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July 18, 2007

Governor Eliot Spitzer
Executive Chambers
State Capitol
Albany, New York 12224

Eric R. Dinallo, Superintendent
New York State Insurance Department
25 Beaver Street
New York, New York 10004

Re: International Commission on Holocaust Era Insurance Claims (ICHEIC)

Dear Governor and Superintendent:

I call upon you to use your best efforts as Governor and Superintendent of Insurance to correct an egregious abuse of Holocaust survivors by ICHEIC.

As Governor you have the opportunity to urge the New York Congressional delegation to back legislation pending in Congress entitled "Holocaust Insurance Accountability Act" introduced by Ros-Lehtinen and co-sponsored by Congressman Elliot Engels.

As the New York Superintendent of Insurance you could use your membership in the National Association of Insurance Commissioners and your prestigious office to right what seems to me to be a horrific and untrustworthy act by Generali Insurance company visited upon the Holocaust era policyholders or beneficiaries

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and accepted by ICHEIC's arbitrators based upon improper and unauthorized burden of proof rules disseminated by an ICHEIC employee.

On March 20, 2007, the International Commission on Holocaust Era Insurance Claims (ICHEIC) issued a press release highlighting their "successful completion of Holocaust Era Insurance Claims Process" in awarding a total of \$306.24 million to more than 48,000 claimants as a result of the ICHEIC process. A closer reading of the statistics contradicts the ICHEIC process as "successful." 91,558 claims were filed and of these 15.49 % or 14,186 received monetary awards of \$238.27 million based upon their claim. 84.5% or 77,372 claims were denied; however, of these denied claims 34,158 were awarded "humanitarian awards" totaling \$61.82 million. 43,214 claims were denied and received no monetary award of any kind. To those who received a humanitarian award they could be left to wonder is this the equivalent of a mendicant award? Although one would have to search in vain to find any actions of the European life insurers toward their Jewish policyholders that could be considered humanitarian, it was not reflective in their impossible claim requirements for documentation of a policy and a death certificate, nor in their refusal to allow access to their records, and certainly not in their stonewalling of any claim payments for over five decades. The term "successful" is like touching up X-rays on a terminal patient.

The Holocaust survivors were treated as sub-humans by the Nazis, and this attitude was continued by the insurers in their unfair denial of policy claims by insurers. ICHEIC was formed five generations after the end of the Holocaust. It held out hope that after 53 years survivors' claims will be adjudicated fairly and equitably. To 43,214 claimants whose claims were denied by ICHEIC their hopes were not only crushed but they were inferentially labeled as fraudsters, connivers, or liars. They were subjected to another indignity. To 37.3 % or 34,158 claimants who received humanitarian awards they would be left to wonder how after 50 years did the insurers develop a humanitarian ethic. To the 16 % who received an award, this tiny minority received compensation after over 50 years of waiting that was too late. The totality of the monetary payout was not only too late but was too little.

Jews were the focus of Nazi atrocities. They were summarily ousted from their homes and transported to concentration camps. They were allowed to take only one valise per family. Those that took their policies with them to a concentration camp would have difficulty to maintain possession of the documentation. The documentation possessed by those that were murdered or died from the inhuman conditions of the camps was also lost. Therefore, almost every policyholder-beneficiary-claimant had no documentation when they were liberated. After 50 plus years of denials of claims because of a lack of a death certificate they may have discarded the documentation as a painful reminder of their ordeal when

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ICHEIC was formed. During this period and up to the present the real and unassailable proof would be the records of the insurers, which records the insurers refused an objective and comprehensive audit.

Generali was the largest life insurer of Eastern European Jews. It maintained offices in Czechoslovakia, Poland, Hungary, Bulgaria, Yugoslavia, and Greece. Generali sold directly to consumers, targeting its sales toward Jews. The company maintained agents in the large orthodox Jewish enclaves in Poland, Hungary and Rumania. As a result, in 1939, Generali wrote 32% of the market share of foreign companies in Poland; 33% of the market share of foreign companies in Czechoslovakia, 27% of the market share of foreign companies in Hungary.¹

Generali knew that the atrocities visited upon the Holocaust survivors made it impossible for them to keep possession of their policies and that the concentration camps and the SS killing squads did not issue death certificates, nor did they make available records of those they murdered. Generali nevertheless required that the claimants produce the policy or documentation of a policy and a death certificate, or they would not consider the claim.

Denied their claims, many of the survivors were reduced to an impoverished existence and survived on the benefits from Jewish charities.

For the next 50 to 60 years Generali refused to change their impossible conditions, nor did they make available their records to the claimants. This left claimants only anecdotal evidence that a policy was issued. Claimants recalled their parents' assurances that they had purchased life insurance policies with Generali to secure their financial future. Some were Generali agents and others remembered a Generali insurance agent coming to their homes and selling insurance and collecting premiums, and others remembered mailing monthly premiums addressed to the company.

When their constituent claimants complained to Deborah Senn, Commissioner of the State of Washington, and Superintendent of Insurance of the State of New York, Neil Levin, of the unfair claims practices of European life insurers, these two commissioners arranged for the National Association of Insurance Commissioners (NAIC) to hold public hearings on Holocaust claims practices of European insurers. The testimony of claimants as to the claim practices at the NAIC's public hearings was extremely damaging to Generali and other European life insurers.

¹ 1. *(Private Insurers & Unpaid Holocaust-Insurance-er Claims April 30, 1999 Deborah Senn, Washington State Insurance Commissioner)*

As an example at the NAIC hearing on September 22, 1997:

Tibor Breuer testified on behalf of his mother, Elza Krausz, who was too ill to testify. Elza was born in 1927. Her mother's family lived in Papa, Hungary, and operated a soda factory and a bakery. Her father, Jeno Krausz, purchased an insurance policy from Trieste Generali. She knew that it was with Generali because she took the premium payment to the post office every month. Jeno died in a labor camp in the Ukraine. Elza was incarcerated in Auschwitz. She was liberated by the Allies in 1945. She walked home to Papa, Hungary, only to find it vandalized. In April 1947 she went to the Budapest Branch of Generali to collect her father's life insurance policy. She was told that the Russians had taken all the company's funds. When the Breuers escaped from Hungary in the revolution of 1956 she reapplied for benefits from Generali in 1969, only to be refused.

Marta Cornell nee Drukerova testified that her father was a medical doctor in a small town in Czechoslovakia. Her father purchased life insurance policies when her older sister was born in 1924 and added policies after that. In 1939 the Nazis occupied her country and the family was deported to the Terizen concentration camp. Her parents were killed. Only she and her 80 year old grandmother survived and lived in Prague without money. She had a piece of paper in her father's handwriting containing policy numbers of her father's policies with companies of Generali. The agent that sold the policy to her father acknowledged that the policies were purchased and that she was entitled to be paid. She approached Generali who refused to pay and gave no reason. In 1948 Czechoslovakia became a Communist country and it became harder for her to get her claim paid. When she emigrated to the U.S.A. she attempted to get paid and this time she was refused with the following reasons: That her father had not paid the premiums, that the accumulated cash value was applied against the unpaid premiums and was used up and that the company was nationalized in 1948. No reason was applicable to its refusal to pay the claim demanded in 1945.

Similar testimony was given by other claimants at NAIC's public hearing on December 8, 1997 and February 16, 1998.

Generali owns valuable licenses in the states of Florida, Illinois, and New York that produce income for Generali. The commissioners at these hearings warned Generali that its claims practices showed a lack of trustworthiness that could result in its licenses being revoked.

ICHEIC was the result of the NAIC bringing pressure on European Insurers that used unfair claims practices to deny claims as well as a class action by survivors. ICHEIC was formed in September, 1998, a Memorandum Of Understanding

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("MOU") was signed by six major European insurance companies. It defined the manner in which the Holocaust claims were to be adjudicated. Paragraph 5 of the MOU:

The International Commission shall establish . . . "relaxed standards of proof that acknowledged the passage of time and the practical difficulties of the survivors, their beneficiaries and heirs in locating relevant documents, . . ."

Under the MOU, ICHEIC is responsible for establishing the process for addressing Holocaust era insurance claims. It published a list of policyholders submitted by the companies and other databases on its Web sites. The insurers have the responsibility to resolve claims first with individual claimants, taking into account the passage of time and the practical difficulties of producing relevant documents, and they should exercise a relaxed standard of proof. Humanitarian awards may be awarded.

The European insurers' decision to sign the MOU and pay claims pursuant to the ICHEIC process for addressing claims came about *not voluntarily* nor as its sudden recognition of its contractual and fiduciary responsibilities. The NAIC's public hearings exposed the insurers' unfair and egregious Holocaust claims handling that made their actions untrustworthy. After the public hearings the NAIC's commissioners warned Generali that their licenses in the respective states may be in jeopardy. The consequences of a possible loss of the United States' licenses was one of several occurrences that caused Generali's and other European insurers to suddenly turn around and agree to negotiate with ICHEIC and sign a Memorandum of Understanding (MOU). To the Holocaust victims it came too late.

Far too late, since in September of 1939 European life insurers were prohibited from selling policies to Jews; therefore, the policies that generated the Holocaust claims were all written before 1939. In the 59 years between the issuance of the policy and the signing of ICHEIC's MOU many of the beneficiaries died and many were impoverished.

In 1998 California enacted legislation that defined as an unfair business practice the insurers' failure to pay a Holocaust survivor's valid claim and extended the statute of limitations, an action to enjoin the implementation of these statutes as a violation of the U.S. constitution. The California statutes were preempted by the U.S. Federal government's executive agreements with the various European governments. In a 5 to 4 decision the Court held that the California statutes were preempted by the President's treaty prerogatives. Supreme Court of the United States American Insurance Association et al., Petitioners v. John Garamendi, Insurance Commissioner, State of California,

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on writ of certiorari to the United States Court of Appeals for the Circuit Court
of Appeals of the Ninth Circuit, June 23, 2003.

In October, 2004, Judge Michael Mukasey dismissed a pending class action citing the United States Supreme Court case that struck down the California statutes. The plaintiffs appealed the decision. While on appeal, the parties held settlement discussions. They presented a settlement of the class action suit by Holocaust survivors for Judge George Daniels' approval. At first he approved the settlement; however, when a group of Holocaust survivors petitioned Judge Daniels to reject the settlement citing that there may be proof of additional unpaid policies in the Nazi Bad Arolsen Holocaust archives, he held up his approval of the settlement. *The Jewish Week*, quoting a JTA source, stated:

"recent revelations of corporate complicity, unrevealed insurance company involvement and the great number of IBM punch cards among papers in a secretive archive in Bad Arolsen, Germany, have re-ignited a grassroots campaign among Holocaust survivors to recover Nazi-era insurance claims against companies such as the Italian insurance giant Generali . . ."

These archives had been sealed for 62 years and are soon to be opened for public inspection. On February 27, 2007, Judge Daniels approved the settlement with a limited extension for 18 months in the event that additional discoveries may emerge from the Bad Arolsen Holocaust archives. In approving the settlement he stated that the settlement was "Not perfect, but for most families who had bought coverage from Generali, it may be their only real opportunity for any monetary recovery."

With this "less than perfect settlement" the full claims of the Holocaust victims will never be adjudicated and the Holocaust victims claims will be buried as were their owners' cadavers and ashes. The stench emanating from the insurers' greed and perfidy is exceeded only by the stench that emitted from the rotting corpses and smoking crematoriums. The stench of the actions by the European insurers was further exacerbated when the ICHEIC press report indicated that 84.5% or 77,372 out of 91,558 claims were denied.

I believe that these denials can be attributable to the improper and *ultra vires* actions of an employee working at the ICHEIC offices in London. The basis of my belief is as follows:

I was appointed as an ICHEIC arbitrator to hear appeals on denials of claims by insurers.

I was appointed the arbitrator for two appeals of Hungarian Jewish policyholders. Each of their claim forms contained anecdotal evidence that their parents had purchased life insurance policies with Generali. The claimants were forced into labor battalions. Their parents died. Returning home after liberation they found everything, including their parents life insurance policies, destroyed. Generali denied their claims stating that they could not find any record of their policies; it admitted that the search of their records was incomplete since the archives relating to policies sold in Hungary "are no longer in our possession." The claimants appealed.

I prepared two drafts of monetary awards granting the Hungarian claimants' appeals. My awards were based upon the rules of the Memorandum of Understanding (MOU). These were my first drafts and I sent them to Katrina Oakley, the Law Administrator in ICHEIC's London office, to have it approved as to any administrative form requirements.

Her reply did not address the form of the award; instead she urged my reconsideration of the proposed awards and that I dismiss the appeals. She claimed that my awards would set a "precarious precedent" and that the claimant had not shown that it was plausible that a policy was issued. She quoted the following burden of proof rule that I was to use for determining the appeals as though it was a rule that was adopted by ICHEIC.

"When no written record of a policy is produced by the Claimant and the Company which is stated to have issued it can find no record of its existence, the burden of proving that a policy was issued is a heavy one for the Claimant." (Emphasis the writer.)

This rule was never adopted by ICHEIC, nor was it included in the Arbitrator's Handbook or in the MOU. To further pressure me she sent me copies of five awards of other arbitrators denying appeals where the claimants had anecdotal but not documented proof of the issuance of a policy. In all of these denials each of the arbitrators used Ms. Oakley's "phantom rule":

"When no written record of a policy is produced by the Claimant and the Company which is stated to have issued it can find no record of its existence, the burden of proving that a policy was issued is a heavy one for the Claimant." (Emphasis the writer.)

Miss Oakley's rule was never accepted or promulgated by ICHEIC. She had no authority to promulgate any of ICHEIC's rules. Her "phantom rule" is a gross misstatement of the rules adopted by ICHEIC on the burden of proof. It places an erroneous and insurmountable burden on a claimant. It is materially and

substantially different from the rules adopted and promulgated by ICHEIC and dooms the vast majority of the claimants who had no policy documentation.

Ms. Oakley was further malfeasant when she acted to include this "phantom" rule in a suggested form of award sent to new arbitrators.

The ICHEIC's awards were confidential and were never published. A copy was only sent to the appellants. The appellants, however, were unaware this rule that denied their appeal was a phantom rule that was never adopted by ICHEIC. They had no way of knowing the rules contained in the Arbitrator's Manual. To their detriment, the appellants relied on ICHEIC to oversee the arbitrator's award. They, therefore, had to accept the denial of their claims as one more unfair and demeaning treatment piled on top of the treatments endured during the Holocaust.

I filed my awards granting compensation to the two appellants. My awards were based upon the following rules adopted by ICHEIC and contained in the

Arbitrator's Manual:

Arbitrator's Manual and the MOU:

Standards of Proof Article 22 Admissibility:

"22.1 Arbitrators shall bear *"in mind the circumstances of each case, the difficulties of tracing documents and information and of proving or disproving the validity of a claim after the destruction caused by the Second World War and the Holocaust and the long time that has elapsed since the insurance policies were issued and the ordinary course documentation retention policies followed by the Member Company"*

Article 23.5:

Arbitrators shall determine the substance of any dispute, matter or issue raised in Appeal . . . *in accordance with the principles of equity and justice.* (Emphasis added)

By his Memorandum of July 2, 1999, Chairman Lawrence Eagleburger stated:

"There can be no question that there has to be sufficient and adequate evidence of a contractual relationship with an insurance company . . . Satisfaction of that requirement will be determined in accordance with the ICHEIC relaxed Standard of Proof which are to be interpreted liberally in favour of the Claimant; all parties agreed to this basic concept. There is intentionally built into the Standards wide latitude and flexibility. Indeed it is understood that, under the catch-all provision anecdotal evidence, . . . will be considered in determining the existence of a policy . . . there has been debate over the proposition that any claim submitted, even if based exclusively on anecdotal or unofficial documentary evidence should

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automatically be entitled to payment . . . This procedure will insure that those with strong evidence of a claim, even if purely anecdotal, as well as those with less persuasive evidence will be given an appropriate and fair review while maintaining the integrity of the process."

Relaxed Standards of Proof was adopted on July 15, 1999 by the Claims Working Group.

" . . . The following standards have been established to make it as easy as possible for a claim to be assessed, taking into account all relevant information.

A) In making a claim related to an insurance policy issued to a victim of the Holocaust a claimant:

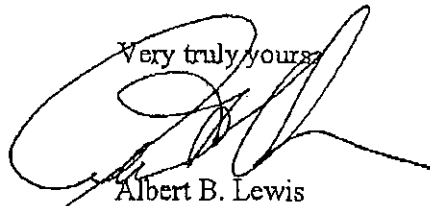
shall show that it is plausible, in the light of all special circumstances involved including but not limited to the destruction caused by World War II, the Holocaust and the lengthy period of time that has passed since the insurance policy in question was obtained, that the claimant is entitled, either in whole or in part, to the benefits of the insurance policy under consideration."

These promulgated rules were the rules that should have been included in the form award sent to new arbitrators, and not the phantom and erroneous burden of proof rule that makes it impossible for a claimant to prevail where there is no documentary evidence of the policy.

There may be a way to correct this injustice. One way would be if the NAIC would demand that the ICHEIC awards that denied an appeal and quoted the erroneous phantom burden of proof rule be reconsidered and fully reviewed by the NAIC. Superintendent Dinallo, you have a voice in this body and you may attempt to correct this injustice. As Superintendent you may also consider the review of Generali's New York license; however, keep in mind the U.S. Supreme Court case involving Garamendi and the California Insurance Department. In addition, there is legislation in Congress which addresses the problem of substantiation of the issuance of the policies by requiring the insurers to open their books and records.

See the two articles from the Jewish Week of 6/29/07 and 7/6/07 enclosed.

Very truly yours,



Albert B. Lewis

Encs.