



HOLOCAUST SURVIVORS' FOUNDATION - USA

July 25, 2007

Comments by Holocaust Survivors' Foundation-USA on State Department (Kennedy) Answers to Questions Posed by Senator Bill Nelson, and ICHEIC (Eagleburger) Final Report

It is a sad day when our own State Department sides with the insurance companies who have reaped enormous financial benefits from the Nazi-led Holocaust at the expense of its victims. Those companies used our families' money to become the largest and wealthiest companies in the world, yet they have never been required to disclose what they did with insurance policies they sold to Jews who believed in good faith these companies would honor their promises if disaster struck. But disaster did strike, and the companies managed to steal over \$17 billion in unjust enrichment. We are deeply saddened that our State Department would side with these corporate thieves, abandoning the basic American tenets of justice and decency

The State Department cover letter says generally that it opposes HR 1746 because it would conflict with a number of U.S. bilateral agreements and that the International Commission for Holocaust Era Insurance Claims (ICHEIC) has already achieved many of the objectives of the legislation. We strongly disagree with the positions set forth by the State Department, Ambassador Kennedy, and former ICHEIC Chairman Eagleburger in his June 2007 written defense of ICHEIC, for the reasons outlined below. When appropriate, our responses provide a reference to Ambassador Christian Kennedy's numbered responses to Senator Bill Nelson's Questions from the Foreign Relations Committee and Chairman Eagleburger's Final Report.

1. HR 1746 does not conflict with U.S. bilateral agreements. The legislation does not conflict with the U.S. Executive Agreements because those agreements do not, on their face, abrogate survivors' rights to recover their family insurance policies. Stuart Eizenstat, in his book describing the U.S.-German Foundation negotiations, concedes that the President lacked the authority to waive individual rights in the context of the German-U.S. Foundation Agreement, and (to the chagrin of Germany) that the U.S. never agreed to such a waiver. Therefore, the State Department's current position is that Congress should extend to Germany and Austria *greater rights* than they negotiated for at the time of the Executive Agreements. This is absurd. (Administration views on HR 1746, Kennedy Answers to Question 5).

Moreover, the Justice Department confirmed early in the process that the Government never purported to waive survivors' claims. On September 11, 2000, seven (7) members of Congress wrote to the Solicitor General urging the Department not to take the side of German insurers in the litigation involving ICHEIC and the German Agreement. While the Department stated that it was obligated to take the insurers' side against the California regulations at issue, it confirmed that the United States

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never agreed that private suits were legally barred: “The [position of] the United States . . . does not suggest that private claimants who wish to pursue suite against German companies are foreclosed from doing so.” (September 29, 2000 Letter from Assistant Attorney General Robert Raben to Henry Waxman, et al.)

Those members of Congress expressed particular umbrage that the German-U.S. Agreement over slave labor was expanded to include any kind of limits on insurance regulations or liabilities, which amounted to billions of dollars. “[W]e reject the notion that insurance claims estimated to be worth billions could be satisfied by the arbitrary DM 300 million (\$150 million) set aside in the German Foundation Fund.” Later, on September 29, 2000, forty six (46) members raised concerns about ICHEIC’s poor performance with Chairman Eagleburger, adding: “ICHEIC never belonged in the slave labor settlement . . .”.

The Department of Justice added that even the Government’s limited support for ICHEIC was contingent on its successful functioning: “[S]hould the United States conclude that ICHEIC cannot fulfill the function for which it was created, the United States will certainly reconsider the balance reflected in its views on the constitutional issues [i.e. the California commissioner’s subpoena power.]” September 29, 2000 Letter from Assistant Attorney General Robert Raben to Henry Waxman, et al.

Survivors throughout the United States (and the world) have experienced ICHEIC’s failures first hand, and call upon Congress to follow through and correct the shortcomings in the process, while the survivors still have life and hope.

2. ICHEIC failed to deliver its promises to open company records and pay claims according to relaxed standards of proof.

As noted above, ICHEIC fell considerably short of its promises. Therefore, even if there were a conflict between the agreements and the legislation, Congress has good reason to abrogate the agreements. These many shortcomings include failing to:

–Publish names of most Jewish policyholders from the era, except for Germany and Austria, despite the fact that two-thirds of pre-Holocaust non-Soviet European Jews lived in Eastern Europe.

--Undertake adequate research to find policy listings in east European archives.

--Apply, in many cases, “relaxed standards of proof” in recognition of the fact that Holocaust survivors or their heirs lack documentation as a result of the horrific events of the Holocaust.

--Develop and require payment by the insurers of the “global amount” of unpaid insurance.

--Pay a significant amount of outstanding life insurance proceeds. Including both claimant payments and humanitarian outlays, ICHEIC ended up satisfying less than 3 percent of the total.

--Pay little, if any, non life policies.

Meanwhile, the recent disclosure about a “phantom rule” imposed by ICHEIC officials to erect a very high burden of proof not required by the rules for claimants with ICHEIC appeals by respected former New York State Insurance Superintendent Albert Lewis has further tainted the ICHEIC legacy, and deserves a full investigation by Congress or the GAO.

(Administration views on HR 1746, Kennedy Answers to Question 1-3.).

3. Congress has the power to abrogate the insurance provisions of the bilateral agreements in question. Since the executive agreements were not ratified as treaties, Congress has the power to enact legislation abrogating the agreements. *Weinberger v. Rossi*, 456 US. 25 (1982). (Administration views on HR1746, Kennedy Answers to Questions 4, 5).

4. ICHEIC did not include any legitimate representatives of Holocaust survivors or insurance claimants. Contrary to the frequent statements by Amb. Kennedy and Mr. Eagleburger, it is not true that “ICHEIC members included organizations representing Holocaust survivors.” The “Jewish” organizations on ICHEIC were the World Jewish Congress, the World Jewish Restitution Organization, the Claims Conference, and the State of Israel. None of these entities represents Holocaust survivors. In fact, none of them are even “survivor organizations.” They do not and never did have the legal or moral authority to speak for or resolve issues involving survivors’ insurance claims.

The Claims Conference has 24 board member organizations, only two of which are survivor organizations. The board is not accountable to Holocaust survivors either legally or in fact. The WJC is a worldwide Jewish membership organization, and the WJRO is nothing more than an aggregation of the Claims Conference, and the WJC, and other non-survivor organizations. The State of Israel, despite its importance to Jews everywhere, has a multitude of national interests and is by no means authorized to represent the interests of survivors with insurance claims.

Further, recent news reports cast serious doubts on the probity of many of these participants to serve in the role of negotiator of holy money such as survivors’ claims, including alleged financial improprieties and mishandling of and failure to account for Holocaust victims’ assets.

(Kennedy Answers to Question 7; Eagleburger/Koken, *ICHEIC Lessons Learned* Report.)

5. ICHEIC paid only 17,000 of the 870,000 life policies owned by Jews at the beginning of WWII. It is a blatant misrepresentation to say that ICHEIC paid “48,000 claimants” who were “beneficiaries or heirs or policies issued to Nazi victims.” In fact, ICHEIC companies recognized and made offers on a total of only 17,000 insurance policies in force between 1920 and 1945. According to published data, ICHEIC also made 31,000 payments of \$1,000 that were considered “humanitarian payments” to survivors or their heirs. (State Department views on HR 1746, Kennedy Answers to Questions 1 and 2.

6. ICHEIC paid less than 3 percent of the value of unpaid insurance policies owned by Jews at the beginning of WWII. Amb. Kennedy states that “over \$500 million dollars have reached Holocaust survivors and heirs as payments for insurance claims and related projects.” Even if true, this total pales in comparison to the **\$17 billion conservative 2007 estimate** by economist Sidney Zabłudoff of the value of life/annuity policies owned by Jews in Europe that were still unpaid when ICHEIC was started. This is conservative because it updates the value of Jewish policies in 1938 which remained unpaid in 1998 to 2007 values using the extremely conservative 30 year U.S. bond rate. Of course, insurers such as Generali, Allianz, Munich Re, Swiss Re, Swiss Life, etc undoubtedly earned higher returns on their money as their funds were invested in real estate and stocks, as well as bonds.

Amb. Kennedy is mistaken when he states, “We have not seen the methodology of the authors of studies” indicating that the unpaid insurance theft is somewhere between \$17 billion and \$200 billion. On March 29, 2007, Sidney Zabłudoff sent by email a copy of his paper as requested by John Becker of Kennedy’s office. This paper, which was published in the *Jewish Political Studies Review*, Spring 2005 issue, contained a detailed methodology showing how the \$15 billion (2003 values) in Jewish life policies was estimated (the \$17 billion is the equivalent in 2006 values). It was also filed in the Generali litigation in November 2004 and again in February 2007. Moreover, the two studies—ICHEIC’s final report and Helen Junz’s for the Swiss related CRT -- Kennedy refers to in his answer have nothing to do with determining current value. Junz’s study does refer to late 1930s value for a few countries, but even this is at the cash surrender value rather than the face value (amount received upon death).

The \$500 million figure cited repeatedly by Eagleburger, the State Department, and Kennedy also requires clarification. According to ICHEIC published statistics, it paid approximately \$260 million for actual insurance policies through March 2007. It paid another \$31 million in \$1,000 “humanitarian payments” and allocated some \$169 million for social services and other projects unrelated to survivors’ welfare.

(Administration views on HR 1746, Kennedy Response to Question 8.).

7. ICHEIC failed to publish the vast majority of Eastern European policy holder names, and failed to publish the names of German and Austrian policy holders in a timely fashion.

It is misleading for Amb. Kennedy to state that ICHEIC “published 500,000 names and provided widespread publicity during a four to five year claims period.” After four years, by the end of 2002, only some 78,000 policies were published, with about three-quarters of these from Germany and Austria. Clearly missing are policyholder names from Eastern Europe where the bulk of European Jews lived before World War II. The final 400,000 names—all from Germany-- were posted in the latter half of 2003, a few months before the final December 31, 2003 deadline. Congressman Henry Waxman and the Washington State Insurance Commissioner Mike Kreidler panned ICHEIC for its inadequate and late publication of names. As Congressman Waxman noted, fewer than 10,000 policy holder names from Eastern Europe were published, even though several million Jews – the vast majority (not including the

USSR where insurance was minimal due to Communism) -- lived in Poland, Czechoslovakia, Hungary, Romania, and Austria prior to WWII.

As to archival research, a number of sources have indicated that there are substantial insurance records in east European archives but ICHEIC did not give sufficient emphasis in obtaining this information. ICHEIC did ask State Department to assist with archive access but that effort was not successful.

(Administration views on HR 1746, Kennedy Response to Question No. 7.).

8. It is outrageous for the State Department to defend ICHEIC today after ICHEIC refused to supply the State Department with information required by Congress in Public Law 107-228, the Foreign Relations Authorization Act of 2003. Yet when ICHEIC refused to provide the information required, rather than move to hold ICHEIC in contempt for disobeying an Act of Congress, the State Department responded by recommending that the Congressional mandate be *repealed*.

9. Amb. Kennedy’s defense of ICHEIC, like Mr. Eagleburger’s report of June 2007, implies that without ICHEIC Holocaust survivors would have recovered nothing from miscreant insurers. They ignore the fact that by 1998, several major states (Florida, California, New York, Texas, Illinois, Maryland, etc.) had enacted comprehensive laws requiring insurers subject to their jurisdiction to publish policy holder names and pay claims, failing which survivors and heirs could pursue their claims in court with treble or punitive damage and attorneys fee provisions. Survivors all understood when ICHEIC was formed, it was an industry initiative designed to create a safe harbor from these state laws. The companies were successful beyond their wildest dreams with ICHEIC’s 3% payment record.

10. The reference to claims which “had already been explicitly settled in U.S. courts” is highly misleading. It suggests that proponents of the legislation are attempting to revisit payments to survivors and heirs pursuant to prior settlements or even ICHEIC. This is not true. HR 1746 does not purport to revisit claims for which survivors and heirs received payments through ICHEIC.

The legislation does explicitly reverse “settlements” that sweep away survivors’ rights to make a claim against a company such as Generali even though a policy owner never had notice that the company had issued a policy and thus never made a claim, or who made an ICHEIC claim that was denied even though no company records were produced to justify such denials. But the system was designed to be *voluntary* by claimants who filed claims at the invitation of ICHEIC, Eagleburger, and insurance commissioners with the promise that companies would be required to disclose all relevant information, and that “liberal standards of proof” would apply. This didn’t happen as promised.

11. The Kennedy response asserts that there have been “settlements of lawsuits involving Swiss companies and Generali” As far as the Swiss companies are concerned, any settlements are very limited and there have been no releases issued in the Swiss litigation because the process is ongoing. The State Department should produce evidence documenting the extent to which it believes Swiss companies’ claims have been “settled.” In the case of the Generali settlement, it was widely condemned in the *New York Times*, *International Herald Tribune*, *Miami Herald*, and several Jewish media. It is currently under appeal, and so the passage of HR 1746 would allow the court of appeals to apply the new law to the extent applicable.

12. The Kennedy response states that “We disagree with the findings” in HR 1746 that criticize ICHEIC for limiting itself to only certain forms of insurance. He said “ICHEIC’s mission was determined by its commissioners...” But while the commissioners clearly included non-life policies under the ICHEIC mandate, the working apparatus never followed through, despite continuous inquiries from Commissioners and others.

13. In response to a question on the Generali settlement, Amb. Kennedy states, “We understand that, as part of a court settlement, Generali agrees to follow ICHEIC valuation and eligibility standards” However, according to Mr. Zabludoff this is not true. The Generali Settlement Agreement greatly reduces the post 1998 annual increases that are stipulated in the ICHEIC valuation guidelines. There also are a number of other statements about the valuation guidelines in the settlement that are unclear.