U.S. Senate Committee on the Judiciary
Hearing "Holocaust-Era Insurance Claims"
September 17, 2019

Questions for the Record from Senator Ben Sasse

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

While 6 million Jews were killed during the Holocaust, according to the United States Holocaust Memorial Museum (USHMM) over 1.34 million of those murdered were from Russia and Ukraine (https://encyclopedia.ushmm.org/content/en/article/jewish-losses-during-the-holocaust-by-country?parent=en%2F11652). **There was no insurance industry in those countries, and thus these Holocaust victims could not have had insurance. As a matter of fact, a private insurance market simply did not exist in Russia or the Ukraine after the 1917 Revolution.** (emphasis added) The absence of an insurance market in Russia and Ukraine is mentioned on page 43 of the ICHEIC Legacy Document which points out that it was impossible to identify any policies for Jewish victims from those countries.

As is known, tragically over 3 million Jews that were murdered during the Holocaust were from Poland, where the insurance market was tiny – with only $6 million received by insurance companies in premiums in 1936 (compared to $455 million premium receipts in 1936 in the German market) [see "The Insurance Industry and the Economies of Central and Eastern Europe 1918 – 1945 published in October 2011 by the Holocaust Claims Processing Office of the New York State Department of Financial Services hereinafter called "HCPO Report"].

Of that tiny market in Poland, the HCPO Report notes that over 65% of the policies were bought from local insurance companies that no longer exist. Only foreign companies, that had headquarters outside of Poland, still exist.

Even more significantly, the HCPO Report notes that, as of 1936, the independent Insurance yearbooks indicate that there were only 13,000 active Generali policies and 9,700 active RAS policies for Polish citizens – Jews and non- Jews combined …….**in the entire country of Poland** [1]. It is also likely that some portion of the policies active in 1936 in Poland were cashed in/redeemed prior to the Holocaust due to the deteriorating economic and political situation in Poland at that time.

Thus, based on the two above facts, it is clear that for approximately 4.34 million murdered Jews (3 million Jewish Poles and approx. 1.34 million Jews from Ukraine and Russia), the idea that there existed hundreds of thousands of unpaid policies that should have been paid during the ICHEIC process contradicts readily available independent data.

In addition, hundreds of thousands of entire families were Holocaust victims, tragically leaving no surviving beneficiaries, even if they might have had insurance. These "heirless" policies were the basis for the humanitarian fund of $169 million.

[1] The Austrian companies Anker and Phoenix had an additional 20,000 active policies for Polish citizens – Jews and non-Jews (see HCPO Report), and these policies were covered by the Austrian General Settlement Fund.

I would refer you to the expertise of the NY State Holocaust Claims Processing office which has categorically stated in its Response for the Record to Chairman Graham that "**It is difficult, if not impossible, to assess how many Holocaust era insurance policies remain unpaid…**" (Letter dated 2 October 2019 from Anna Rubin to Chairman Lindsey Graham page 2) found at https://www.judiciary.senate.gov/imo/media/doc/Rubin%20Responses%20to%20QFRs.pdf.

Can you give us some history of what happened to insurers and other private financial institutions in Eastern Bloc countries ? Where should we consider the responsibility for those policies to be located ?

First, as mentioned above, for those countries such as Russia and Ukraine in Eastern Europe, there was no private insurance market after 1917.

For countries such as Poland, Czech Republic and Hungary, each country had both local insurance companies and foreign insurance companies selling insurance policies to its citizens. According to the HCPO Report, in 1936 in Czechoslovakia only 26% of the policies were purchased from foreign companies and in Hungary about 27% were purchased from foreign companies.

In the post war period, all insurance companies that had done business in Central and Eastern Europe that were now located in countries under Communist rule, had their assets nationalized and the companies were either put under Government administration (such as in Czechoslovakia) or merged into/replaced by State insurance companies (such as in Hungary).

As stated by Anna Rubin in her 2 October, 2019 letter to the Committee

> "The domestic companies did not have offices outside the countries in question, nor do they have modern day successors. … Moreover, since there are no successor companies to the nationalized domestic companies, there is nowhere to turn…".

During the past few decades, and with the exception described below, only policies that were issued by foreign companies could be the subject of any claim for compensation by Holocaust survivors or their families.

The process developed by ICHEIC for claims from Eastern European insurance companies where no successor company existed (under section 8A2 of the ICHEIC Memorandum of Understanding) provided a unique mechanism to make payments to claimants who would find it impossible to establish an entity responsible for the payment on the unpaid Holocaust era policies.

If any entity could be theoretically responsible for the policies issued by domestic insurance companies that were nationalized in the post war period, it would seem to be the current governments in Central and Eastern Europe that are successors to the governments that conducted the nationalization, not any private insurance companies.

Can you give us an overview of the problems encountered in administering the ICHEIC process ? In your best judgement, how much more could have been paid out to victim's families had the process gone more smoothly.

It is clear that the main problem encountered by ICHEIC was the length of time from the signing of the MOU between the parties in August 1998 and the completion of processing of claims.

The slow pace of payment of claims was reflective of some of the unprecedented policy, processing and valuation issues that ICHEIC had to grapple with given the passage of decades. For example: the valuation process had to determine how to value policies that were denominated in currencies that became worthless in the post war period or ceased to exist – such as the Hungarian *pengo*. Furthermore, in order to reach as many potential claimants as possible it was operating in over ten languages and received applications from dozens of countries.

My testimony to the Senate Foreign Relations Committee in May 2008 on this point remains as true today as it was then.

> "It must be said that ICHEIC got off to a painfully slow and expensive start due to the complexity of the issues and the distrust of the parties. Eliminating that distrust took years, but in the end, ICHEIC was able to achieve its mandate of providing some measure of justice for Holocaust survivors and their heirs as quickly as possible. ICHEIC ultimately was successful. It paid $306 million to 48,000 Holocaust victims and their heirs under relaxed legal standards -- far lower than would satisfy a court. It also paid $169 million for humanitarian programs and humanitarian claims….
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> **ICHEIC paid claims regardless of whether the company which issued the claimant's policy was actively participating in the ICHEIC process. This is important, because it meant that individuals who owned policies issued by companies that were liquidated, nationalized, or otherwise no longer existed, could still submit a claim to ICHEIC and be paid the full value of the claim. Approximately $31 million was paid out on such so-called "8a2" claims. The normal relaxed ICHEIC standards applied equally to these claims.** (emphasis added)
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> In the final analysis, ICHEIC successfully compensated individuals for their Holocaust-era insurance policies. Much has been said about the substantial administrative costs ICHEIC incurred, which amounted to approximately 17.4% of the funds it paid out. But it is important to understand what is included in this 17.4% figure. It includes all costs incurred by ICHEIC in publicizing its programs; in researching all claims at no cost to the claimants; in creating and staffing U.S. and European offices to work with local claimants; and in maintaining a call center that potential claimants could contact to receive more information about and assistance with the ICHEIC process."

It is relevant to note that the payments on individual policies to claimants would not have been larger had the initial issues been resolved faster – the payments would have just been paid out at an earlier date.

Mr. Webel and Mr. Eizenstat, from the perspective of an individual claimant, can you compare pursuing a claim through the ICHEIC process with pursuing a cause of action under the proposed legislation?

First, there are a number of issues particular to insurance policies that would most likely have prevented successful litigation. It is clear that an individual claimant who did not know the identity of the company that issued the policy would not be able to seek any redress in a court of law. Who would he or she litigate against? Further, the ICHEIC process paid claims where the successor company no longer existed – it is clear that such claimants could not succeed in a court of law as there would be no legal entity to sue.

Finally, the ICHEIC process operated under relaxed standards of proof, that would simply not be applicable in a court of law. As I mentioned in my letter to the Committee on 23 September, 2019, the ICHEIC Relaxed Standards of Proof state:

The existence of an insurance policy will be considered adequately substantiated by any one of the following:

(1) an original or copy of an insurance policy;
(2) original or copies of premium receipts for an insurance policy;
(3) information in the records of an insurer that verifies the existence of an insurance policy;
(4) written correspondence between the insurer or agent or representative of the insurer and the claimant that verifies the existence of an insurance policy;
(5) records held or maintained by any governmental body that verify the existence of an insurance policy;
(6) records of any governmental body held by the claimant that verify the existence of an insurance policy.
The ICHEIC process shall also consider whether any other document or statement, or combination of documents or statements, are sufficient to substantiate the existence of an insurance contract [emphasis added].

The most important component of the standards of proof was the last sentence - known as the "catch all". This provided for an insurance company to make a payment based on statements and/or combination of circumstances. This standard is far more liberal than that in a court of law.

I will provide an example of how this standard was implemented. In 2008, in response to a question from Senator Nelson, the HCPO gave five examples from their records of claimants who were paid based on anecdotal evidence.[2] Below is one example:

Mr. A.A., a Holocaust survivor who was born in Poland, filed a claim with the HCPO in September 1999 for the policies of his grandfather, Mr. E.B., a wealthy Polish businessman who perished in the Warsaw Ghetto in 1942, as did his wife. His daughter, the mother of Mr. A.A., perished in Auschwitz in October 1944. Mr. A.A. and his father were the only members of his family to survive the Holocaust.
After the war, Mr. A.A.'s father attempted to claim the insurance policies from the Italian insurance company Riunione Adriatica di Sicurtà (RAS). However, because the policies were written in Poland, the Italian headquarters of the company had no information regarding the contracts and advised Mr. A.A.'s father to contact the Polish state insurance authority instead. Mr. A.A.'s father was unable to make any headway in this regard and so the matter languished for decades until Mr. A.A. filed his claim with the HCPO.
The HCPO forwarded Mr. A.A.'s claim to ICHEIC, which in turn forwarded the claim to RAS. There were no policy numbers and very few other details available to either the company or the claimant; however, the claimant did have some correspondence between his father, his father's attorneys and RAS during the immediate postwar period and using this, RAS was able to locate a letter from an Italian lawyer detailing some of the terms of the insurance policies taken out by Mr. E.B (namely the insured sums and the beneficiaries, in one case Mr. E.B.'s wife, in the other case, his daughter, the claimant's mother.) Under ICHEIC's Relaxed Standards of Proof, which stipulated that insurers would consider the existence of an insurance policy as adequately substantiated by written correspondence between the insurer or agent or representative of the insurer with the policyholder, claimant or agent of the policyholder or claimant that verified the existence of the insurance policy, RAS used these documents as the basis for their May 2005 offer of over $1 million to Mr. A. A. on both of his grandfather's policies.

[2]The letter from HCPO to the Senate Foreign Relations committee dated June 20, 2008 was attached to my letter to you of 23 September.

In addition, ICHEIC circulated Mr. A.A.'s claims to other companies that did business in Poland, and subsequent to the offer from RAS, Mr. A.A. also received offers from Assicurazioni Generali S.p.A (Generali) on four additional policies taken out by Mr. E.B. which Generali had located in their records. Mr. A.A. received an additional $229,000 offer from Generali on these four policies.

On a more general level, Holocaust claims will encounter numerous legal and practical obstacles. While the proposed legislation deals with the legal obstacle of the "statute of limitation" – this is merely one of a number of legal obstacles that could impede successful litigation. In this regard, it is appropriate to cite two Federal Court judges who carefully presided over unprecedented Holocaust era litigation in US Federal Court – Judge Edward Korman who presided over the Swiss Banks Case and Judge Shirley Kram who presided over the Austrian and German Bank Litigation.

In his opinion on the Swiss Banks Settlement, Judge Korman stated:

> I note that the adequacy and reasonableness of the settlement must be measured against the practical alternative to the settlement in the real world. **The alternative to this settlement was prolonged, complex and difficult litigation, in which plaintiffs' chance of success as a class was uncertain**. The age and health of many of the class members also presses for a prompt resolution. **Because of the passage of time, the destruction of records, and the death of most of the percipient witnesses, the potential amount of damages plaintiffs might have recovered, even if they had been able to prevail in litigation, would have been extremely difficult to calculate with precision**. [emphasis added]
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> Defendants raised substantial questions regarding plaintiffs' ability to state claims under either international or state law, at least with respect to some of the claims. Significant and non-frivolous questions were also raised by defendants in their motions to dismiss, including questions regarding the justiciability of some of plaintiffs' claims. Such concerns have resulted in the dismissal of Holocaust-era claims in two recent cases decided in New Jersey. See Iwanowa v. Ford Motor Co., 67 F.Supp.2d 424 (D.NJ.1999); Burger-Fischer v. DeGussa AG, 65 F.Supp.2d 248 (D.NJ.l999).

Judge Korman continued:

> I take no position regarding whether these cases were correctly decided, or whether they would even apply here. **Instead, I cite them as a reality check for those objectors who believe that strong moral claims are easily converted into successful legal causes of action**. [emphasis added].

See 105 F.Supp.2d 139

Judge Kram stated it well in her opinion in *In re Austrian and German Bank Holocaust Litigation* in which she observed:

> It goes without saying that the events which form the backdrop of this case make up one of the darkest periods of man's modem history. Those persecuted by the Nazis were the victims of unspeakable acts of inhumanity. **At the same time, however, it must be understood that the law is a tool of limited capacity. Not every wrong, even the worst, is cognizable as a legal claim**

Indeed, a number of obstacles stand in the path of plaintiffs' claims in this case. (emphasis added)

See 80 F.Supp.2d 164 (S.D.N.Y.2000).

Mr. Webel and Mr. Eizenstat, can you give us a sense of what other compensation efforts have been undertaken in the context of the Holocaust? How have they been administered? Beyond the Holocaust, are there other processes in other contexts that we should consider instructive or cautionary?

Since the end of World War 2, there have been dozens of legislative initiatives and agreements relating to Holocaust era restitution and compensation in most countries in Europe. These efforts differ from country to country and some have been more comprehensive than others. Some involve private, religious/communal, or heirless property and assets and others provide personal compensation.

In my capacity as Special Representative of the President and Secretary of State during the Clinton Administration (1993-2001), I negotiated or assisted in the negotiation of the following Holocaust-related agreements:

- The Washington Principles of Nazi-Confiscated Art with 44 countries.
- The Swiss Bank Settlement of 1999 for $1.25 billion which I began and which was finalized by Judge Edward Korman of the Eastern District of New York, involving major Swiss banks, class action lawyers, and the World Jewish Restitution Organization (WJRO);
- The U.S.-Germany Agreement of July 2000, for $5 billion (10 billion DM), with German companies and the German government, covering slave and forced labor, insurance, and a future fund for Holocaust-related education and related projects. Class action lawyers and major Jewish organizations including the Jewish Claims Conference was involved.
- The U.S.-Austria Agreement of January 2001, and interim agreements, worth around $800 million, covering slave and forced labor, payment for confiscated personal effects, $210 million for real property claims, with Austrian companies and the Austrian government. Class action lawyers and major Jewish organizations like the Jewish Claims Conference was involved.
- The U.S.-French agreement of January 2001, with French banks, for some $20 million.
- During the course of the Clinton Administration, I also encouraged communal property restitution (synagogues, churches, community centers, schools, cemeteries) and/or compensation with the governments of the Czech Republic, Slovakia, Hungary, Romania and Poland.
- I led two interagency reports on the history of Switzerland as a neutral country during World War II (1997) and the history of other countries, including Portugal, Spain and Turkey (1998).

In my capacity as Special Adviser on Holocaust-Era Issues to Secretary of State Hillary Clinton and Secretary of State John Kerry (2009-2017), I negotiated the following Holocaust-related agreements:

- U.S.-Lithuania agreement of 2011 for $11 million to the Lithuanian Jewish community, in lieu of property restitution.
- The U.S.-French agreement of 2014 for $60 million in compensation for the deportation of Jews (non-French citizens) on the state-owned railways to death camps, to living surviving deportees, their spouses and children.
- The Terezin Declaration of 2009 with 46 countries.

- The Best Practices and Guidelines for the Restitution and Compensation of Real (Immovable) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and their Collaborators Between 1933-1945, with over 40 countries.

In my capacity as a leader of the negotiating team of the Jewish Claims Conference since 2009, I have negotiated over $9 billion with the German government for improved home care and social services, higher monthly pensions, payments for child survivors and flight victims.

While billions of dollars in assets have been the subject of restitution or compensation, there is still much to be done. At present, the US Department of State is compiling a report on this issue under section 2 of the Justice for Uncompensated Survivors Today Act of 2017 (known as the JUST Act.)

Question for the record from Senator Amy Klobuchar

In your testimony, you expressed opposition to legislation to permit litigation of Holocaust-era insurance claims, and instead suggested that Congress consider requiring insurance companies to provide periodic reports on the number of new Holocaust-era claims submitted, the number granted, and the amount offered or reason a claim was denied.

- How would measures to increase transparency help to ensure that claims by Holocaust survivors and their heirs are properly reviewed?
- Are there other metrics that should be publicly reported to ensure that European insurance companies continue to review claims under the standards set by the International Commission on Holocaust Era Insurance Claims?

It would be advisable for Congress to refer the regular detailed report it receives from the insurance companies to the NY Holocaust Claims Processing Office, or another independent expert office. The referral should ask for the report from the insurance companies to be reviewed to ensure that claims were processed in accordance with ICHEIC standards. In the event that this independent office detects any area of concern, this could be flagged to Congress for further action.