

(Unofficial translation from original German)

## Holocaust Victims

# Insurers threatened by new restitution debate

**The American Congress is currently considering a law that would re-open new avenue for legal action by victims.**

By Stefan Ruhkamp

*21 April 2008* Considering the scope of the crime perpetrated by the Germans during World War II, the goal was presumptuous: German enterprises should be granted "a lasting and comprehensive legal peace" in America. This is how Samuel Berger, an adviser to President Bill Clinton, described the German-American government agreement for compensation of Holocaust victims. And it seemed as though legal peace for the insurers was reached with the conclusion of the process last March.

This legal peace, however, appears to be fragile. Barely one week after the wrap-up of the compensation process, Republican Representative Ileana Ros-Lehtinen in March 2007 introduced a proposed law (H.R.1746) to the Congress, aimed at facilitating new lawsuits against European insurers, who supposedly or actually discriminated against Jewish policy owners during or after the war. The House Committee on Foreign Affairs has already passed the bill with unanimous approval. It

is now before the Committee on Financial Services and will proceed in May to a Senate committee.

### **The question of appropriate compensation could flare up again**

There is much to be said for the possibility that the question of appropriate compensation could flare up again, at least for the German insurance industry. As part of the compensation process, which had a history lasting ten years and was finalized last year, the German insurers anted up an amount of 285 million Euros. This happened within the framework of the Foundation "Remembrance, Responsibility and Future," which also had the task of compensating forced laborers. German industry and the German government endowed the foundation with a total of 5 billion Euros.

Part of the money -- some 300 million Dollars -- was handed over to the restitution

committee ICHEIC, on which victim organizations, American insurance commissioners and six European insurers were represented. Insurers from other European countries provided an additional 200 million dollars. The abbreviation 'ICHEIC' stands for International Commission on Holocaust Era Insurance Claims. Part of the money was appropriated to finance general humanitarian payments to Holocaust victims. Of particular importance and cost was the settlement of individual claims for insurance contracts.

For this purpose, some 100 million dollars was expended. ICHEIC issued a worldwide call through newspaper advertisements for survivors of the Holocaust or descendants of murdered victims with claims to apply. To assert a claim, no insurance policies or similar documents -- possibly lost during the years of persecution -- were required. Name and birth date were sufficient to begin an inquiry. As an example, photos or witness testimonies were considered to be valid proof. In this way, some 86,000 claims were submitted against the European insurers. Out of these, some 20,000 involved German insurers, and in about 12,000 cases the commission approved the claim and paid an average of \$9000 to victims or heirs.

### **The value of uncompensated claims: Between 17 and 200 billion Dollars**

The proposed legislation, which is supported among others by victims' attorney Samuel Dubbin, sharply criticizes this process. Hundreds of thousands of policies belonging to Jewish victims are alleged to remain uncompensated by the European insurers. They retained 97% of their "unjust enrichment", said Dubbin in February during a hearing of the House Committee on Financial Services. The proposed bill estimates the amount of uncompensated claims between \$17 and \$200 billion.

In addition, the process has allegedly been non-transparent, the lists of policy-owners have not been published in a satisfactory manner and many individuals who should be entitled to claim have been precluded in advance from doing so. Also, only life-insurance claims were considered, whereas other types of insurance, such as accident, transport, health etc. have not been handled.

### **Counter-arguments cautiously voiced**

It is especially the last argument which is apparently false, argue the representatives of the insurance industry. The argument that many thousands of clients from the past have not yet been compensated has not been proven by the proponents of the bill. To support their argument, they have brought forward cases showing that compensation already had taken place. However, these counter-arguments are voiced by the representatives of the insurance industry only with great caution and care.

The restraint is understandable, given the emotional debates taking place in America. Holocaust survivors were invited and heard before the Congressional committees. Some voice support for the compensation given out so far, while others criticize the process. A sponsor of the bill, the Democratic legislator Robert Wexler said during the hearing: "Six million Jews perished in the Holocaust and 13,000 received compensation." The question is, "whether we allow the issue to die, or whether the Congress will grant the survivors a last chance".

### **A new way for lawsuits**

At present, individuals are still allowed the opportunity to file a lawsuit before the American courts in spite of the

compensation process and in spite of the German-American agreement. However, in such cases, the American government advises the courts to dismiss the case. The bill intends to provide the establishment of a new legal path before the American courts.

The insurers fear the unforeseen results of such development. If it were only for individual lawsuits, e.g. if a victim or the surviving kin learns about their entitlement only now, after the finalization of the compensation process, the repercussions would be minor, because the insurers are already willing to fulfill such demands. But in the case of a great wave of lawsuits they would have to bear their own attorney costs, even if they the case is rejected. The insurers worry that the total value of compensation rendered since the end of the War will be questioned. "The passage of the bill would mean, that the American Government cannot keep its commitments".