20
Generale Wien. Ruf: 17245-70

An den

Herrn Oberfinanzpräsidenten Berlin-Brandenburg
Aussenstelle,



B e r l i n C 2, Neue Königstrasse 61/64

Bei Abwesenheit gef. anzuführen:

M. Best.-Verw. EN/k

Wien, am 23. November 1942.

Ihr Zch.: 188 518 G
Betrifft: Pol. Nr. 574534 - Hermann Heymann, früher Brüssel.

Auf Ihre Anfrage vom 6. v. Mts. teilen wir Ihnen wunschgemäß fol-

gendes mit:

- 1.) Zeitiger Aufenthalt des Berechtigten (Versicherungsnehmer) unbekannt, zuletzt wohnte der Versicherte in Paris oder Brüssel ohne nähere Adresse,
- 2.) letzte Wohnung im Inland ~~X~~ Berlin, Grunewald, Danckerstr. 19,
- 3.) Staatsangehörigkeit des Berechtigten im Zeitpunkte seiner Auswanderung: unbekannt,
- 4.) heutige Staatsangehörigkeit unbekannt,
- 5.) der Berechtigte (Versicherungsnehmer) ist Jude,
- 6.) die Anmeldung als feindliches Vermögen erfolgt in der Annahme, dass Belgien Feindesland sei.

Auf Grund Ihrer jetzigen Ausführungen nehmen wir zur Kenntnis,
dass die Versicherung nicht anzumelden war.

Handwritten signature: Hermann Heymann

Heil Hitler!
ALLGEMEINE ASSEKURANZ
(ASSICURAZIONI GENERALI)
Direktion für das Deutsche Reich

Handwritten signature: Kurt...

Der Oberfinanzpräsident Berlin-Brandenburg

— Außenstelle —

PIKV 188 518 81-85

Berlin C 2, 9. Dez.
Neue Königstraße 61/64

194 2

B f g.

1. An Polizei Einwohnermeldeamt (Einwohnermeldeamt)

Finanzamt

in

Berlin

Anmeldung feindlichen Vermögens.

Der Herrmann Heymann

hat zuletzt

Berlin Grisevald

Lünkersh. 19

gewohnt. Es wird um Feststellung und Mitteilung gebeten, wohin

der Genannte ausgewandert ist. Soweit dort bekannt, bitte ich um folgende Angaben:

1. Jegige Anschrift,
2. Geburtstag und Geburtsort,
3. Staatsangehörigkeit (der früheren und der jetzigen),
4. Ist der Genannte Jude?

2. Folg. 20.1.1943

Mit Nachtrag vom 18.12.42

und Nachtrag verpflegt.

Die Registratur.

28.12.42

3. H.

- 8. Dez. 1942

P1 8b

C/2340. DGB. 381/42.

4/12
42
lin.

Das Gefüge ist seit 1. 2. 37 von Berlin,
 Landesregierung 19 voll Winter nach Paris
 abgemindert. Hauptausg. v. R. vergründet.
 Jntu.

12. 12. 42
 Das Einwohner-Meldeamt
 der Polizeidirektion

St. Helmen

Der Oberbürgermeister Berlin-Brandenburg Außenstelle 18. DEZ 1942 Anlagen

1/2. Vg.
 1/2 1/4/14

Anmeldebogen C1

Ausfällen von Schulden im Inland, die im Ausland befälligen, haben eine Leistung schulden. — § 5 der Anmeldeverordnung —
Auf Anmeldebogen C1 sind anzumelden: Verpflichtungen aus dem Warenverkehr und dem Kapitalverkehr, Hypotheken- und Grundschulden sowie Verpflichtungen aus Versicherungsverträgen.

Verpflichtungen betreffend gewerbliche Schutzrechte und Urheberrechte, Verpflichtungen zu wiederkehrenden Leistungen, sonstige Verpflichtungen (vgl. Anleitung D. IV. 2. c) sowie Verpflichtungen zu Leistungen, die nicht auf Geld lauten, sind nicht auf diesem Anmeldebogen, sondern auf Anmeldebogen C2 anzumelden.

1. Name (Surname und Vorname)

Firma

Wohnort oder Niederlassung

Staatsangehörigkeit

des feindlichen

Gläubigers

(vgl. Anleitung C.)

unbekannt

unbekannt

2. Name (Surname und Vorname)

Firma

Wohnort oder Niederlassung

Staatsangehörigkeit

des Anmelde-

pflichtigen

(vgl. Anleitung B.)

Assicurazioni Generali

Wien I., Bauernmarkt 2.

Ich schulde — wir schulden — die oben unter 2. bezeichnete Firma (schuldet — den oben unter 1. Bezeichneten — der oben unter 1. Bezeichneten) — folgende Beträge oder sonstige Leistungen (vgl. Anleitung D. IV. 1.).

Art der Schuld (z. B. Kontokorrentschuld, Darlehensschuld, Hypothekenschuld)	Wann ist die Schuld entstanden?		Wett der Schuld (nach Abzug getilgter Beträge)		Zins- satz ¹⁾	Fälligkeit oder ver- tragliche Laufzeit ²⁾	Bemerkungen
	a) vor dem 3. 9. 39 entstanden: ja oder nein?	b) falls am 3. 9. 39 oder später entstanden, Angabe des Zeitpunktes	a) in der ge- schuldeten Währung	b) in R.M.			
1	2a	2b	3a	3b	4	5	6
Versicherungsschuld	ja			115.47	zins- los	Er- und Ableben	
<div>2. Erfassung</div> <div>entfällt</div> <div>1. Vorberatung</div> <div>2. Anmeldebogen 2 und 3</div> <div>an d. S. M. am</div> <div>X Kartei Hg.</div> <div>X Statistik</div> <div>Statist. erfasst d. Hg.</div> <div>25. 9. 40</div> <div>Statistik absetzen</div>							

¹⁾ In den Zinssatz sind auch etwaige regelmäßig zu zahlende Verzugszinsen, Verzugsstrafen, Provisionen, Gebühren usw. einzubeziehen. Zinslose Verpflichtungen sind in der Spalte »Zinssatz« als »zinslos« zu bezeichnen.

²⁾ Bei Festzeithypotheken ist der Zeitpunkt anzugeben, an dem die Rückzahlung frühestens verlangt werden kann, bei Kündigungshypotheken ohne feste Mindestlaufzeit ist die Kündigungsfrist anzugeben. — Falls Tilgungsraten vereinbart sind, so ist ihr Betrag und ihre Fälligkeit anzugeben.

Ich versichere, daß ich die Angaben nach bestem Wissen und Gewissen gemacht, insbesondere die geschuldeten Beträge und sonstigen Leistungen richtig und vollständig angegeben habe.

Wien 12. September 1940

Assicurazioni Generali
Direktion für Oesterreich

BAP

(Unterschrift des Anmeldepflichtigen)

Anmeldungen ohne Unterschrift gelten als nicht abgegeben.

Allgemeine Assekuranz

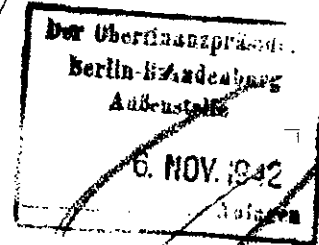
(Assicurazioni Generali)

Gegründet 1831.

Direktion
für das Deutsche Reich:
Wien 1, Bauernmarkt 2.

An den

Herrn Oberfinanzpräsidenten Berlin-Brandenburg,
Aussenstelle,



Telegramme: Ref: 1.2.95.20
Generale Wien Ref: 1.2.45.70

BERLIN C 2, Neue Königstr. 61/64

Bei Antworten ggf. anzuführen:

All Best.-Verw. EN/k

Wien, am 3. November 1942.

Ihre Zahl: M KFY 188 590 C 1
Betrifft: polizze Nr. 573335 - S. Barchasch

Auf Ihre Anfrage vom 9. IX. 1. J. teilen wir Ihnen mit, dass
uns der jetzige Wohnsitz des Ugenannten nicht bekannt ist.

Auch ist uns die Staatsangehörigkeit des S. Barchasch, der
Nichtarier ist, unbekannt. Seine letzte inländische Wohnungsanschrift war laut
unseren Aufzeichnungen: Leipzig C 1, Auenstrasse Nr. 23.

Heil Hitler!
ALLGEMEINE ASSEKURANZ
(ASSICURAZIONI GENERALI)
Direktion für das Deutsche Reich

EXHIBIT 8



HOLOCAUST SURVIVORS' FOUNDATION – USA

December 4, 2008

The Honorable Klaus Scharioth
Ambassador of the Federal Republic of Germany
4645 Reservoir Road N.W.
Washington, DC 20007

Facsimile No. 202-298-4270

Dear Ambassador Scharioth:

We are Holocaust survivors, and members of the executive committee of the Holocaust Survivors Foundation USA, Inc. (HSF), which includes elected leaders of groups throughout the U.S. representing thousands of survivors. We came together nearly a decade ago because we were alarmed about the growing poverty and deprivation among our fellow survivors that was being ignored by government and Jewish leaders, and about the failure of the "restitution" establishment to deliver the oft-stated but not delivered "measure of justice."

Our leaders have met with representatives of the Embassy on several occasions, in Washington, Miami, Boca Raton, Boston, and elsewhere, to discuss these subjects.

As you are undoubtedly aware, HSF has been in the forefront of the effort to raise awareness about the problem of survivor poverty and need among relevant policy makers, in our government as well as yours. We are attaching the letter we wrote Chancellor Merkel on this subject recently. Several of us have testified before committees of the U.S. Congress and State legislatures as well. We were extremely disappointed with the response we received from the Chancellor's office, and we are including the original German language response and translation we received as well. From the perspective of survivors and our families, the efforts that have been made to address survivors' needs in their older years are grossly inadequate to the human and moral deficits that remain unaddressed.

We have also been leaders in the effort to have the U.S. Congress restore survivors' and heirs' rights to recover unpaid insurance policies sold to our parents and grandparents before WWII. We have read your letters to the Congressional leadership and realize the German Government has a different opinion about legislation such as HR 1746 than we do. We understand your argument, made in your letters to the late Tom Lantos, Chairman of the

Foreign Affairs Committee, and Barney Frank, Chairman of the Financial Services Committee, to be that German industry believes it had resolved all "Holocaust era" property claims, including insurance claims, in the German-U.S. Foundation Agreement, and would regard being subject to further claims outside the ICHEIC framework to undermine those agreements.

We disagree, because the President did not promise any companies immunity from lawsuits in the United States. To us, the provisions of HR 1746 that passed the House Foreign Affairs Committee would reinforce the principle that Holocaust survivors, and legal heirs, own the rights to negotiate and make decisions over their own property claims and their families' legacies. These are rights enshrined in the U.S. Constitution and are a fundamental element of American justice. On this issue, members of Congress can assess the record and make an informed judgment on the merits.

However, there is one issue that has emerged in the debate over HR 1746 about which we are seeking clarification of the German government's position. During the debates over HR 1746, one argument has been advanced that federal legislation restoring survivors' right of access to the courts to pursue claims on pre-war insurance policies would "jeopardize critical ongoing negotiations with Germany and other governments for the continuation and expansion of hundreds of millions of dollars in crucial funding, immediately required, for survivors in need in the United States and worldwide."

We understand your government's position, as stated in your letters to Chairmen Lantos and Frank, that the "risks" posed by HR 1746 apply only to possible future negotiations involving German private industry, not programs offered by the German government. You wrote that HR 1746 would "jeopardize the possibility of compensating large numbers of Holocaust survivors through voluntary contributions, for example, by industry" and "would make it much harder to convince industry not only in Germany, but anywhere in the world, to enter into agreements."

We have seen no evidence that HR 1746 would jeopardize the ongoing commitments of the German government to fund survivor welfare and assistance programs, some of which date to the 1950s. To the contrary, your letters take pains to reaffirm the German government's historic "responsibility for the Holocaust and Holocaust survivors."

Further, Mr. Schwake of your office specifically informed some of the HSF leaders, in person, that the German government would not reduce or limit benefits to survivors even if HR 1746 became law. We understand others involved in the legislative process received similar assurances. We are writing to have your government confirm this understanding.

Some organizations have continued to make the representation that the German government will retaliate by cutting benefits for poor survivors if HR 1746 or similar legislation passes. This is a very serious threat because invariably members of Congress believe survivors should have the same access to courts as any other citizens, but they

also do not want to do anything they think will harm survivors who are in financial need.

The insurance issues should be addressed on their merits. The problems of survivor poverty and dignity are separate (except that many survivors denied insurance recoveries are undoubtedly among the poor) and deserve special, immediate attention in their own right. But they are not otherwise related, logically or policy-wise, to the insurance issue.

More importantly, though we have our differences with the German government on several issues, we do not believe that in light of our histories, that the German nation would allow the financial interests of one industry to tarnish the moral position it has taken in relation to its acknowledgment of its obligation to Holocaust survivors. Please respond to me via fax at the number printed below, so we can facilitate the clarification of this very important matter.

Sincerely,

David Schaecter, President
Phone: 305.231.0221, Ext. 243

Fax: 305.231.4242

JOINED BY HSF EXECUTIVE COMMITTEE:

Israel Arbeiter, Boston
Nesse Godin, Washington DC
David Mermelstein, Miami
Alex Moskovic, Hobe Sound
Leo Recther, Queens
Jack Rubin, Boynton Beach
Henry Schuster, Las Vegas
Fred Taucher, Seattle
Esther Widman, Brooklyn



Embassy
of the Federal Republic of Germany
Washington

Mr. David Schaecter
President
Holocaust Survivors' Foundation USA
4200 Biscayne Blvd.
Miami, FL 33137-3279

Klaus Scharloth

Ambassador of the Federal Republic of Germany

4645 Reservoir Road N.W.
Washington, D.C. 20007
Tel.: +(202) 298 4201
Fax: +(202) 298 4270
E-MAIL: klaus.scharloth@diplo.de
Internet: www.germany.info

Washington, February 10, 2009

Thank you very much for your letter dated December 4, 2008. First, let me say that I very much respect your concern for fellow survivors of the Holocaust.

I have said on previous occasions that the German Government acknowledges without qualifications Germany's historical responsibility for the Holocaust, and Germany remains committed to helping needy survivors to live dignified lives. Germany has so far paid out about € 65 billion in compensation and restitution since World War II, and it continues to make direct payments to survivors in the form of pensions and supports home care through its payments to the Jewish Claims Conference (JCC).

In its annual negotiations with the German Government, the Claims Conference has pointed out the growing needs of aging Holocaust survivors. At the request of the Claims Conference, the German Government last year agreed to provide approx. € 45 million for these services. This sum is more than double the funds provided in previous negotiations. Germany remains committed to helping survivors in need, and we will meet with the Claims Conference for another round of talks in March.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) concluded its work, with more than \$305 million paid to Holocaust victims or their heirs for

previously unpaid insurance policies. An additional \$200 million was distributed for humanitarian purposes, thereby helping survivors in need.

I believe both examples show very well that voluntary agreements work to the benefit of large numbers of survivors. Legal action, on the contrary, only benefits the very few who are successful in court, but does not address the needs of the broader majority of survivors.

It was with this in mind and based on the promise of "legal peace" made to us in the German-American Executive Agreement of 2000 that my government opposed HR 1746.

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

Turning away from the principle of "legal peace" after voluntary compensation has been paid would make it almost impossible, though, to convince the business community not only in Germany but anywhere in the world to enter into voluntary agreements that ensure compensation for Holocaust survivors.

Let me reiterate that I fully respect your work on behalf of fellow survivors. I continue to believe, however, that negotiations and voluntary contributions are the best way to help survivors in need, a goal we should all have in common.

Please convey my warm regards to the members of the Holocaust Survivors' Foundation's executive committee.

Sincerely,
Gunn Hertz

EXHIBIT 9



HOLOCAUST SURVIVORS' FOUNDATION - USA

December 11, 2007

Member Organizations (Partial List)

Amer. Assn. of Jewish Holocaust
Survivors of Greater Boston
Assn. of Holocaust Survivors from
Former USSR, Los Angeles
C.A.N.D.L.E.S., Tene Harte, IN
Child Survivors of Arizona
Child Survivors/Brides Children of
The Holocaust
Coalition of Holocaust Survivor
Clubs in South Florida
Council of Nazi Holocaust Survivor
Organizations of So. California
Habonim Cultural Club, Miami
Holocaust Child Survivors &
Friends of Greater Hartford
Holocaust Survivors Club of
Boca Raton
Holocaust Survivors of
Greater Detroit
Holocaust Survivors of
Greater Pittsburgh
Holocaust Survivors of
South Florida
Holocaust Survivors Group of
Southern Nevada
Houston Council of
Jewish Holocaust Survivors
The Jewish Holocaust Survivors &
Friends of Greater Washington
Jewish Survivors of Latvia, Inc.
New York
National Assn. of Jewish Child
Holocaust Survivors, Inc.
New American Jewish Social Club,
Miami
New Orleans Friendship Society,
New York
Survivors of Atlantic City, NJ
Survivors of the Holocaust Asset
Recovery Project, Seattle
Survivors of the Holocaust of
New Mexico
Tikvah Ashkenaz Hashoch,
San Francisco

Her Excellency Dr. Angela Merkel, MdB
Federal Chancellor
Bundeskanzleramt
Willy-Brandt-Straße 1
10557 Berlin
Germany

Dear Chancellor,

We write this letter with admiration for the direct and humane manner in which you have conducted your high office since being elected.

We are an alliance of over 50 Holocaust survivor organizations from across the United States, formed nearly a decade ago to represent and help those survivors among us who are suffering terribly and receiving little or no help in their battle against poverty.

We are approaching you now after reading of the public disagreements over the provision of funds for aging Holocaust survivors whose urgent needs are not being met. Whether the funds meant to help survivors are being hidden and hoarded for other purposes, or whether those entrusted with the allocation of these precious resources simply underestimated the amounts required to provide dignity and healthcare for survivors into the 21st century, the result is the same. It is tragic and unacceptable.

It is common knowledge that survivors in the United States are very unhappy with how survivor-related funds have been spent in the past. It is painfully obvious to us that in far too many instances resources are not going to the living survivors who are in need.

We are also distressed at the reaction, reflected in recent media reports, of many in Germany who wrongly feel that any efforts to seek additional funding to care for aged, needy survivors are simply another attempt to "fleece" your country. We are saddened that such a harsh attitude prevails in the face of the indisputable fact that survivors suffer from catastrophic medical and psychological conditions as a direct result of the horrors they suffered during the Holocaust. In fact, Madam Chancellor, as we are sure you know, these conditions are intensified by the normal aging process and require much more care and intervention than previously imagined.

Yet, no funds are forthcoming to deal with the very real and painful situation of tens of thousands of survivors living in poverty in this country and around the world. They did not do this to themselves. It was done to them willfully and relentlessly, as history has shown.

We dissent with those who take the position that governmental agencies and public resources in other countries, provinces or states pay for the required care of survivors, thereby diverting funds for care of the general aging population in the U. S. or elsewhere. Although the German government admits publicly that it has a continuing direct responsibility to survivors of the *Shoah*, this moral obligation has not been effectively implemented.

"JUSTICE AND DIGNITY FOR SURVIVORS"

PHONE (305) 231-9221 EXT. #243

4700 BISCAYNE BLVD MIAMI, FL 33137-3279
EMAIL: contact@hsf-usa.org

FAX (305) 231-4242

HOLOCAUST SURVIVORS' FOUNDATION - USA

Page 2

We urge you to take a personal responsibility in addressing these pressing challenges by assigning a person in your office to coordinate efforts to provide the necessary funds for Holocaust survivors in need of assistance.

We further propose that your government establish a fund for this purpose, with guaranteed funding to provide a dignified level of care and basic services for all Holocaust survivors, and that you ensure all agencies participating in handling such funds or delivering services recognize the unique physical and emotional needs of survivors, are committed to the efficient and effective delivery of services, and operate in a completely transparent fashion.

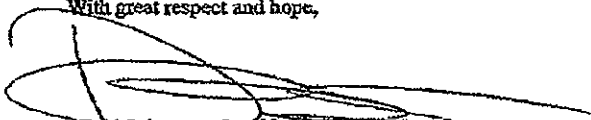
The current framework for addressing the needs of aging survivors, in which the political considerations of unrepresentative and unaccountable organizations overshadow the right of survivors to health and dignity, has not been adequate. The result is, unfortunately, not appropriate for the morally demanding, indeed, sacred responsibility of caring for survivors. We are confident that the overwhelming majority of Holocaust survivors throughout the world would confirm this view.

If the present system had been working properly, there would not have been the huge build-up over the past years resulting in over 30,000 survivors presently living at or near poverty in the U. S., and even more in Israel. No additional proof is needed.

We write, then, to ask for your direct intervention. We are confident that you will recognize these injustices and -- by executive action -- put in place the type of system we propose in cooperation with actual survivors and appropriate agencies. The aging survivors need help quickly and effectively before it is too late! Your actions would be greatly applauded and widely supported.

Naturally, our national organization stands ready to help in this endeavor. I would welcome a call from your office at (305) 231-0221, Ext. 243, and look forward to your written response as well.

With great respect and hope,



David Schacter, President
Holocaust Survivors Foundation-USA, Inc.

Approved by HSF Executive Committee:

Israel Arbeiter, Boston
Nesse Godin, Washington, D.C.
David Mermelstein, Miami
Alex Moskovic, Hobe Sound, FL

Leo Rechter, Queens
Henry Schuster, Las Vegas
Fred Taucher, Seattle
Esther Widman, Brooklyn

POSTANSCHRIFT Bundeskanzleramt der Bundesregierung 53117 Bonn

Holocaust Survivors' Foundation - USA
Präsident David Schaefer
4200 Biscayne Blvd
MIAMI, FL 33137-3279
USA

HAUPTANSCHREIBSTELLE Dienststelle Bonn
Ellerstraße 56, 53119 Bonn
BEARBEITET VON RD'in Barbara Busch
Referat VB 4
TEL +49 (0) 1888 682-2708 (oder 682-0)
FAX +49 (0) 1888 682-2508
E-MAIL Barbara.Busch@bmi.bund.de
TELEK 280645
DATUM 21. Februar 2008

BETREFF Wiedergutmachung nationalsozialistischen Unrechts

BZNR Ihr Schreiben vom 11. Dezember 2007

OZ VB 4 - O 1470/08/0002

DKR 2008/0090097

(zu Antwort bzgl. OZ und DKR 1330/07)

Sehr geehrter Herr Schaefer,

vom Bundeskanzleramt wurde ich als innerhalb der Bundesregierung für Fragen der Wiedergutmachung zuständiges Fachressort gebeten, Ihr Schreiben vom 11. Dezember 2007 zu beantworten.

Zu meinem Bedauern muss ich Ihre Forderung nach Einrichtung eines Homecare-Fonds, der seit langem auch von der Jewish Claims Conference (JCC) sowie von der israelischen Regierung gefordert wird, ablehnen.

Es ist zwar richtig, dass bei höherer Lebenserwartung die Pflegebedürftigkeit zunimmt. Dies gilt jedoch nicht nur für Holocaust-Überlebende, da die Pflegebedürftigkeit in der Regel nicht verfolgungs-, sondern altersbedingt ist. Die jeweils - und auch von der amerikanischen Holocaust Survivors' Foundation - aufgeführten typischen Krankheitsbilder (z.B. verstärktes Auftreten von Osteoporose) sind auf die Mangelernährung im Kindesalter zurückzuführen, unter der weite Teile der Bevölkerung Europas gelitten haben. NS-Verfolgten, die durch verfolgungsbedingte Gesundheitsschäden Pflegeleistungen benötigen, wird nach dem Bundesentschädigungsgesetz Hilfe geleistet. Ferner unterstützt die Bundesregierung im Rahmen des Artikel 2-Abkommens mit der JCC Einrichtungen, die Pflegeleistungen für Holocaust-Opfer

Postanschrift Berlin, Bundeskanzleramt der Bundesregierung, 13248 Berlin

www.bundeskanzleramt.bund.de

erbringen. In den Jahren 1993 bis 2007 sind insgesamt 52,9 Mio. € im Rahmen der Institutionellen Förderung der JCC zur Verfügung gestellt worden. Im Rahmen der Stiftung „Erinnerung, Verantwortung und Zukunft“ sind zudem an die JCC 114 Mio. € für humanitäre Zwecke gezahlt worden. Eine weitergehende Finanzierung von Pflegeleistungen ist von Seiten der Bundesregierung nicht vorgesehen.

Die Bundesregierung ist darüber hinaus nicht für unzureichende Sozialsysteme anderer Staaten verantwortlich.

Hierfür bitte ich um Verständnis.

Mit freundlichen Grüßen

In: Auftrag
Barbara Busch

Beglaubigt



Carsten

[TRANSLATION]

Mailing address: Bundesministerium der Finanzen – Postfach [illegible], Bonn

Holocaust Survivors' Foundation – USA
David Schaefer, President
4200 Biscayne Blvd
MIAMI, FL 33137-3279
USA

[illegible]

HANDLED BY

TEL

FAX

E-MAIL

TELEX

DATE

Bonn Office

Ellestraße 58, 53119 Bonn

Barbara Busch, RD

Opinion V B 4

+49 (0) 1888 682-2708 (or 682-0)

+49 (0) 1888 682-2508

Barbara.Busch@bmf.bund.de

388645

February 21, 2008

RE **COMPENSATION FOR NATIONAL SOCIALIST ILLEGALITY**

REF. Your letter of December 11, 2007

No. **V B 4 _ 1470/08/0002**

DCK **2008/0090087**

(please mention in correspondence with [illegible])

Dear Mr. Schaefer:

I have been asked by the office of the Federal Chancellor, as the person responsible for questions of compensation within the Federal Government, to respond to your letter of December 11, 2007.

I regret that I must deny your claim for establishment of a Homecare Fund, which has been requested for a long time also by the Jewish Claims Conference (JCC) as well as the government of Israel.

Although it is true that with longer life expectancies, the need for care is increasing, this does not apply only to Holocaust survivors, since the need for care is, as a rule, not caused by persecution, but by age. The typical disease picture mentioned – also by the American Holocaust Survivors' Foundation – (e.g., increased occurrence of osteoporosis) are not due to the malnutrition in childhood that was suffered by large parts of the population of Europe. Those persecuted by the Nazis who need care services for health damage caused by persecution, will be provided with assistance according to the Federal Compensation Law. Furthermore, the Federal Government supports providing care services for Holocaust victims within the framework of article 2 of the agreement with the JCC

[line illegible]

institutions. In the years 1993 through 2007, a total of 52.9 million € was made available within the framework of institutional support for the JCC. Within the framework of the "Remembering, Responsibility, and Future" Foundation, 114 million € were also paid to the JCC for humanitarian purposes. More extensive financing of care services is not planned by the Federal Government.

Moreover, the Federal Government is not responsible for inadequate social systems of other states.

I request your understanding of this.

With friendly greetings,

by assignment,

Barbara Busch

Certified

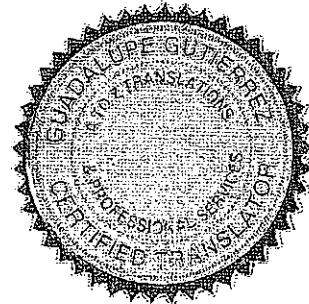
[seal, signature]

AFFIDAVIT

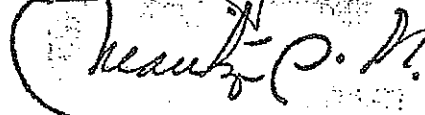
STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

BEFORE ME, A NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE, PERSONALLY APPEARED MRS. GUADALUPE GUTIERREZ, A CERTIFIED TRANSLATOR FOR AND ON BEHALF OF A TO Z TRANSLATIONS & PROFESSIONAL SERVICES CORP., WHO, AFTER BEING DULY SWORN, DEPOSES AND SAYS THAT THE PRECEDING IS A TRUE AND CORRECT TRANSLATION INTO ENGLISH OF THE ATTACHED DOCUMENT(S) IN GERMAN AND THAT THE TRANSLATOR IS COMPETENT TO TRANSLATE FROM THE FOREIGN LANGUAGE INTO ENGLISH.


Guadalupe Gutierrez



SWORN TO AND SUBSCRIBED BEFORE ME BY GUADALUPE GUTIERREZ, WHO IS PERSONALLY KNOWN TO ME, THIS 3rd DAY OF June, 2008.



NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE

Name: Maritza S. de Puzo
Commission No. DD 562207
Expires: August 27, 2010

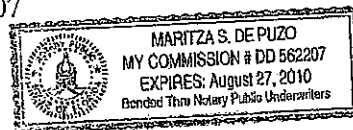


EXHIBIT 10



U.S. Department of Justice
Civil Division
Washington, DC 20530

JFC:REK:MBS:SSwingle v2
DJ# 145-15-3175

Tel: (202) 353-2689
Fax: (202) 514-8151

SEP 25 2008

151

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: In re Assicurazioni Generali, No. 05-5602 et al. (2d Cir.)

TIME LIMITS

The court of appeals invited the views of the State Department and requested that the Government notify the court by August 31, 2008, whether the Government intends to file a brief, further providing that any brief would be due by October 30, 2008. We asked the Second Circuit to extend the time for informing the court whether any response will be filed. Assuming that the court grants this request, we will need a decision on amicus participation no later than September 30, 2008.

RECOMMENDATIONS

The Department of State¹ recommends amicus participation on question 1. The U.S. Attorney's Office² recommend amicus participation.

I recommend amicus participation on question 1.

QUESTIONS PRESENTED

1. Whether it is the foreign policy of the United States that Nazi-era claims for unpaid insurance policies brought against an Italian company that voluntarily participated in the International Commission on Holocaust Era Insurance Claims (ICHEIC) should be resolved exclusively by ICHEIC rather than in litigation in U.S. courts.

2. Whether federal foreign policy preempts litigation of plaintiffs' state law claims seeking to recover on unpaid insurance policies or, alternatively, whether that policy supports dismissal of the claims on the ground of international comity and/or *forum non conveniens*.

¹ See attached letter from John Bellinger, Sharla Draemel, 776-8343.

² See attached email from David Jones.

STATEMENT

A. Overview.

This consolidated multi-district litigation involves claims brought by Holocaust survivors or their heirs seeking to recover on insurance policies issued in Europe before or during the Nazi era. The defendant, Assicurazioni Generali, is a large Italian insurance company that sold insurance policies to Jewish families and businesses throughout Europe in the years leading up to World War II. *See, e.g.*, J.A. 306-307 (Weiss Complaint). The district court held that plaintiffs' claims were preempted by federal foreign policy, which favors exclusive resolution of Holocaust era claims by the International Commission on Holocaust Era Insurance Claims (ICHEIC), rather than in litigation in U.S. courts. Plaintiffs appealed. Following oral argument, the Second Circuit solicited "the advice of the Executive Branch on the question whether court adjudication of these Holocaust era claims against Generali would conflict with the foreign policy of the United States."

B. Background.

1. The Foundation Agreement and ICHEIC.

The United States Government has long been involved in efforts to resolve claims arising out of Nazi-era harms. *See generally American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 401-408 (2003). Reparations for wartime harms was a principal object of post-war Allied diplomacy, and the West German Government enacted restitution laws, but those laws left out many claimants and certain types of claims.

After Germany was unified, numerous class-action lawsuits for restitution were brought in U.S. courts against companies doing business in Germany during the World War II era. The U.S. Government sought mediated settlement as an alternative to litigation, and the President ultimately signed an executive agreement with Germany establishing a foundation funded with 10 billion DM, contributed jointly by the German Government and German companies, to be used to compensate individuals who suffered at the hands of German companies during the Nazi era. Agreement Concerning the Foundation 'Remembrance, Responsibility and the Future,' 39 Int'l Legal Materials 1298, 1303 (2000) ("Foundation Agreement"). Similar agreements were signed with Austria and France, *see Garamendi*, 539 U.S. at 408 n.3, but not with Italy, the country of nationality of defendant Generali.

The United States committed in the Foundation Agreement to file a statement of interest in cases in which Holocaust-era claims against German companies were pending in U.S. courts, declaring that "it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all asserted claims against German companies arising from their involvement in the National Socialist era and World War II." *Garamendi*, 539 U.S. at 406. The Foundation Agreement also specified that "[t]he United States

does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal.” *Id.*

The Foundation Agreement contemplates a central role in claims resolution for ICHEIC, a voluntary organization that had previously been formed by European insurance companies, the State of Israel, Jewish and Holocaust survivor organizations, and the national association of American state insurance commissioners. *See Garamendi*, 539 U.S. at 406-407. ICHEIC would negotiate with European insurers to provide information about unpaid insurance policies issued to Holocaust victims, and would establish and implement procedures to settle claims brought under those policies. *See id.* at 406-407. The German Foundation subsequently agreed to set aside 200 million DM to pay claims approved by ICHEIC and a portion of ICHEIC’s operating expenses, with another 100 million DM in reserve to be used if the initial funding was exhausted. *See id.* at 407. The German Foundation also agreed to contribute 350 million DM to a humanitarian fund administered by ICHEIC, and to work with German insurance companies in order to publish a comprehensive list of possible insurance policyholders who might have been Holocaust victims. *See id.*

2. The Garamendi Litigation.

In *American Insurance Ass’n v. Garamendi*, 539 U.S. 396 (2003), the Supreme Court considered a constitutional challenge to a provision of California law that required each insurance company doing business in the State to disclose for publication detailed information concerning policies issued by the company or its affiliates in Europe decades ago. The United States urged, and the Supreme Court agreed, that the statute impermissibly intruded into the conduct of U.S. foreign policy.

The *Garamendi* Court explained that, in negotiations over Holocaust-era claims, the foreign policy of the United States has “stressed mediated settlement as an alternative to endless litigation promising little relief to aging Holocaust survivors.” 539 U.S. at 405 (international quotation marks and citation omitted). The Court noted the commitment of the United States to file statements of interest in pending district court cases, and to use its “best efforts, in a manner it considers appropriate,” to convince state and local governments to respect the foundation as the exclusive mechanism for resolving Holocaust-era claims. *Id.* The Court also noted the pivotal role of ICHEIC in the payment of insurance claims.

The Court held that the disclosure provisions of California law were preempted by federal law because they “interfere[] with the foreign policy of the Executive Branch, as expressed principally in the executive agreements with Germany, Austria, and France.” 539 U.S. at 413. Although the Court recognized that the Foundation Agreements were not themselves preemptive, it held that the state statute was preempted because it conflicted with the federal foreign policy embodied and reflected in those agreements. *Id.* at 415-417, 420.

The Court pointed to the history of negotiations over the Foundation Agreements as evidence of a “consistent Presidential foreign policy * * * to encourage European governments and companies

to volunteer settlement funds in preference to litigation or coercive sanctions.” *Id.* at 421. “As for insurance claims in particular,” the Court continued, “the national position, expressed unmistakably in the executive agreements signed by the President with Germany and Austria, has been to encourage European insurers to work with the ICHEIC to develop acceptable claim procedures, including procedures governing disclosure of policy information.” *Id.* The Court described the agreements as “exemplars” of the United States’ foreign policy, but also quoted and relied on various statements by officials of the State Department, including statements by Deputy Secretary of State Stuart Eizenstat and others setting out the position of the United States that ICHEIC “should be considered the exclusive remedy for resolving insurance claims from the World War II era” and that “a company’s participation in the ICHEIC should give it a ‘safe haven’ from sanctions, subpoenas, and hearings relative to the Holocaust period.” *Id.* at 422 (quotation marks and citations omitted).

The Court held that the California state-law approach of providing regulatory sanctions to compel disclosure and payment conflicted with the federal foreign policy towards Holocaust-era insurance claims. *See* 539 U.S. at 423-425. The Court noted that Deputy Secretary Eizenstat had written to the state insurance commissioner following enactment of the California law to complain that California’s actions “damag[ed] the one effective means at hand to process quickly and completely unpaid insurance claims from the Holocaust period” — *i.e.*, ICHEIC — and threatened to derail the German Foundation Agreement. *See* 539 U.S. at 424, 411. The effect of the state law was to place the Government at a disadvantage in seeking to persuade foreign governments and foreign companies to participate voluntarily in ICHEIC, and ultimately to “thwart[] the Government’s policy of repose for companies that pay through the ICHEIC.” *Id.* at 424. The Court also noted that the California law diminished the effectiveness of ICHEIC by undermining European privacy protections. *See id.* at 425. Holding that the California provision was “an obstacle to the success of the National Government’s chosen ‘calibration of force’ in dealing with the Europeans using a voluntary approach,” the Court concluded that the state law was preempted. *Id.* at 425 (citation omitted).³

The dissenting Justices in *Garamendi* focused primarily on the inadequacy of ICHEIC and the lack of any formal federal law that could be afforded preemptive effect. Thus, the dissenters emphasized that ICHEIC had made only “slow and insecure” progress in resolving Holocaust-era insurance claims. 539 U.S. at 432. The dissenters also noted that the directive to ICHEIC members to publish lists of unpaid Holocaust-era policies “has not yielded significant compliance”; petitioner *Garamendi* “may have sold more life insurance and annuity policies in Eastern Europe during the Holocaust than any other company,” but had apparently refused to disclose the bulk of information from its internal list of insurance policies sold between 1918 and 1945. *Id.* at 433. The dissenting Justices emphasized that the only provision at issue in *Garamendi* was the information disclosure requirement, which “imposes no duty to pay any claim, nor does it authorize litigation on any claim.”

³ Although the Court held that this conflict was sufficient in itself for preemption to apply, the Court also emphasized the “weakness of the State’s interest, against the backdrop of traditional state legislative subject matter, in regulating disclosure of European Holocaust-era insurance policies in the manner” employed by the challenged state law. 539 U.S. at 425.

539 U.S. at 435. Finally, the dissenters criticized the extension of “dormant foreign affairs preemption” applied in cases such as *Zschemig v. Miller*, 3489 U.S. 429 (1968), in which state action involved criticism and judgment of foreign governments, to the “dissimilar” context of a state statute aimed solely at private insurers doing business in California and not taking any position on a foreign government or regime. 539 U.S. at 439-440. Noting that it was uncertain “whether even litigation on Holocaust-era insurance claims must be abated in deference to” the Foundation Agreements, the dissenters stated that it should be clear that “those agreements leave disclosure laws like the [California provision at issue] untouched.” *Id.* at 440-441 (emphasis in original). The dissenters also criticized the majority’s reliance on statements by Deputy Secretary Eizenstat and others to determine the substance of federal foreign policy. *See id.* at 441 (“The displacement of state law by preemption properly requires a considerably more formal and binding federal instrument.”).

C. This Litigation.

The plaintiffs in these MDL cases sued Generali and other European insurance companies under various state law theories, including breach of contract, breach of fiduciary duty, breach of the duty of good faith and fair dealing, conspiracy, and unjust enrichment. *See, e.g., id.* at 242-250, 288-289. Claims were also brought under state statutes extending the limitations period for Holocaust victims to sue to recover on unpaid insurance policies and making other changes to enable Holocaust victims or their families to recover damages from the carriers of those policies. *See, e.g., id.* at 339-340 (bringing claim under the Florida Holocaust Victims Insurance Act, codified at Flor. Stat. § 626.9543 (1999)).

1. District Court Refusal To Dismiss Under *Forum Non Conveniens*.

Generali moved to dismiss the cases on the ground of *forum non conveniens*, arguing that plaintiffs’ Holocaust-era insurance claims should be resolved by ICHEIC. (Generali was one of the founding insurance companies of ICHEIC and contributed a substantial amount of money towards its operations. *See In re Assicurazioni Generali*, 228 F. Supp.2d at 254.) The district court (Mukasey, J.) denied the motions, holding in relevant part that ICHEIC was not an adequate alternative forum. *In re: Assicurazioni Generali S.P.A. Holocaust Ins. Litig.*, 228 F. Supp.2d 348 (S.D.N.Y. 2002).

Although the district court recognized that ICHEIC offered several advantages in comparison to litigation in U.S. courts, the court nevertheless concluded that the forum was inadequate. *See* 228 F. Supp.2d at 354-356. The court first suggested that no private, non-governmental organization “can ever constitute an adequate alternative forum.” *Id.* at 356. As the court explained, “[t]he doctrine of *forum non conveniens* is appropriately used as a tool to force plaintiffs to litigate in a more convenient public forum, but it cannot be used to throw a plaintiff out of court and into a private dispute-resolution mechanism.” *Id.* “For that reason alone,” the court stated, the motion to dismiss on the ground of *forum non conveniens* would be denied. *Id.*; *but see id.* (stating that court

would “not entirely foreclose” the possibility that “a private, nongovernmental forum could under certain circumstances be an adequate alternative forum”).

In addition, the district court held that ICHEIC was not adequate because it “lacks sufficient independence and permanence.” *Id.* at 356. The court reasoned that the founding insurance companies “could use their financial leverage to influence the ICHEIC process.” *Id.* at 357. The district court pointed to various statements by ICHEIC Chairman Lawrence Eagleburger reflecting member companies’ disagreement with various actions taken and statements that they would end their voluntary participation if they disagreed with ICHEIC’s decisions. *Id.* at 357. The district court questioned whether ICHEIC would continue to be viable if member companies left the organization, as one corporation had already done. *Id.* at 357. And the district court noted that only a few claims had been paid to date and that its operations had been criticized as uncertain and potentially at the point of collapse. *Id.* at 358.

The district court recognized that the United States had repeatedly expressed the view that ICHEIC “should be considered the exclusive remedy for resolving insurance claims from the World War II era,” but dismissed those statements as “irrelevant.” *Id.* “Absent a statute or executive agreement suspending plaintiffs’ claims or an executive agreement that gives rise to specific foreign relations concerns,” the district court held, “the government’s position is not controlling and speaks at most to the convenience of ICHEIC as a forum.” *Id.* at 358 (citation and footnote omitted).⁴

2. District Court Dismissal In Light Of *Garamendi*.

Following the Supreme Court’s decision in *Garamendi*, Generali moved for dismissal on the ground of federal preemption. The district court granted the motion, holding that “laws supporting litigation of plaintiffs’ benefits claims are preempted by a federal Executive Branch policy favoring voluntary resolution of Holocaust-era insurance claims through ICHEIC,” and that plaintiffs’ claims are “not actionable because * * * they do not allege any cognizable injury other than that caused by Generali’s non-payment of benefits, redress for which is committed to ICHEIC.” 340 F. Supp.2d 494, 497 (S.D.N.Y. 2004).

⁴ The district court also rejected Generali’s argument that the claims should be dismissed in deference to litigation in the courts of the European countries in which the insurance policies were issued, either under *forum non conveniens* or pursuant to forum selection clauses in those policies. The court reasoned that forcing the plaintiffs to litigate in foreign courts could be a “death knell” to their claims, and also that the U.S. forum had a strong interest in the claims by virtue of the local residency of many plaintiffs and New York’s law barring dismissal of Nazi-era insurance claims on the ground of *forum non conveniens*. 228 F. Supp.2d at 365-367. The court also held that it would be unreasonable to enforce forum selection clauses because the parties “could not knowingly have consented to jurisdiction in the courts of Poland, Italy, the Czech Republic, Austria, Slovakia, and Hungary as constituted in the year 2002.” *Id.* at 373.

The district court held that federal foreign policy preempts not only state statutes “designed to foster litigation of Holocaust-era insurance claims,” but also “claims arising under generally applicable state statutes and common law * * *.” *Id.* As the court explained, permitting either type of claim to go forward “necessarily conflicts with the executive policy favoring voluntary resolution of such claims through ICHEIC.” *Id.*

The district court also held that the federal policy to resolve Holocaust-era insurance claims exclusively through ICHEIC encompasses claims against Generali. 340 F. Supp.2d at 503. The court noted that Generali was a petitioner in *Garamendi* as well as the most prominent of the defendants, and yet the *Garamendi* Court had not excluded the company from its holding on preemption. *Id.* at 503. The district court also relied on statements by Executive Branch officials — some of which were referenced in *Garamendi* — that promoted ICHEIC as the exclusive remedy for Holocaust-era insurance claims. *Id.* at 504-505. The district court recognized that there was no Foundation Agreement between the United States and Italy, the country of Generali’s nationality, but held that federal foreign policy was not required to be embodied in an executive agreement in order to have preemptive force. *Id.* at 505.

Finally, the district court held that the fact the United States had not filed a statement of interest in this case did not preclude dismissal on grounds of foreign policy preemption. 340 F. Supp.2d at 506. The court declined “to infer from the mere fact of executive inaction that the policy favoring ICHEIC resolution does not encompass claims against Generali.” *Id.* at 506. The district court also noted that the Government’s failure to file appeared to “stem from an unwillingness to act on behalf of a private company absent a government-to-government agreement encompassing claims against the company in question,” rather than from the underlying federal foreign policy towards the claims at issue. *Id.* at 506-507.

3. Second Circuit Proceedings.

The remaining plaintiffs⁵ argue on appeal that there is no federal preemption because the statements of U.S. officials are not themselves preemptive and there is no executive agreement between Italy and the United States. The plaintiffs also argue that, because the United States has not filed a statement of interest, there must be no federal foreign policy supporting dismissal. They argue that there is, conversely, a greater state interest than in *Garamendi*, because some of their claims arise under common law, an area of traditional state interest. They argue that some of their claims, because they involve recent conduct by Generali, do not implicate federal foreign policy. Finally, the plaintiffs assert that ICHEIC is an inadequate forum, and that as a result the policy of

⁵ Appeals were initially brought on behalf of all plaintiffs in the consolidated actions, including the named plaintiffs in the class actions. Prior to oral argument, Generali entered into a settlement agreement that resolved the class actions. See *Rubin v. Assicurazioni Generali S.p.A.*, 2008 WL 2329321 (2d Cir. June 6, 2008) (affirming district court’s approval of settlement agreement). The three sets of plaintiffs who remain in this litigation include opt-outs from the settlement class and individual plaintiffs whose claims were not settled.

the United States to provide for compensation through an alternate forum is inapplicable and due process prohibits dismissal of their claims on the ground of federal preemption.

At oral argument, the court of appeals asked repeatedly about the foreign policy of the State Department towards claims brought against Generali, and queried why the State Department had not expressed its views in this litigation. See, e.g., Transcript 34 (Calabresi, J.) (“[W]hy isn’t it appropriate for a court simply to say, to the extent that there is a question as to whether there is a foreign policy conflict, * * * the president must tell us again that there is a conflict in the new case.”); *id.* at 49 (Pooler, J.) (suggesting that, even absent an obligation to file, the State Department could make its position “clear so that we don’t have to deal with ambiguities”); *id.* at 61-62 (Leval, J.) (suggesting that statement by Executive Branch would be relevant and that counsel for Generali could request State Department “to furnish a letter to the Court saying that this is the policy of the United States”). Although Generali argued that the United States’ foreign policy was the same policy at issue in *Garamendi*, the plaintiffs relied on a letter sent to them in 2001 by Ambassador Bindenagel, stating that the United States has no obligation to file a statement of interest in a case brought against Generali, to argue that no federal foreign policy is implicated by this litigation.

On August 1, 2008, the Second Circuit sent a letter to the Secretary of State soliciting “the advice of the Executive Branch on the question whether court adjudication of these Holocaust era claims against Generali would conflict with the foreign policy of the United States.” Letter at 1. The court recognized that the United States’ amicus brief in *Garamendi* had stated that ICHEIC “should be recognized as the exclusive remedy for all insurance claims that date to the Nazi era.” *Id.* at 2. “The Court is unaware, however, whether this continues to be Government policy, whether Government policy on this question is influenced by the fact that ICHEIC is no longer accepting claims, and whether that policy today encompasses insurers from countries (like Italy) not covered by executive agreements, as against companies from countries (like Germany and Austria) that are.” *Id.* The Court requested that the State Department notify it by August 31, 2008, whether the government would file a brief as amicus curiae; we have asked the Court to extend the date for notification to October 1, 2008.

DISCUSSION

We recommend participating as amicus curiae in response to the invitation of the court of appeals. Although we are still awaiting guidance from the State Department as to the precise scope of the government’s foreign policy, the State Department has informed us that it continues to be the policy of the United States that ICHEIC should be the exclusive remedy for all Holocaust-era insurance claims. Furthermore, it is government’s position that a company’s voluntary participation in ICHEIC should give it a safe haven from Holocaust-era claims, even if that company’s government did not enter into a Foundation Agreement with the United States. It is thus clearly appropriate to respond to the Second Circuit’s questions and to set out current U.S. foreign policy.

We recommend against taking a position in an amicus filing on the question whether the government’s foreign policy requires dismissal of plaintiffs’ claims. The Second Circuit has not explicitly asked the government to address this question, and the State Department has indicated that

it does not wish to express a view on the question. Furthermore, there are significant weaknesses in any argument for dismissal. While the logic of *Garamendi* arguably militates in favor of dismissal of plaintiffs' claims on federal preemption grounds — the argument made by the defendants in this case — the position of the United States urged in that case does not extend inexorably to the preemption of all common law state claims against foreign corporations arising from the Holocaust era. Indeed, urging some form of blanket preemption would arguably be in tension with the government's stated view in the Foundation Agreements that its foreign policy interests do not constitute an independent basis for dismissal of such claims. Similarly, although it would be possible to argue for dismissal under *Whiteman v. Dorotheum GmbH & Co KG*, 431 F.3d 57 (2d Cir. 2005), a Foundation Agreement case in which Holocaust-era claims were dismissed under the political question doctrine and case-specific deference, such an argument would mark a substantial expansion of justiciability doctrines and might be difficult to defend on further review.

If, however, you disagree with the recommendation *not* to address the impact of the government's foreign policy interests to the claims in this case, we recommend that you give serious consideration to urging the court to sidestep federal preemption and the political question doctrine and to consider instead whether international comity is a basis for dismissal. This discretionary doctrine would permit consideration of foreign policy interests in conjunction with other factors, and would appear to provide a more established doctrinal basis on which to dismiss the action.

A. The United States Government has repeatedly expressed the view, both in court filings and in public statements by government officials, that ICHEIC should be the exclusive remedy for Holocaust-era insurance claims. In the government's view, that is true even for claims against a company that is not a national of a country that has entered into a Foundation Agreement, so long as that company has voluntarily participated in the ICHEIC process. The *Garamendi* Court cited and relied on a number of those statements in analyzing the scope of the federal foreign policy there at issue, and the State Department has informed us that its policy remains the same. That history is discussed in the Supreme Court's decision and in the government's brief as *amicus curiae*.

Although the plaintiffs argue in their briefs that ICHEIC was flawed in practice, and that the statements about U.S. foreign policy in the *Garamendi* litigation should not be taken at face value, the State Department has continued to endorse the ICHEIC process in more recent years. In 2008, following the formal closure of the ICHEIC claims process, former Deputy Secretary of the Treasury Stuart Eizenstat testified before Congress (in coordination with, although not on behalf of, the State Department) that ICHEIC was able "to achieve its mandate of providing some measure of justice for Holocaust survivors and their heirs as quickly as possible," and "ultimately was successful." Testimony of Stuart Eizenstat Before the House Financial Services Committee, Feb. 7, 2008. Eizenstat also stated that litigation should not be permitted to proceed against companies that "participated fully in the ICHEIC process without the benefit of an Executive Agreement" because, although "there was no technical legal peace extended by the U.S. Government," those companies "nonetheless participated in good faith in a process that the United States Government had decided was the 'exclusive remedy' for resolving all Holocaust-era insurance claims." Eizenstat stated that "[t]here is no justification for now subjecting them to some other remedy. This is a conclusion

shared by the United States Supreme Court, in its *Garamendi* decision * * * [and by the] *In re Assicurazioni Generali* decision dealing precisely with this issue.”

Furthermore, there are compelling reasons to set forth the U.S. foreign policy in this case. The State Department has informed us that the United States is in discussions with several European governments in an effort to convene a second Holocaust assets conference as a follow-up to the 1998 Washington Conference. The 1998 Conference provided a strong impetus to the governments of Germany, Austria, and France to enter into executive agreements, and the United States is hoping for similar compensation programs to be established by governments from Central and Eastern Europe. The State Department is concerned that the specter of ongoing litigation against companies that participated in ICHEIC may discourage these governments from establishing and participating in a new Holocaust compensation program. In addition, litigation in a U.S. court may affect current efforts by our government to persuade Germany to expand the scope of existing compensation programs. Accordingly, there appears to be a significant government interest in articulating the current federal foreign policy in response to the explicit solicitation of that policy by the court of appeals.

The fact that ICHEIC is no longer accepting claims does not modify the U.S. foreign policy at least with respect to claims that were or could have been submitted to ICHEIC. (As noted above, the time period for submitting claims to ICHEIC has expired.) Although participating companies have voluntarily agreed to continue to accept and process claims under the same procedures and guidelines employed by ICHEIC, we are not aware of any State Department policy formally supporting that effort as an exclusive remedy. We are currently discussing with the State Department whether its support of ICHEIC extends to support of the new round of claims processing by participating companies, and will reflect any resolution of those discussions in the amicus filing. At a minimum, however, we can articulate in an amicus filing the foreign policy that ICHEIC should be the exclusive remedy for claims that were or could have been submitted as part of that claims resolution process.⁶

⁶ A pending federal bill, H.R. 1746, would, if enacted, modify federal policy at least prospectively. That bill would require insurers to disclose information relating to Holocaust-era policies and would establish a federal cause of action for claims arising out of a covered policy. The bill contains congressional “findings” that ICHEIC has not complied with certain reporting requirements relating to implementation of the German Foundation Agreement; that U.S. courts have jurisdiction over actions by Holocaust victims and their families to recover insurance proceeds, including actions against Generali; that ICHEIC did not take adequate steps to compensate policyholders under Holocaust-era policies; and that Holocaust victims and their heirs should be permitted to bring insurance claims in U.S. courts. H.R. 1746, § 2(14), (17-20), (26). Among other things, that bill would create a federal cause of action to recover benefits from an insurance company under a Holocaust-era insurance policy, would provide for retroactive application “to the fullest extent permitted” by the Constitution — “including claims previously dismissed on the grounds of executive preemption” — and would provide a new limitations period of 10 years to bring suit. *Id.* (continued...)

B. We recommend against taking a position on the impact of foreign policy on the claims in the case. The State Department has requested that we not weigh in on the legal impact of the relevant U.S. policy, and the letter from the court of appeals does not specifically request our views on this question. Furthermore, the most obvious arguments in support of dismissal (including the argument accepted by the district court) are problematic — although it is certainly possible that the court of appeals will nevertheless treat the government's statement of foreign policy as sufficient to warrant dismissal. An elaboration of the government's legal position is probably significant only if you wish to head off a ruling by the court of appeals that the foreign policy interest of the United States renders non-justiciable the claims in this case.

As noted, the State Department has informed us that they do not wish to express a view in any amicus filing on the effect of U.S. foreign policy on the claims in this litigation. The State Department has concerns about the potential strength of any arguments that could be made for dismissal, and is also concerned that taking a position on this issue could complicate efforts to defeat the pending bill, H.R. 1746, or similar future bills. We are currently discussing with the State Department whether it would be better simply to omit mention of the legal effect of the U.S. foreign policy, or instead to note affirmatively that the government does not take a position on the issue, and we anticipate that this issue will need to be resolved in the course of drafting any amicus submission. In any event, however, the State Department has expressed its clear, and strong, preference against making any legal arguments in favor of dismissal.

Furthermore, submission of a filing that sets out U.S. foreign policy but does not address the legal consequences of that policy would be fully consistent with the terms of the court's invitation letter. That letter invites the government to address "whether court adjudication of the Holocaust era claims against Generali would conflict with the foreign policy of the United States," and to elaborate on certain aspects of the nature and scope of U.S. foreign policy. Although nothing in the letter would prevent the government from taking a position on the ultimate legal questions in the case, the letter does not on its face solicit such a position.

Finally, we have concerns that the most obvious arguments in support of dismissal are potentially weak on the merits, and would mark a substantial extension of existing precedent.

In its letter to the State Department, the Second Circuit described at length the holding in *Garamendi*, and framed the issue on appeal as whether the district court erred in holding that the plaintiffs' claims were preempted by federal foreign policy under *Garamendi*. The parties have also briefed the case as one of federal foreign policy preemption under *Garamendi*. Although the

⁶(...continued)

§ 10(a)(1), (d), (e). Should this bill (which the State Department opposes) be enacted, it could have a substantial impact on our articulated foreign policy relating to ICHEIC as the exclusive remedy for Holocaust-era insurance claims. At a minimum, we would likely need to acknowledge that the prior foreign policy, which was in effect during the period of ICHEIC's active operation, would be modified prospectively.

defendants-appellees recognize that, unlike in *Garamendi*, there is no executive agreement that bears on the claims against Italian company Generali, they argue that this distinction is not dispositive, relying on the fact that in *Garamendi* the agreements were not themselves held to be preemptive but were instead treated as evidence of the preemptive foreign policy. Furthermore, the foreign policy at issue in *Garamendi* also involved the U.S. Government's policy towards Generali (which was a petitioner in the case), and the Court drew no distinction between the federal foreign policy relating to German companies, on the one hand, and federal foreign policy relating to Italian companies, on the other.

But any argument that the federal preemption holding in *Garamendi* also bars the claims at issue here is problematic. Even those statements of federal foreign policy in the German Foundation Agreement are deliberately ambiguous. On the hand, they include a commitment by the President to inform U.S. courts that "it would be in the foreign policy interests of the United States for the Foundation to be the exclusive forum and remedy for the resolution of all asserted claims against German companies arising from their involvement in the National Socialist era and World War II." *Garamendi*, 539 U.S. at 406. The United States would thus suggest to the courts that "U.S. policy interests favor dismissal on any valid legal ground." *Id.* At the same time, however, the Agreement explicitly provides that "[t]he United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal." *Id.* The Agreement thus might be read to reflect the view that United States foreign policy does not, as such, preempt state law claims arising from the Holocaust era. The government's brief in *Garamendi* does not suggest otherwise. The brief urged that California had impermissibly interjected itself into the conduct of foreign policy by adopting a regulatory scheme that was extraterritorial in purpose and effect. The government's analysis addressed the conflicts between this regime and the ICHEIC process without suggesting a broad preemption of all Holocaust-era claims.⁷

Arguing for federal preemption in this case would require an extension of the holding in *Garamendi* to a setting in which there is no executive agreement to support the assertedly preemptive foreign policy, but merely public statements of State Department officials. Furthermore, we would be required to argue that federal foreign policy preempts not only state laws specifically targeted at the problem of post-war reparations for insurance claims — a context in which the Supreme Court viewed the state's interests as minimal, *see* 539 U.S. at 425-426 — but also common-law claims seeking to enforce traditional tort duties. Although we have argued in other federal preemption cases that the fact a claim arises under state common law rather than positive enactment does not preclude

⁷ At oral argument in *Garamendi*, the Supreme Court inquired as to the impact of the government's position on "the litigation that was ongoing in the Eastern District of New York that I think involved a slave labor question? Did the United States take a position in that litigation, which involved people who moved here, or their survivors moved here after, that that was improper litigation?" *American Ins. Ass'n v. Garamendi*, No. 02-722, Transcript of Oral Argument, 2003 WL 21015147, *28 (U.S. Apr. 23, 2003). Government counsel responded: "No. Those — that did not involve State regulation, that involved private lawsuits, and there was a settlement which the United States encouraged. Again, this was part of the overall approach of the United States Government." *Id.*

application of conflict preemption, *see, e.g., Riegel v. Medtronic, Inc.*, No. 06-179, Brief for the United States as Amicus Curiae 16-19, it would nevertheless mark a further step beyond *Garamendi* itself.

Although the court of appeals and the parties have framed the relevant question on appeal as one of foreign policy preemption, another possible approach to the case would be to assert that the claims are barred under the political question doctrine or as a matter of case-specific deference to federal foreign policy. In *Whiteman v. Dorotheum GmbH & Co. KG*, 431 F.3d 57 (2d Cir. 2005), the court of appeals held that federal foreign policy as expressed in the Austrian Foundation Agreement and a statement of interest filed by the United States under that Agreement barred the adjudication of claims against Austria and Austrian entities arising out of the Nazi-era confiscation of the property of Austrian Jews. Invoking both the political question doctrine and “case-specific deference” to foreign policy, *see Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2766 n.21 (2004), the court held that the claims were “nonjusticiable.” 431 F.3d at 73. The Third Circuit has similarly held, in *In re: Nazi Era Cases Against German Defendants Litig.*, 2006 WL 2162308 (3d Cir. Aug. 2, 2006), that claims for compensation against German companies arising out of inhumane Nazi medical experimentation in concentration camps were barred by the political question doctrine. *See also Alperin v. Vatican Bank*, 410 F.3d 532, 559-562 (9th Cir. 2005) (holding that political question doctrine barred claims that Vatican Bank assisted the Nazi regime in committing wartime atrocities and was unjustly enriched by profits derived from slave labor).

An argument for dismissal on these grounds would also pose potential problems, however. Even in cases in which the United States has filed a Statement of Interest pursuant to a Foundation Agreement, there is considerable tension between the position that foreign policy requires dismissal of an action and the express recognition in the Foundation Agreement that the agreement does not itself provide an independent legal basis for dismissal. In *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004), a Foundation Agreement case, the Eleventh Circuit pointed to this disjunct in holding that the political question doctrine did not apply. *Id.* at 1235-1237. Even if the federal foreign policy might warrant case-specific abstention by a federal court in a case involving Holocaust-era insurance claims arising under state law, furthermore, it would be difficult to argue that a similar claim brought under a cause of action created by federal law would also be nonjusticiable — a problem with courts’ treatment of the issue as one of justiciability, which is highlighted by the pending federal bill. *See* n.7, *supra*. And the argument would appear particularly difficult to make in the circumstances present here, where the allegedly dispositive foreign policy is expressed only in an amicus brief and public statements by sub-cabinet-level federal officials, sources that have not previously been considered to give rise to binding federal law.

Accordingly, in light of the request from the State Department not to address the impact of U.S. foreign policy on the litigation and the potential problems with the most obvious doctrinal grounds on which to support dismissal, we recommend that, consistent with the plain language of the court’s letter, any amicus filing by the United States merely articulate the federal foreign policy towards ICHEIC, including with regard to claims against a company that voluntarily participated in the ICHEIC process but was not a national of a country that entered into a Foundation Agreement.

However, should you determine nevertheless to address the impact of foreign policy on the disposition of this litigation, the doctrine of international comity (or its related cousin, *forum non conveniens*) might better harmonize general U.S. policy with the explicit recognition that this policy, at least as of the time of the Foundation Agreement, did not require dismissal of all claims. As noted above, in its initial decision, the district court refused to dismiss the claims against Generali on the ground of *forum non conveniens*, holding in relevant part that ICHEIC was not an adequate alternative forum and suggesting that no private forum could ever be adequate. We believe that these aspects of the district court's holding were in error. (Indeed, the district court itself has suggested that parts of its earlier decision might no longer be valid following *Garamendi*. See 340 F. Supp.2d at 505-506.)

If we were to address this issue in a filing, we would explain that the United States' policy towards ICHEIC should be given significant weight in any consideration of *forum non conveniens* or the related doctrine of international comity. Both doctrines require a court to consider the adequacy of the alternate forum as a relevant factor. See *Ungaro-Benages v. Dresdner Bank AG*, 379 F.2d 1227, 1238 (11th Cir. 2004). Here, the policy of the United States is that Holocaust-era insurance claims should be resolved exclusively by ICHEIC — a policy that strongly suggests, therefore, that ICHEIC was an adequate forum. We think that the Eleventh Circuit was correct in *Ungaro-Benages* to consider the Executive Branch's policy supporting the German Foundation as the exclusive remedy for Holocaust-era claims also to support application of international comity. See 379 F.3d at 1240. Conversely, the district court was wrong to suggest that the United States' policy towards ICHEIC was "irrelevant" to its analysis of the adequacy of the forum under *forum non conveniens*. 228 F. Supp.2d at 358.

Addressing this issue would also provide an opportunity to disagree explicitly with the district court's suggestion that a private forum cannot be adequate for purposes of *forum non conveniens* (or, presumably, international comity). There are several reasons why a private entity might be used to process claims in favor of a government body, such as a desire to preserve the independence or impartiality of the claims process. The State Department has previously supported the use of private entities of this type, such as the claims tribunal established by agreements between the United Arab Emirates and other countries to provide compensation to former camel jockeys. The State Department has an interest in preserving foreign states' ability to resolve claims through the use of a private mechanism, without rendering inapplicable in a U.S. court the doctrines of *forum non conveniens* or international comity.

Accordingly, should you determine that the government's filing should take a position on the legal effect of the federal foreign policy, an argument in favor of international comity could provide an alternate basis on which the court of appeals could affirm the judgment of the district court. We urged the court of appeals to follow a similar approach in a recent case in which a district court held that the State Department's position that dismissal of the action would be in the foreign policy interests of the United States, set forth in a Statement of Interest filed in the case, rendered the case nonjusticiable under the political question doctrine. While suggesting that foreign policy interests may properly support dismissal in some circumstances under the political question doctrine or the doctrine of case-specific deference, we suggested that the court

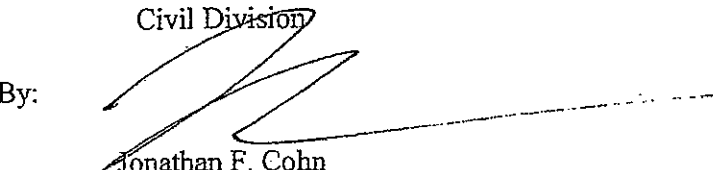
of appeals did not need to decide the question because the case was properly dismissed under the doctrine of international comity. See *Mujica v. Occidental Petroleum Corp.*, No. 05-56175 *et al.*, Brief of the United States as Amicus Curiae 10-12 (9th Cir. filed Mar. 17, 2006). A copy of that brief is attached.

CONCLUSION

For the foregoing reasons, I recommend that we file a brief as *amicus curiae* in support of defendants-appellees on question 1.

GREGORY G. KATSAS
Assistant Attorney General
Civil Division

By:



Jonathan F. Cohn
Deputy Assistant Attorney General

Memorandum



Subject	Date
<u>In re Assicurazioni Generali,</u> No. 05-5602 (2d Cir.)	September 25, 2008
To	From
The Solicitor General	<i>DHD</i> Douglas Hallward-Driemeier

TIME

In a letter dated August 1, 2008, the Second Circuit invited the United States to file a submission amicus curiae informing the court whether the foreign policy interests of the United States would be undermined by adjudication of the plaintiffs' claims against defendant Generali relating to Holocaust-era insurance policies. The court of appeals asked the government to inform the court by August 31 whether the government intends to file a brief and to file any such brief sixty days thereafter, by October 30. The Civil Division requested an additional 30 days, until September 30, to inform the court whether the United States would make an amicus filing. *We received Civil's memorandum on September 25.*

RECOMMENDATIONS

The Department of State, United States Attorney's Office, and Civil Division recommend amicus participation on issue 1. I recommend AMICUS PARTICIPATION ON ISSUE 1.

I recommend AMICUS PARTICIPATION, subject to approval of the chief brief.

We must notify CA2 by September 30 whether the US will file an amicus brief. If the government intends to file, a brief would then be due October 30.

There is a general consensus that the United States should at least file an amicus brief informing CA2 that it continues to be the foreign policy of the United States that insurance claims should be subject to voluntary resolution, such as through ICHEIC. CA2 asked whether it is; State confirms that that is the U.S. policy; and there have been many pronouncements supporting that proposition. It therefore is the right thing to do to inform CA2 of that position.

There remains the question of what is the legal consequence of that foreign policy. In the Statement of Interest filed in the German Foundation cases, the

Privileged and Confidential

QUESTIONS PRESENTED

(1) Whether it is the foreign policy of the United States that Nazi-era claims for unpaid insurance policies brought against an Italian company that voluntarily participated in the International Commission on Holocaust Era Insurance Claims (ICHEIC) should be resolved exclusively by voluntary means such as ICHEIC rather than through litigation in the courts of the United States.

(2) Whether, assuming the United States foreign policy is as stated in question (1), that foreign policy preempts plaintiffs' state law claims relating to unpaid Holocaust-era insurance policies or whether that policy supports dismissal on other grounds, such as international comity.

STATEMENT

1. In the late 1990s, after numerous suits were filed in the United States asserting claims arising out of the Holocaust era, the United States facilitated discussions between the representatives of the plaintiffs and defendants, the governments of Germany, numerous Eastern European countries, and Israel, and other groups representing Holocaust survivors and the heirs of Holocaust victims regarding non-litigation resolution of claims from the Holocaust era. These discussions culminated in the issuance of a Joint Statement by the participants in the discussions and the July 2000 signing of an Executive Agreement between the United States and Germany establishing a foundation funded with 10 billion DM, contributed jointly by the German Government and German companies, to be used to compensate individuals who suffered at the hands of German companies during the Nazi era. Agreement Concerning the Foundation 'Remembrance, Responsibility and the Future,' (Foundation Agreement), 39 Int'l Legal Materials 1298, 1303 (2000). A similar Executive Agreement was signed by the United States and Austria, see Agreement between the Austrian Federal Government and the Government of the United States of America Concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund Agreement), 40 Int'l Legal Materials 523 (2001), and another agreement addressing Holocaust-era claims was signed between the United States and France, and a Joint Statement was issued by the United States and Switzerland. See American Ins. Ass'n v. Garamendi, 539 U.S. 396, 406-408 & nn. 2-3 (2003).

U.S. set forth a similar foreign policy but said that the Statement of Interest did not itself furnish a basis for dismissal, although the US used dismissal as any valid legal ground. By e-mail this afternoon, State says it would go along with that approach. There is no need to decide at this point whether or how to express that view, although my position, at least on the basis of what I know thus far, is that we should say at least that -- both because it would be consistent with what the US said in Statement of Interest pursuant to the Executive Agreement, and because I think we should get that much on the record now so that we

Privileged and Confidential

As part of the Foundation Agreement, the United States agreed to inform its courts that "it would be in [its] foreign policy interests * * * for the Foundation to be the exclusive remedy and forum for resolving [Holocaust-era] claims asserted against German companies." The United States also agreed to "use its best efforts" to promote the objectives of the agreement, including the achievement of an "all-embracing and enduring legal peace" with respect to such claims. The Reconciliation Fund Agreement and accompanying Joint Statement similarly establishes that the United States believes Austria's General Settlement Fund (GSF) should be the exclusive remedy for all Holocaust-era claims against Austrian companies and that the United States' foreign policy supports an "all-embracing and enduring legal peace" for Austria and Austrian companies in favor of the remedy provided by the GSF. The United States did not maintain in the Foundation Agreement or Reconciliation Fund Agreement that its foreign policy interests would "in themselves provide an independent legal basis for dismissal," but the United States ~~did~~ undertook to file statements of interest informing United States courts "that U.S. policy interests favor dismissal on any valid legal ground." Garamendi, 539 U.S. at 406 (quoting Foundation Agreement).

With respect to insurance claims, the Foundation Agreement specified that such claims against German insurance companies were to be handled according to the procedures established by the International Commission on Holocaust Era Insurance Claims (ICHEIC), with a total of DM650 million allocated to paying approved claims as well as a "humanitarian fund" to be administered by ICHEIC. The Austrian GSF also covered insurance claims. See Garamendi, 539 U.S. at 408 n.3. Although the German and Austrian agreements expressed the United States' foreign policy that the ICHEIC process should be the exclusive remedy for Holocaust-era insurance claims against German and Austrian companies, those agreements did not create ICHEIC. Rather, ICHEIC was "a voluntary organization formed in 1998 by several European insurance companies, the State of Israel, Jewish and Holocaust survivor associations, and the National Association of Insurance Commissioners, the organization of American state insurance commissioners," and was chaired by former Secretary of State Lawrence Eagleburger. Id. at 406-407. ICHEIC was set up "to provide information about unpaid insurance policies issued to Holocaust victims and settlement of claims brought under them," and the organization established "procedures for handling demands against participating insurers," including a system for researching and publishing unpaid policies, investigating the current status of

would not appear to have been hiding the ball if this case later goes to the Supreme Court.

For now, I recommended that you authorize notification to CAZ that the U.S. will file an amicus brief, subject to approval of the brief.

ESF.
9/29/08

Privileged and Confidential

policies for which claims were made, a valuation process for paying claims, and "relaxed standards of proof." Id. at 407.

Generali, an Italian insurance company that is the defendant in this litigation, was one of the founding participants in the ICHEIC process. Generali committed \$100 million to pay Holocaust-era claims through ICHEIC, and, through ICHEIC, Generali published information relating to 43,000 unpaid policies of Holocaust victims. Generali's participation in ICHEIC was voluntary, and no executive agreement was entered into between the United States and Italy. Nonetheless, Deputy Secretary of the Treasury Stuart Eizenstat and other high-ranking government officials have repeatedly stated that the United States' policy that ICHEIC "should be considered the exclusive remedy for resolving insurance claims from the World War II era." In re Assicurazioni Generali, 340 F. Supp. 2d 494, 504 (S.D.N.Y. 2004) (Generali II) (quoting Eizenstat statement to House Committee on Banking and Financial Services); ibid. (Eizenstat testimony to Senate Committee on Foreign Relations that a company's participation in ICHEIC should give it "'safe haven' from sanctions subpoenas, and hearing relative to the Holocaust period"); ibid. (Letter of Deputy Secretary of State Richard Armitage that the U.S. "continues to support the ICHEIC and believes it should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II").

2. This appeal involves the individual claims of some 27 individuals who brought suit against Generali in United States courts (some of which were filed in state court and removed on the basis of diversity jurisdiction), which were consolidated before then-Judge Mukasey in the Southern District of New York. The consolidated litigation initially also included several class actions that have subsequently been settled. The complaints allege a variety of causes of action, including under state laws that create causes of action and extend statutes of limitation for claims on Holocaust insurance policies in particular, state unfair business practices statutes, international law, and common law principles of contract, unjust enrichment, and the duty of good faith and fair dealing. See Generali II, 340 F. Supp. 2d at 508 (Appendix).

In 2002, Judge Mukasey considered and denied Generali's motion to dismiss on forum non conveniens grounds. In Re Assicurazioni Generali, 228 F. Supp.2d 348 (S.D.N.Y. 2002) (Generali I). He held that ICHEIC was not an adequate alternative forum because it was a "private, nongovernmental form that [the defendants] both created and control," id. at 355, 356, and because "there are questions about ICHEIC's continued viability as a forum," id. at 357.

Privileged and Confidential

In 2003, the Supreme Court issued its opinion in Garamendi. In that decision, the Court held that California's Holocaust Victims Insurance Relief Act was preempted because it conflicted with the foreign policy of the Federal Government as demonstrated in the Executive Agreements. 539 U.S. 420-425. The Court reasoned that its recounting of "negotiations toward the three settlement agreements is enough to illustrate that the consistent Presidential foreign policy has been to encourage European governments and companies to volunteer settlement funds in preference to litigation or coercive sanctions." Id. at 420. The Court relied on the Executive Agreements as "exemplars" of the government's position, but cited as well the more general statements of Deputy Secretary Eizenstat quoted above that "[t]he U.S. Government has supported [the ICHEIC] since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era." Id. at 422. The majority specifically took issue with the dissent, which criticized the majority for relying on "Executive Branch expressions of the Government's policy" other than formal Executive Agreements or statements by the President. Id. at 423 n.13.

Following the Garamendi decision, the Judge Mukasey ruled on Generali's motion to dismiss on preemption grounds. The district court ruled that "the laws supporting litigation of plaintiffs' benefits claims are preempted by a federal Executive Branch policy favoring voluntary resolution of Holocaust-era insurance claims through ICHEIC" and because "[p]laintiffs' ancillary claims, in turn, are not actionable because it appears that they do not allege any cognizable injury other than that caused by Generali's non-payment of benefits, redress for which is committed to ICHEIC." Generali II, 340 F. Supp.2d. at 497. The court held that the Executive's stated policy not only preempted state laws specific to Holocaust claims, but also to "the benefits claims arising under generally applicable state statutes and common law as well as customary international law. Litigation of Holocaust-era insurance claims, no matter the particular source of law under which the claims arise, necessarily conflicts with the executive policy favoring voluntary resolution of such claims through ICHEIC." Id. at 501. The court also held that the Executive's policy and Garamendi decision extended to Generali, despite the fact that there was no Executive Agreement with Italy. The court noted that Generali was one of the petitioners in Garamendi, that the Supreme Court had frequently referred to "European insurers," rather than German and Austrian insurers, and that senior Executive Branch officials, including Deputy Secretary Eizenstat and State Department officials had stated the United States' policy in terms of support for ICHEIC as the exclusive remedy for unresolved

Privileged and Confidential

insurance claims, not just for companies covered by the Foundation Agreement or Reconciliation Fund Agreement. Id. at 503-504. The court noted that the United States had not filed a statement of interest in the case, but attributed that fact to "an unwillingness to act on behalf of a private company absent a government-to-government agreement encompassing claims against the company in question." Id. at 506-507. The court observed that Executive Branch officials had said that "the U.S. government could not be expected to intervene in the U.S. courts on behalf of Generali, since there was not governmental connection." Id. at 507.

3. While the case was pending on appeal, ICHEIC discontinued its operations, because its claims date had long passed and the filed claims were resolved. While the appeal was pending, Generali reached a settlement agreement with counsel in the class actions under which Generali agreed to reopen the period for filing claims, which would be resolved under the same terms as ICHEIC processed claims, but with ultimate supervision by the district court, and that Generali would pay an additional \$35 million to compensate the new claimants. The district court, after a remand from the court of appeals, approved the settlement, and the court of appeals affirmed. As a consequence of the class settlement, only twenty-seven individual claimants' cases remain pending (in addition to an approximate 200 individuals who opted-out of the class action settlement and who may now seek to file individual claims, especially if the court of appeals reverses the district court's order).

At oral argument, the members of the panel asked counsel for Generali what the United States' foreign policy actually was, and whether the United States shouldn't be asked to furnish its views. See Civil Mem. 8. On August 1, 2008, the Clerk of Court sent a letter to the Secretary of State asking for the Executive Branch's advice on "whether court adjudication of these Holocaust era claims against Generali would conflict with the foreign policy of the United States." 8/1/2008 Letter of Catherine O'Hagan Wolfe 1; see id. at 2 ("whether adjudication of these suits by a court of the United States would conflict with the foreign policy of the United States"). The court acknowledged the United States' statement in its Garamendi amicus brief that ICHEIC "should be recognized as the exclusive remedy for all insurance claims that date to the Nazi era," but questioned "whether this continues to be Government policy, whether Government policy on this question is influenced by the fact that ICHEIC is no longer accepting claims, and whether that policy today encompasses insurers from countries (like Italy) not covered by executive agreements, as against companies from countries (like Germany and Austria) that are." Ibid.

Privileged and Confidential

DISCUSSION

I agree with the unanimous recommendations that the United States should file a response to the inquiry from the court of appeals informing it of the foreign policy of the United States as it relates to the questions the court raised in its letter. I also agree that the United States' response should not take a position on the further question of the legal consequences of the United States' foreign policy.

1. As the Civil Division memorandum thoroughly discusses, the United States has repeatedly stated that it is the policy of the Executive Branch that ICHEIC should be the exclusive remedy for Holocaust-era insurance claims, including for companies that participated in ICHEIC voluntarily, without the compulsion of an Executive Agreement entered into by its national government. The Supreme Court relied on those statements in Garamendi, in which Generali was one of the petitioners, and the State Department informs us that the government's policy remains the same.

As explained in the Statements of Interest that the United States filed in cases against German and Austrian companies, the government's policy favoring resolution of Holocaust-era claims through negotiation and cooperation was based on many factors, including our foreign relations with the governments of Western Europe, where most of the defendant companies were located, and with the governments of Israel and Central and Eastern Europe, where most of the potential claimants lived. The policy also reflected the reality that litigation would be long and costly, with very uncertain prospects for claimants in light of the numerous defenses that the defendants might raise, and the conviction that only a negotiated resolution, with relaxed standards of proof and waiver of defenses was likely to result in some measure of justice on behalf of aging Holocaust victims. (A copy of the Statement of Interest filed in Whiteman v. Federal Republic of Austria, No. 00-8006 (S.D.N.Y.), is attached.) Although the United States did not take the step of espousing and settling individuals' claims (that was not the nature of the role the United States played in the negotiations, and, in any event, many of the claimants the United States sought to benefit were not United States nationals), the Executive Branch did recognize that, in order to achieve its policy goals, the government had to embrace as part of its policy a preference for dismissal of even those claims brought by plaintiffs who did not wish to take advantage of the negotiated processes, but wanted instead to litigate their claims in the courts of the United States. Thus, in the Executive Agreements with Germany and Austria, the United States agreed to file statements of interest that would inform the courts "that U.S.

Privileged and Confidential

policy interests favor dismissal on any valid legal ground." Garamendi, 539 U.S. at 406. Although the United States made no undertaking to make similar filings on behalf of companies who were not covered by an Executive Agreement, the government's policy with respect to companies that participated in ICHEIC was the same, whether they did so voluntarily or under compulsion of their governments. As we stated in our amicus brief in Garamendi, the United States' policy was that ICHEIC "should be recognized as the exclusive remedy for all insurance claims that date to the Nazi era." U.S. Br. at 2. Id. at 13 ("with respect to unresolved claims against foreign enterprises arising out of the Holocaust, the United States has determined that those claims should be pursued through voluntary, non-adversarial processes rather than through coercive regulations and litigation"). That policy did not distinguish Generali, which was a voluntary founding member of ICHEIC and petitioner in Garamendi, from the German companies covered by the Executive Agreement. Rather, the United States' brief explained that the Executive Agreement "reflected" the "United States' approach to resolving Holocaust victims' claims, including insurance claims." Id. at 3.

As the Civil Division explains (Mem. 9-10), the policy stated in our Garamendi brief remains the policy of the United States and is not altered by the fact that ICHEIC is no longer accepting claims.

The court of appeals has made a reasonable request, that the United States confirm its policy in light of developments that might have altered that policy (though they have not). Although the government was not obligated to file a statement of interest in this case, there is little reason why the government should refuse to clarify its foreign policy for the court when the court believes that foreign policy is relevant to the legal issues presented in the case and understandably wishes to ensure that it acts on a correct understanding of that policy. Moreover, the State Department has requested that we inform the court of its views, and has explained (as summarized in the Civil Division memorandum at 10) that a failure to respond would be construed as a retreat from the government's commitment to cooperative negotiated resolution of Holocaust-era claims, which would undermine present efforts by the State Department to expand the scope of the existing compensation program in Germany and create new programs along similar lines in Central and Eastern Europe. Thus, I concur with the recommendation of the Civil Division and Department of State that we respond to the court of appeals' inquiry and inform the court that the policy stated in our amicus brief in Garamendi remains the policy of the United States, that it applies to companies that voluntarily participated in the ICHEIC process although they were not covered

Privileged and Confidential

by an Executive Agreement, and is not affected by the fact that ICHEIC is no longer accepting claims. (We can state that our policy does not oppose reopening an ICHEIC-type process to additional claims, as Generali has voluntarily agreed to do as part of the class action settlement agreement.)

I note that you have received two letters from Members of Congress that urge you not to make a filing in this case suggesting that the foreign policy of the United States would be interfered with by litigation of claims against a company that is not covered by an Executive Agreement. See 9/23/08 Letter of Representative John Conyers, Jr.; 9/24/08 Letter of Representatives Ileana Ros-Lehtinen, Robert Wexler, Steve Chabot, and Ron Klein. Although it is clear that the Members disagree with the foreign policy that the Executive Branch has adopted with respect to claims against companies that voluntarily participated in ICHEIC, I do not believe that is an appropriate basis to refrain from responding to the court of appeals' inquiring and providing it with correct and current information about the foreign policy views of the Executive Branch.¹ To the extent that the Members' letters can be construed as urging you not to go farther, and not to take a position on the legal merits of the defendants' preemption argument, that question is addressed below.

2. I agree with the Civil Division that the United States' submission should not take a position on what the legal consequences of the government's foreign policy are for the viability of plaintiffs' claims. Most significantly, the court of appeals does not appear to have requested a brief addressing legal arguments, but rather a statement of the government's foreign policy views. While it would not be unreasonable to view the letter, which sets forth the district court's preemption rationale, as an implicit invitation to comment on whether the United States agrees that that is the legal consequence of the government's policy views, the particular question that the court has asked of the government is to explain what its present foreign policy is.

¹ The Letter of Members Ros-Lehtinen, Wexler, Chabot, and Klein refer to a bill pending in the House of Representatives that would provide Holocaust victims a cause of action in United States courts with respect to Holocaust-era insurance policies. See Civil Mem. 10 n.6 (discussing bill). Although that bill, if passed by Congress and signed by the President, would establish a new policy with respect to Holocaust-era claims, the State Department opposes the bill precisely because it is inconsistent with the foreign policy articulated by the Executive Branch.

Privileged and Confidential

Moreover, it would seem somewhat incongruous for the government to take a position on the legal merits at this late date. The government has filed numerous statements of interest in the past eight years pursuant to the Executive Agreements with Germany and Austria, but it has almost never taken a position on the merits of the legal defenses raised by defendants in support of the dismissal of individual Holocaust victims' claims.² Instead, the governments' statements of interest have stuck to the language of the Executive Agreements, encouraging the courts to dismiss on any valid legal basis. That decision was based on numerous considerations, including a sense that the government's role in the negotiations had been that of an intermediary and that it was inappropriate to take sides between the plaintiffs and defendants on their legal disputes. Moreover, the government did not always agree with some of the defendants' legal arguments, but worried that it would be seen as subverting the Executive Agreements if we took a position adverse to dismissal on one or another ground. In the end, that approach has perhaps led the courts to give the Executive's foreign policy broader legal force than the government might itself have urged. The district court's decision in this case is a good example. Although the government would probably not have argued at the time the motion to dismiss was briefed that the individual plaintiffs' common law claims were preempted by the government's foreign policy, that argument by defendants ultimately found support in the Supreme Court's Garamendi decision, which was decided after the motion was briefed. Indeed, in Garamendi itself, the United States did not urge the theory of preemption that the

² The sole exception of which I am aware is Deutch v. Turner, 317 F.3d 1005, amended on rehearing, 324 F.3d 692 (9th Cir. 2003). In that case, the United States did take a position that California's World War II forced labor statute, which created a statutory cause of action and established a unique statute of limitations for common law causes of action related to World War II forced labor claims was unconstitutional because it was an impermissible attempt by the State to legislate with respect to foreign war claims that were the exclusive province of the federal government, which had adopted a policy that opposed litigation of such claims. The reasons for that filing were unique, however. Deutch was pending along with numerous claims brought by victims of Japanese slave labor practices in World War II. A treaty with Japan had expressly settled such claims of signatory states, including Japan and the United States, or relegated them to government-to-government resolution. We were concerned that Deutch could be heard and decided first, and felt the need to make the same arguments against the state statute in that case that we were advancing in the Japanese cases.

Privileged and Confidential

majority adopted, but instead argued that the California law constituted an unconstitutional intrusion by the State into matters of foreign relations and impermissible extraterritorial legislation.

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

For the foregoing reasons, I recommend against taking a position on the legal merits of the particular defenses Generali has raised in this litigation.

ACTION SHEET

TO: OFFICE OF THE SOLICITOR GENERAL - RM 5259

FROM: CIVIL DIVISION

___ Mr. Garre Civil Rights Division *Agencies:* EEOC, FEC, FLRA, MSPB *Special Subjects:* Bivens & Section 1983, Employment Discrimination, Federal Employees, Governmental Immunity, Prison Litigation Reform Act, Religious Freedom Restoration Act, Title VII

___ Mr. Hungar Antitrust, Civil Division (Commercial Branch - includes bankruptcy, Gov't contracts) (except False Claims)), Environment Division (pollution control), Tax Division *Agencies:* CFTC, CPSC, EPA, FCC, FDIC, Federal Reserve Board, FMC, FTC, IRS, NLRB, NRC, OCC, SEC, STB *Special Subjects:* Attorneys Fees (including EAJA), Banking, Customs & International Trade, Patent, Copyright & Trademark, Taxation

✓ ___ Mr. Kneedler Civil Division (Federal Programs, Office of Immigration Litigation, Office of Consumer Litigation, Torts), Environment Division (except pollution control) *Agencies:* FDA, FERC, Forest Service, HHS, Interior Department, Labor Department (ERISA), PBGC, SSA, TVA *Special Subjects:* Civil/False Claims Act (including Qui Tam), Federal Programs, Federal Tort Claims Act, FOIA, Immigration, Indian Law, Original Actions, Privacy & Sunshine Acts

___ Mr. Dreeben Criminal Division *Special Subjects:* Criminal matters from Antitrust, Civil Division (FDA cases - as well as some other consumer protection matters), Civil Rights, Environment, Tax Divisions, Forfeiture, Habeas Corpus (except immigration)

Note: Consult with Mr. Kneedler on Supreme Court original actions.

Mr. Feldman, Ms. Blatt, & Mr. Himmelfarb will review Sentencing Guidelines recommendations.

Mr. Stewart will review whether to waive or respond to certiorari petitions in Criminal matters involving litigating Divisions other than the Criminal Division.

Comments:



United States Department of State

The Legal Adviser

Washington, D.C. 20520

August 18, 2009

Mr. Robert E. Kopp
Director, Appellate Staff
U.S. Department of Justice
Civil Division
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Robert:

I am writing in reference to *In re Assicurazioni Generali*, No. 05-5602, et al. (2nd Cir.). The Department of State received the attached letter sent on behalf of a three judge panel of the Court of Appeals for the Second Circuit inquiring whether the position of the Executive Branch remains the same as that expressed in the Government's October 2008 letter brief. The Department of State, recognizing the important legal and policy implications of the dispute, and wishing to honor the Court's request for advice, believes we should respond by acknowledging that our position remains in substance the same as that communicated in the October 20, 2008 letter.

We would recommend, however, that in responding to the Second Circuit's renewed request, you update the October 30, 2008 DOJ letter brief in two respects, perhaps in a supplemental statement of the kind envisioned by the court's July 29, 2009 letter. First, the reference on page 9 to a second Holocaust assets conference scheduled for Prague in June 2009 could be updated to indicate the outcomes of that conference relevant for this litigation. Specifically, a new letter could note that the United States and other participants at the Prague Conference agreed to establish the European Shoah Legacy Institute in the Czech Republic to facilitate an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation programs in Central and Eastern Europe. This and other on-going efforts of the United States focus on engaging countries and other relevant parties in voluntary compensation programs. Our ability to continue to negotiate and facilitate successful compensation agreements and alternative programs to settle Holocaust-era claims would be undermined if litigation eroded the status of ICHEIC as the exclusive remedy for Holocaust-era insurance claims.

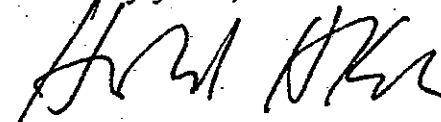
Second, a supplemental filing could more persuasively explain why the absence of an executive agreement with Italy does not affect the relative strength of U.S. foreign policy interests in this case. For example, the October 30 brief states without background on page 6 that the "United States did not conclude any agreement with Italy." Later on that same page, in discussing *Garamendi's* holding on the preemptive effect of U.S. foreign policy on inconsistent state statutes, the brief quotes the Supreme Court's statement that "the national position, *expressed unmistakably in the executive agreements signed by the President with Germany and Austria*, has been to encourage European insurers to work with the ICHEIC to develop acceptable claim procedures" (emphasis added). While the letter brief goes on to argue that it is the U.S. policy that has preemptive force in *Garamendi*, not the specific executive agreements, a fuller, more persuasive explanation of our policy position, as well as a discussion of why our foreign policy should be considered by the court, despite the lack of an accompanying executive agreement in this case, seems warranted. The statement on page 8 of the letter brief—"as in *Garamendi*, the pertinent U.S. foreign policy interest is not diminished, for purposes of this case, by the absence of an executive agreement with Italy"—may read to the Second Circuit more like *ipse dixit* than as an argument as to why a U.S.-Italy executive agreement is not necessary for the foreign policy interest standing alone to have sufficient persuasive force in this case. We believe this point needs to be fleshed out further to fully answer the Second Circuit's question.

The legal significance *vel non* of the absence of an executive agreement with Italy is obviously a question of great concern to the Second Circuit panel, a concern that led it not once but twice to seek the U.S. government's views on this issue. Indeed, on page 2 of its August 1, 2008 letter to then-Secretary Rice, the court expressly states: "The Court is unaware whether ... [the U.S. Government policy] today encompasses insurers from countries (like Italy) not covered by executive agreements, as against companies from countries (like Germany and Austria) that are." We do not believe the Second Circuit panel will be satisfied without fuller elaboration of why the Obama Administration continues to support the prior Administration's policy. An updated version of the October 30, 2008 letter brief should specifically answer the court's question by asserting, with persuasive supporting reasons, that "the U.S. Government policy today favoring exclusive claims resolution before the ICHEIC encompasses insurers from countries (like Italy) not covered by executive agreements, as well as companies from countries (like Germany and Austria) that are."

In our view, at a minimum, a supplemental statement should provide more details on the extensive efforts undertaken by the Executive to resolve Holocaust-era claims through non-adversarial mechanisms. These efforts should be presented as part of a larger policy to ensure the greatest compensation for Holocaust victims and their heirs, as well as to support broad "legal peace" for countries and companies subject to on-going claims. We should underscore that the United States has long been committed, and remains committed, to a policy favoring non-contentious, cooperative mechanisms for resolving Holocaust claims more generally. We recognized that this was the most effective way of ensuring broad compensation to victims who could generally not meet evidentiary standards required by courts. The supplemental statement should offer a more complete explanation as to why our policy alone in this case deserves the same deference as our policy combined with the executive agreements with Germany and Austria. We should make clear to the Second Circuit that the agreements are not the basis for the policy, nor are we urging any particular legal grounds for dismissal of the claims in this case. Specifically, we could note that the relevant portion of the agreements with Germany and Austria simply required that the United States file Statements of Interest in U.S. courts recommending that suits against German or Austrian companies be dismissed on any valid legal ground. Our commitment to filing this statement informing U.S. courts of our policy interests was an essential element of securing the cooperation of those key partners as we pursued a measure of justice for Holocaust victims through cooperative mechanisms.

I am happy to discuss with you further if you would find it helpful. Should you have any questions or need assistance in developing further supporting reasons for inclusion in any supplemental statement, please feel free to contact attorney Sharla Draemel in my office at (202) 776-8343.

Sincerely yours,



Harold Hongju Koh
Legal Adviser

Privileged and Confidential

Memorandum



Subject	Date
In re Assicurazioni Generali, Nos. 05-5610, 05-5612 (2d Cir.)	August 20, 2009
To	From
The Solicitor General	DHD Douglas Hallward-Driemeier

TIME

In a letter dated July 29, 2009, the Second Circuit invited the United States to file a submission amicus curiae informing the court whether the foreign policy interests of the United States are today the same as those articulated in an amicus brief we filed with the court on October 30, 2008, concerning adjudication of claims against defendant Generali relating to Holocaust-era insurance policies. The court of appeals asked the government to inform the court by August 28 whether the government intends to file a brief and to file any such brief sixty days thereafter, by October 27. We received the Civil Division's memorandum on August 20, 2009.

RECOMMENDATIONS

The Department of State, United States Attorney's Office, and Civil Division recommend amicus participation. I recommend AMICUS PARTICIPATION.

I recommend AMICUS PARTICIPATION, SUBJECT TO APPROVAL OF THE LETTER BRIEF.

Mr. Hallward-Driemeier's memo contains an excellent account of the United States' involvement in efforts to bring about a resolution of Holocaust-era claims -- including, as relevant here, claims against insurance companies. Insurance claims were to be resolved through ICHEIC, an entity created through the effort of some state insurance commissioners in the U.S., European governments, Israel, Holocaust survivor groups, and others. Last October, the U.S. submitted an amicus letter, at the request of CA2, stating that it continued to be in the foreign policy interest of the United States -- as it has been since 2000 -- that Holocaust-era insurance claims be resolved through ICHEIC, but did not take a position on whether the Executive Agreements between Germany and Austria and the U.S. preempted such claims. CA2 has now asked whether, in light of the new Administration, that continues to be the U.S.'s foreign policy. The State Department recommends that

Privileged and Confidential

QUESTION PRESENTED

Whether it is the foreign policy of the United States that Nazi-era claims for unpaid insurance policies brought against an Italian company that voluntarily participated in the International Commission on Holocaust Era Insurance Claims (ICHEIC) should be resolved exclusively by voluntary means such as ICHEIC rather than through litigation in the courts of the United States.

STATEMENT

1. In the late 1990s, after numerous suits were filed in the United States asserting claims arising out of the Holocaust era, the United States facilitated discussions between the representatives of the plaintiffs and defendants, the governments of Germany, numerous Eastern European countries, and Israel, and other groups representing Holocaust survivors and the heirs of Holocaust victims regarding non-litigation resolution of claims from the Holocaust era. These discussions culminated in the issuance of a Joint Statement by the participants in the discussions and the July 2000 signing of an Executive Agreement between the United States and Germany establishing a foundation funded with 10 billion DM, contributed jointly by the German Government and German companies, to be used to compensate individuals who suffered at the hands of German companies during the Nazi era. Agreement Concerning the Foundation 'Remembrance, Responsibility and the Future,' (Foundation Agreement), 39 Int'l Legal Materials 1298, 1303 (2000). A similar Executive Agreement was signed by the United States and Austria, see Agreement between the Austrian Federal Government and the Government of the United States of America Concerning the Austrian Fund "Reconciliation, Peace and Cooperation" (Reconciliation Fund Agreement), 40 Int'l Legal Materials 523 (2001), and another agreement addressing Holocaust-era claims was signed between the United States and France, and a Joint Statement was issued by the United States and Switzerland. See American Ins. Ass'n v. Garamendi, 539 U.S. 396, 406-408 & nn. 2-3 (2003).

As part of the Foundation Agreement, the United States agreed to inform its courts that "it would be in [its] foreign policy interests * * * for the Foundation to be the exclusive remedy and forum for resolving [Holocaust-era] claims asserted against German companies." The United States also agreed to "use its best efforts" to promote the objectives of the agreement, including the

2

The government file a submission saying that that does continue to be the policy, and Civil. Mr. Hallward-Dreemier and I agree. We also agree that the long-articulated policy applies to insurance claims against Generali, an Italian company, even though the U.S. did not enter into an Executive Agreement with Italy. All of the class actions and all but two of the individual claims that were consolidated in SDNY and were one before CA2 have settled. There is reason to think

Privileged and Confidential

achievement of an "all-embracing and enduring legal peace" with respect to such claims. The Reconciliation Fund Agreement and accompanying Joint Statement similarly establishes that the United States believes Austria's General Settlement Fund (GSF) should be the exclusive remedy for all Holocaust-era claims against Austrian companies and that the United States' foreign policy supports an "all-embracing and enduring legal peace" for Austria and Austrian companies in favor of the remedy provided by the GSF. The United States did not maintain in the Foundation Agreement or Reconciliation Fund Agreement that its foreign policy interests would "in themselves provide an independent legal basis for dismissal," but the United States did undertake to file statements of interest informing United States courts "that U.S. policy interests favor dismissal on any valid legal ground." Garamendi, 539 U.S. at 406 (quoting Foundation Agreement).

With respect to insurance claims, the Foundation Agreement specified that such claims against German insurance companies were to be handled according to the procedures established by the International Commission on Holocaust Era Insurance Claims (ICHEIC), with a total of DM650 million allocated to paying approved claims as well as a "humanitarian fund" to be administered by ICHEIC. The Austrian GSF also covered insurance claims. See Garamendi, 539 U.S. at 408 n.3. Although the German and Austrian agreements expressed the United States' foreign policy that the ICHEIC process should be the exclusive remedy for Holocaust-era insurance claims against German and Austrian companies, those agreements did not create ICHEIC. Rather, ICHEIC was "a voluntary organization formed in 1998 by several European insurance companies, the State of Israel, Jewish and Holocaust survivor associations, and the National Association of Insurance Commissioners, the organization of American state insurance commissioners," and was chaired by former Secretary of State Lawrence Eagleburger. Id. at 406-407. ICHEIC was set up "to provide information about unpaid insurance policies issued to Holocaust victims and settlement of claims brought under them," and the organization established "procedures for handling demands against participating insurers," including a system for researching and publishing unpaid policies, investigating the current status of policies for which claims were made, a valuation process for paying claims, and "relaxed standards of proof." Id. at 407.

Generali, an Italian insurance company that is the defendant in this litigation, was one of the founding participants in the ICHEIC process. Generali committed \$100 million to pay Holocaust-

3

This litigation in U.S. courts is almost over, and there is no reason to change course now.

Yesterday, after a meeting with counsel for one of the plaintiff counsel, we discussed with the Legal Adviser and Civil what such a filing should look like, and there was general agreement on its contents. See pp. 7-8, infra. We must notify CA 2 by August 28 whether the U.S. intends to file. I recommend that we inform

Privileged and Confidential

era claims through ICHEIC, and, through ICHEIC, Generali published information relating to 43,000 unpaid policies of Holocaust victims. Generali's participation in ICHEIC was voluntary, and no executive agreement was entered into between the United States and Italy. Nonetheless, Deputy Secretary of the Treasury Stuart Eizenstat and other high-ranking government officials have repeatedly stated that the United States' policy that ICHEIC "should be considered the exclusive remedy for resolving insurance claims from the World War II era." In re Assicurazioni Generali, 340 F. Supp. 2d 494, 504 (S.D.N.Y. 2004) (Generali II) (quoting Eizenstat statement to House Committee on Banking and Financial Services); ibid. (Eizenstat testimony to Senate Committee on Foreign Relations that a company's participation in ICHEIC should give it "'safe haven' from sanctions subpoenas, and hearing relative to the Holocaust period"); ibid. (Letter of Deputy Secretary of State Richard Armitage that the U.S. "continues to support the ICHEIC and believes it should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II").

2. Several class actions and some 27 individual suits filed against Generali in United States courts (some of which were filed in state court and removed on the basis of diversity jurisdiction), were consolidated before then-Judge Mukasey in the Southern District of New York. The complaints allege a variety of causes of action, including under state laws that create causes of action and extend statutes of limitation for claims on Holocaust insurance policies in particular, state unfair business practices statutes, international law, and common law principles of contract, unjust enrichment, and the duty of good faith and fair dealing. See Generali II, 340 F. Supp. 2d at 508 (Appendix).

In 2002, Judge Mukasey considered and denied Generali's motion to dismiss on forum non conveniens grounds. In Re Assicurazioni Generali, 228 F. Supp.2d 348 (S.D.N.Y. 2002) (Generali I). He held that ICHEIC was not an adequate alternative forum because it was a "private, nongovernmental form that [the defendants] both created and control," id. at 355, 356, and because "there are questions about ICHEIC's continued viability as a forum," id. at 357.

In 2003, the Supreme Court issued its opinion in Garamendi. In that decision, the Court held that California's Holocaust Victims Insurance Relief Act was preempted because it conflicted with the foreign policy of the Federal Government as demonstrated in the Executive Agreements. 539 U.S. 420-425. The Court reasoned that its recounting of "negotiations toward the three settlement agreements is enough to illustrate that the consistent Presidential foreign policy has been to encourage European governments and

CA2 that we do intend to file. CA2 has allowed 60 days after that to actually file a brief. I recommend that you authorize a filing, subject to approval of the brief as the details are worked out in the drafting.

Est.
8/20/09

Privileged and Confidential

companies to volunteer settlement funds in preference to litigation or coercive sanctions." Id. at 420. The Court relied on the Executive Agreements as "exemplars" of the government's position, but cited as well the more general statements of Deputy Secretary Eizenstat quoted above that "[t]he U.S. Government has supported [the ICHEIC] since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era." Id. at 422. The majority specifically took issue with the dissent, which criticized the majority for relying on "Executive Branch expressions of the Government's policy" other than formal Executive Agreements or statements by the President. Id. at 423 n.13.

Following the Garamendi decision, the Judge Mukasey ruled on Generali's motion to dismiss on preemption grounds. The district court ruled that "the laws supporting litigation of plaintiffs' benefits claims are preempted by a federal Executive Branch policy favoring voluntary resolution of Holocaust-era insurance claims through ICHEIC" and because "[p]laintiffs' ancillary claims, in turn, are not actionable because it appears that they do not allege any cognizable injury other than that caused by Generali's non-payment of benefits, redress for which is committed to ICHEIC." Generali II, 340 F. Supp.2d. at 497. The court held that the Executive's stated policy not only preempted state laws specific to Holocaust claims, but also to "the benefits claims arising under generally applicable state statutes and common law as well as customary international law. Litigation of Holocaust-era insurance claims, no matter the particular source of law under which the claims arise, necessarily conflicts with the executive policy favoring voluntary resolution of such claims through ICHEIC." Id. at 501. The court also held that the Executive's policy and Garamendi decision extended to Generali, despite the fact that there was no Executive Agreement with Italy. The court noted that Generali was one of the petitioners in Garamendi, that the Supreme Court had frequently referred to "European insurers," rather than German and Austrian insurers, and that senior Executive Branch officials, including Deputy Secretary Eizenstat and State Department officials had stated the United States' policy in terms of support for ICHEIC as the exclusive remedy for unresolved insurance claims, not just for companies covered by the Foundation Agreement or Reconciliation Fund Agreement. Id. at 503-504. The court noted that the United States had not filed a statement of interest in the case, but attributed that fact to "an unwillingness to act on behalf of a private company absent a government-to-government agreement encompassing claims against the company in question." Id. at 506-507. The court observed that Executive Branch officials had said that "the U.S. government could not be

Privileged and Confidential

expected to intervene in the U.S. courts on behalf of Generali, since there was not governmental connection." Id. at 507.

3. Plaintiffs appealed. While the case was pending on appeal, ICHEIC discontinued its operations, because its claims date had long passed and the filed claims were resolved. Also during the appeal, Generali reached a settlement agreement with counsel in the class actions under which Generali agreed to reopen the period for filing claims, which would be resolved under the same terms as ICHEIC processed claims, but with ultimate supervision by the district court, and that Generali would pay an additional \$35 million to compensate the new claimants. The district court, after a remand from the court of appeals, approved the settlement, and the court of appeals affirmed. As a consequence of the class settlement, only twenty-seven individual claimants' cases remained pending. Subsequently, all but two of the remaining individual claimants settled. (In addition to the two plaintiffs whose appeals remain pending, an approximate 200-300 individuals who opted-out of the class action settlement might still seek to file individual claims, especially if the court of appeals reverses the district court's order).

On August 1, 2008, after oral argument in the case had already been held, the Clerk of Court sent a letter to the Secretary of State asking for the Executive Branch's advice on "whether court adjudication of these Holocaust era claims against Generali would conflict with the foreign policy of the United States." 8/1/2008 Letter of Catherine O'Hagan Wolfe 1; see id. at 2 ("whether adjudication of these suits by a court of the United States would conflict with the foreign policy of the United States"). The court acknowledged the United States' statement in its Garamendi amicus brief that ICHEIC "should be recognized as the exclusive remedy for all insurance claims that date to the Nazi era," but questioned "whether this continues to be Government policy, whether Government policy on this question is influenced by the fact that ICHEIC is no longer accepting claims, and whether that policy today encompasses insurers from countries (like Italy) not covered by executive agreements, as against companies from countries (like Germany and Austria) that are." Ibid.

Your predecessor, Solicitor General Garre, authorized an amicus filing to respond to the Second Circuit's inquiry. The government's October 30, 2008, amicus letter brief explained that the United States' policy continued to favor regarding ICHEIC as the exclusive forum for claims within its purview, that the fact that ICHEIC was no longer accepting new claims did not alter that policy, and that the government's foreign policy extended to Generali, which participated in ICHEIC voluntarily rather than

Privileged and Confidential

pursuant to an Executive Agreement. 10/30 Br. 1. The letter brief expressly took "no position on whether plaintiffs' claims are preempted by [the United States'] foreign policy in light of" Garamendi, except to state our view that state statutes creating Holocaust-specific causes of action were preempted. 10/30 Br. 1-2.

Counsel for one of the plaintiffs submitted a supplemental filing in response to the government's brief arguing that the brief's statement of the government's policy was contradicted by the government's characterization of the German Foundation Agreement in a 2000 amicus brief filed in the Ninth Circuit (shortly after the German Foundation Agreement was signed).

On July 20, 2009, the Second Circuit Clerk issued a further letter on behalf of the panel inquiring "whether, in the new administration, the answer of the Executive Branch would be the same as communicated in the October 30, 2008 letter."

DISCUSSION

I agree with the unanimous recommendations that the United States should file a response to the inquiry from the court of appeals informing it that the foreign policy of the United States remains the same as that articulated in the October 30, 2008 letter. As the State Department recommendation makes clear, the United States is continuing its extensive efforts to "engag[e] countries and other relevant parties in voluntary compensation programs." 9/18/2009 letter of Legal Adviser Koh at 1. Indeed, in June 2009, the United States engaged in a Holocaust assets conference in which the United States and other participants agreed to establish the European Shoah Legacy Institute to facilitate intergovernmental efforts to develop restitution and compensation programs in Central and Eastern Europe. As the State Department explains, "[o]ur ability to continue to negotiate and facilitate successful compensation agreements and other alternative programs to settle Holocaust-era claims would be undermined if litigation eroded the status of ICHEIC as the exclusive remedy for Holocaust-era insurance claims." Ibid.

The Civil Division recommends filing a short submission with four elements: (1) an affirmation that the United States' foreign policy continues to be that ICHEIC should be regarded as the exclusive forum and remedy for claims within its purview, including claims against Generali, despite the absence of an executive agreement; (2) a brief additional explanation of the basis for government's foreign policy; (3) a discussion of the June 2009 Holocaust assets conference as further evidencing and supporting the government's foreign policy; and (4) a brief explanation why

Privileged and Confidential

the government's October 2008 letter-brief is not inconsistent with the 2000 brief to the Ninth Circuit.¹

I agree that a limited filing along those lines is appropriate. I recommend that the filing not attempt to be as extensive as the October 2008 filing, for fear that we will otherwise risk the Second Circuit trying to read significance into every discrepancy between the two briefs. I also believe that the letter should again refrain from addressing the question whether the government's foreign policy provides a basis for holding the plaintiffs' claims preempted. We did not address that issue in our October 2008 brief, and the supplemental request appears to be limited to asking the government to confirm that the foreign policy itself remains in force.

¹ The relevant statements in the government's 2000 brief responded to and contradicted contentions by the insurance company plaintiffs that in the German Foundation Agreement the United States had undertaken a "duty to achieve legal peace for German companies" or "itself * * * preclude[s] individuals from filing suit on their insurance policies in court." See Jan. 8, 2009 letter of Samuel Dubbin to Catherine O'Hagan Wolfe 2 (quoting government's 2000 brief at 7-9). It is hard to see how the October 2008 letter brief could be inconsistent with the quoted language from the 2000 brief. The quoted language spoke to the legal consequences of the German Foundation Agreement, whereas the 2008 letter brief addressed only the foreign policy of the United States and disavowed taking a position on the question whether plaintiffs' claims were foreclosed as a legal consequence of that policy. To the extent the 2008 letter brief did address the legal consequences of the German Foundation Agreement, it quoted the language of that Agreement (as the 2000 brief did) as providing that "[t]he United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal." October 2008 Letter Br. at 5. In Garamendi, the Supreme Court noted that provision in the German Foundation Agreement and characterized it as merely recognizing that the determination whether there was a legal basis for dismissal was "an issue for the courts." 539 U.S. at 406.



U.S. Department of Justice
Civil Division

RECEIVED
OFFICE OF THE
SOLICITOR GENERAL

2009 AUG 20 PM 2: 36

Washington, D.C. 20530-0001

BSB:REK:BMSultz
145-15-3175

269467

AUG 20 2009

Tel: (202) 514-3518
Fax: (202) 514-9405

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: In re Assicurazioni Generali, Nos. 05-5612-cv, 05-5310-cv (2d Cir.)

TIME LIMITS

For the second time in this appeal, the court of appeals invited the government's views, and it asked the government to notify it by August 28, 2008, whether it would file a supplemental amicus brief. If the government chooses to file a supplemental brief, any brief would be due by October 27, 2009.

RECOMMENDATIONS

The State Department recommends in favor of further amicus participation.

The U.S. Attorney's Office recommends in favor of further amicus participation.

I recommend in favor of further amicus participation.

QUESTIONS PRESENTED

Whether the government continues to adhere to the position it took in the October 30, 2008 letter brief it previously filed in this case.

STATEMENT

More background is available in the attached letter brief we filed in this case in October 2008. In short, this consolidated multi-district litigation involves claims brought by Holocaust survivors, or their heirs, seeking to recover on insurance policies issued in Europe before or during the Nazi era. The defendant, Assicurazioni Generali ("Generali"), is a large Italian insurance company that sold numerous policies in that era. The district court held that plaintiffs' claims were preempted by federal foreign policy, which favors exclusive resolution of such claims by the International Commission on Holocaust Era Insurance Claims (ICHEIC).

Plaintiffs appealed and the case was argued to a panel of the Second Circuit. In August 2008, after argument, the court sent a letter to the government asking whether “adjudication of these suits . . . would conflict with the foreign policy of the United States.” We filed a letter brief on October 30, 2008, confirming that adjudication of these suits conflicted with U.S. foreign policy.¹ However, with one narrow exception, we declined to take a position on whether that meant that plaintiffs’ claims were preempted.²

After we filed our letter brief, plaintiffs were given the opportunity to provide a supplemental submission, which they did in December 2008. One plaintiff also filed an additional supplemental filing, in which he claimed that our October 2008 brief was inconsistent with the position DOJ took in a brief filed in 2000 in *Gerling v. Low*, 240 F.3d 739 (9th Cir. 2001). Counsel for that plaintiff also sent a letter to Attorney General Holder, and Acting Solicitor General Kneeder, asking them to withdraw the government’s October 2008 brief in light of the alleged inconsistency. DOJ and the State Department both believed that there was no inconsistency, and the government did not withdraw its brief or make any further court filings.

Roughly six months later, on July 29, 2009, the court sent follow-up letters to the government. (One was addressed to the Solicitor General’s Office, the other addressed to Secretary of State Clinton). In the letters, the court stated that it wished to know “whether, in the new administration, the answer of the Executive Branch would be the same as communicated in the October 30, 2008 letter.” Within 30 days, the court asked to be notified whether the government will respond. If the government elects to respond, the court has requested that we submit something within 60 days thereafter.

I recommend that you authorize the government to submit a response to the court’s question. If you so authorize, we will promptly notify the court that we will be filing something within the next 60 days.

As the State Department explains in its recommendation, U.S. foreign policy on this issue has not changed since the October brief was filed. Nonetheless, the State Department would like us to respond to the court’s letter, which would allow us to discuss additional developments and confirm that our policy remains the same. We agree with the State Department that some sort of further submission would be helpful to the panel.

It is anticipated that our ultimate submission would include the following:

- An affirmative statement that the government’s foreign policy has not changed.

¹ There was one minor exception to that statement. See U.S. Letter Br. at 9 n.5.

² The narrow exception pertained to those few claims based on special state Holocaust laws that singled-out and gave special treatment to claims involving events in a foreign country. See U.S. Letter Br. at 9-10.

- A brief additional explanation of why the government believes that its foreign policy is likely to advance the interests of Holocaust survivors and their heirs.
- A discussion of the results of the June 2009 Holocaust assets conference, and why those results further confirm our foreign policy.
- A short discussion of the government's 2000 brief in *Gerling*, and an explanation of why the statements in that brief are entirely consistent with the position we took in the October 2008 brief.

To be sure, the issues involved are somewhat nuanced, and how we phrase these points will require careful editing and further discussions between the Department of Justice and the State Department. Nonetheless, there is agreement that some sort of additional filing is called for, and we therefore ask that you authorize an additional filing, and allow us to then notify the court of our intention to do so.

CONCLUSION

For the foregoing reasons, I recommend that you authorize an additional amicus filing.

TONY WEST
Assistant Attorney General
Civil Division

By:



Beth S. Brinkmann
Deputy Assistant Attorney General