



Embassy
of the Federal Republic of Germany
Washington

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington D.C. 20515

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Dear Mr. Chairman,

In view of next week's intended mark up of the amended Holocaust Insurance Claims Accountability Act (HR 1746), and as a follow-up to our recent meeting, I would like to bring to your attention some of the German Government's concerns regarding the draft version which is currently discussed. In addition, we have also discussed this draft with the German Insurance Association (GDV) as they have participated in the recent ICHEIC process.

Let me first emphasize that the German Government acknowledges without qualification Germany's historical responsibility for the Holocaust and Holocaust survivors. Insurance policies of Holocaust victims and their heirs have been compensated through state restitution programs since 1953.

The US and Germany have for over 60 years relied on intergovernmental, diplomatic solutions to World War II era restitution, and not on litigation. Acknowledging these efforts, the Executive Agreement of July 2000 between Germany and the United States of America recognizes that Germany has provided comprehensive and extensive restitution and compensation to victims of National Socialist persecution in an unprecedented manner.

Additionally, the International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in 1998 in order to ensure efficient and timely compensation of all Holocaust era insurance holders. Within the ICHEIC process more than 300 million US\$ have been paid for insurance compensation claims and additional large contributions in the amount of 170 million US\$ have been made within the ICHEIC Humanitarian Fund for programs and schemes designed to help Holocaust survivors and to commemorate and inform about the Holocaust. The German Government and German insurance companies alone have contributed more than 300 million US dollars to the compensation amounts distributed by ICHEIC.

The German insurance companies that participated in ICHEIC have furthermore committed themselves to continue to review inquiries based on the simplified standards of proof agreed between ICHEIC and the GDV. Since the end of the ICHEIC process in March 2007, only very few new inquiries have been filed and very few cases were eligible for compensation. The small number of new inquiries and the very few remaining claims provide clear proof of the fact that previous compensation efforts undertaken by the German Government and German companies cooperating with ICHEIC were successful. In this regard, we noted with great satisfaction the declarations made by Secretary Eagleburger, Ambassador Eizenstat and representatives of victims' organizations in the course of the hearing held in the Senate Foreign Relations Committee on May 6th, reaffirming that the companies participating in ICHEIC have provided compensation and information to Holocaust victims in a timely, unbureaucratic and comprehensive manner.

In exchange for their cooperation, insurance companies participating in ICHEIC were assured an all-embracing and enduring legal peace in the German-US Executive Agreement of July 2000 (Berlin Accords) and in the Trilateral Agreement of October 2002 between ICHEIC (including US insurance regulators, Jewish restitution organizations and the State of Israel), the German Foundation "Remembrance, Responsibility and the Future" and the GDV. The German Government and German companies have honored their commitments under the Berlin Accords and have relied on these promises of legal peace. Any federal cause of action against these companies would thwart the legal peace promised by our governments, be fundamentally unfair and jeopardize the possibility of compensating Holocaust survivors through voluntary

contributions in the future. This is even more unfortunate, as voluntary agreements have proven to be the most successful method of addressing open claims in the past.

Voluntary agreements have the advantage of working to the benefit of large numbers of survivors – not just to the few who are successful in court. Moreover, given the significant legal hurdles posed by the federal rules of evidence, it is far from certain that court action against insurance companies would be successful. Furthermore legal action would generate unnecessary costs, both for the Holocaust victims and for the defendant insurance companies. The current bill would not benefit those Holocaust survivors who regrettably live in difficult social situations but only the small number of persons able to afford a federal cause of action. In addition this legislation could lead to the termination of the voluntary further engagement of German companies, which was promised in earlier correspondence, as they will see themselves forced into US litigation.

Let me also expose some further aspects in which the amended HR 1746 constitutes a breach of existing agreements and is contrary to good faith:

- The Secretary of State is requested to seek agreements with European countries including Germany in order to facilitate the observation of the designated response requirements by insurance companies. Such an agreement would explicitly contradict the already existing German-US Executive Agreement in which the US administration commits to using its best efforts in order to achieve legal peace.
- A civil penalty against insurance companies failing to provide information within 90 days after a claim was received would be unfeasible due to practical reasons. Researching cases that date back at least 50 and sometimes even 70 years is a challenging and time-consuming task, especially regarding the loss of documents on the side of both policyholders and insurance companies during and after World War II.
- All eligible claims under ICHEIC have been defined in section 2, paragraph 1 of the Trilateral Agreement. The redefinition of the criteria of eligibility stipulated in HR 1746 is inconsistent with previous eligibility criteria and would reopen already closed compensation proceedings.

- The proposed exemption clauses would be ineffective and contradict with US international commitments, as currently full ICHEIC member companies shall be exempt from jurisdiction, disregarding all companies cooperating via bi- or trilateral agreements with ICHEIC (such as the Trilateral Agreement of 16th October 2002). Again, long and costly court proceeding over exemption-facts would be detrimental to both victims' and insurance companies' interests and only benefit trial attorneys.

Hence, the current version of HR 1746 constitutes a clear breach of the United States' international obligations. It would do nothing to improve the situation of the large majority of Holocaust survivors, but would put at risk future agreements that could benefit those Holocaust survivors in dire need of help who are unable to afford litigation in the United States. I therefore believe that HR 1746 is not only unnecessary in regard of German insurance companies but also detrimental to Holocaust survivors' needs and would highly appreciate your reconsideration regarding the intended mark up.

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

*Sincerely yours,
Alex Lischke*

Cc: Office of Rep. Spencer Bachus
Office of Rep. Ileana Ros-Lehtinen
Office of Rep. Robert Wexler