

**Testimony of Leslie Tick, California Department of Insurance
United States House of Representatives Government Reform's Subcommittee on
Government Efficiency, Financial Management and Intergovernmental Relations.
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2:00 pm.**

Good afternoon. My name is Leslie Tick. I am senior staff counsel at the California Department of Insurance. I have been with the Department for the past 10 years and have worked on the Holocaust era insurance issue since late 1997.

In pre-war Europe, insurance was sold extensively and primarily to middle and working class people. Many individuals invested in life insurance policies and in annuities because retirement planning tools, such as pensions, were not widely available. Dowry and education policies were also very common during this time. These policies were purchased when a child was born and paid when a daughter married or a son commenced higher education.

As the religious, ethnic and political repression preceding World War II spread, and later, as the war and Holocaust enveloped Europe, more people purchased insurance products in an effort to keep their assets safe.

Over the past 50 years, some insurers have consistently refused to pay benefits or provide information about these policies. The reasons given for non-payment include:

- No death certificate provided by the claimant;
- Policyholders stopped making premium payments during the war;
- Proceeds of policies sold to Jewish insureds were already paid to the Nazis or nationalized;
- Reparations to Holocaust survivors were made by government restitution treaties, which covered insurance proceeds;
- Companies located in eastern bloc countries were taken over by communist regimes and their assets were confiscated so that no funds exist to pay claims; and
- Records no longer exist to verify the individual's status as a policyholder beneficiary.

An estimated 50,000 to 100,000 Holocaust survivors live in the United States. California has the second largest number of survivors with estimates ranging from 6,300 to 20,000 survivors. If these policies were paid today, at present value with currency adjustments and interest, it is estimated that the total due could reach into the hundreds of millions of dollars.

In order to see that justice is done and provide assistance to those survivors who may wish to file claims on these policies, information needs to come from the insurance companies. Most survivors and their heirs no longer have documentary proof of insurance. Most survivors were children during the war. Some recall details regarding insurance ? the agent coming to their home for payment, or their parents telling them that they were insured. The majority of claimants, however, have no actual knowledge of whether or not their family members were insured, but believe they must have been because of their social and economic status, business holdings, or because they believe that their parents took good care of the family.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was formed in August 1998 to try to address the issues surrounding these policies in a consensual manner. The ICHEIC is made up of a few European insurers (Allianz, Generali, Zurich, AXA and Winterthur), American and European insurance regulators, representatives of Jewish and survivor organizations, and the State of Israel. In order to address the problem of claimants' lack of records, ICHEIC required each member company to provide a list of unpaid policies issued to Holocaust victims. It was envisioned that this list would be made available to the public so that potential claimants would be able to see if they or their relatives had a policy.

ICHEIC required that its member companies provide lists of policies held by victims of the Holocaust, but left each insurer to decide who was and who was not a victim of the Holocaust. Even if some names are known as "Jewish names" a company cannot determine with certainty which policyholder was, or was not, a Jew. And for those who were victims by virtue of the fact that they were homosexual, Roma, disabled, or Jehovah's Witness, for example, it would be entirely impossible.

Another problem arose from ICHEIC's requirement that the insurers provide policyholder names just for those policies that remained unpaid. There was a widespread practice during the pre-war and war years for the Nazis to confiscate policies outright or for the policies held by victims to be paid into "blocked accounts." These "blocked accounts" were in the policyholder's name, but the account only worked one way. The account holder was forced to deposit his assets, but was not allowed to make any withdrawals. Unfortunately, the insurers considered these policies to be "paid" even though they were not paid to the beneficiary of the policy, and these names were not included on the lists.

Another problem with the ICHEIC lists is that most of the ICHEIC insurers simply refused to provide lists, saying that European law would forbid such disclosure, or saying that it would simply take too much time and cost too much money to collect the data. Allianz, for example, with approximately 1.3 million paper files, refused to put the information into electronic format, citing cost and difficulty and its decision that such an effort would be unlikely to yield enough Jewish policyholders to make the exercise cost effective. Allianz eventually agreed with ICHEIC to digitize information regarding a small sampling of the 1.3 million policies and to match those names against the Yad Vashem¹ database of Jews killed in the Holocaust, in order to determine which of the policies were victims of the Holocaust. The Yad Vashem database, however, contains the names of only about half of Jewish victims of the Holocaust. The matching was ultimately never done, as Allianz was not willing to agree to the Yad Vashem matching system and so, to date, there are no Allianz names on the ICHEIC database that came from this exercise.

ICHEIC also undertook limited research of non-insurer archives for evidence of individual policies. ICHEIC searched state archives in various locations around Europe and looked mostly at documents reflecting the forced documentation of Jewish assets to be either taxed by or collected by the Nazis. These names were collected in ICHEIC's research database and were

¹ Yad Vashem is the Holocaust memorial in Israel, which to date, has the world's largest collection of names of Jewish Holocaust victims.

added to the policyholder database that is publicly available on ICHEIC's website (www.icheic.org).

To date the ICHEIC policyholder database contains 59,244 policyholder names. Only 15% of those names (8,929) came from ICHEIC's member insurers. Of the 8,929 names provided by the insurers, 94% (8,388 names) come from just one company. Generali, which provided 94% of the names on the ICHEIC database, actually collected information on 360,000 policies in force in 1939 but was only willing to give ICHEIC a smaller list of 90,000 "unpaid" policies. Those were then matched against the Yad Vashem list, resulting in the 8,388 names currently published.

When the German Foundation negotiations are completed, the German insurers say that they will provide a list names of policies in force, to be matched against a list of German Jews. Virtually none of these names will come from Allianz, as the German insurers agreed to provide those names that were already in electronic format. The resulting matched names will be added to the ICHEIC website database. Since the matching will be done against a list of German Jews, it will not capture homosexual, disabled, Jehovah's Witness or Roma victims of the Nazis.

In contrast to the ICHEIC list requirements, AB 600, codified as California Insurance Code §13800 (attached) directs insurers to provide to the Department data regarding *all* insurance policies they or a related company wrote in Europe between 1920 and 1945. This requirement addresses the problem of insurers deciding for themselves who was and who was not a victim of the Nazis and deciding which policies were paid and which were not paid. It also allows survivors and the families of victims who were not targeted because they were Jews, to be able to search for names.

The statute directs the Department to suspend the certificate of authority of any insurer that fails to comply. The statute required insurers to provide their data to the Department of Insurance by April 10, 2000.

Beginning in March 2000, various insurance companies (Gerling, Generali, American Reinsurance, Winterthur) and the trade association American Insurance Association (representing an additional one hundred or so insurers), filed four separate federal lawsuits against the California Insurance Commissioner asserting that the statute and its implementing regulations violated their federal constitutional rights.

On June 9, 2000, the United States District Court for the Northern District of California granted plaintiffs' request and enjoined enforcement of the statute.

On February 7, 2001, the United States Court of Appeals for the Ninth Circuit rejected the insurers' commerce clause and foreign affairs constitutional challenges. (Opinion attached as Exhibit 2). The Court kept the injunction in place pending proceedings on the merits regarding due process, the insurers' one remaining constitutional challenge.

In September 2001 the parties argued cross motions for summary judgment on the due process issues. On October 1, 2001, the District Court denied the Commissioner's Motion for Summary

Judgment and granted Plaintiffs' motions, finding that the statute violated the insurers' due process rights.

Both sides took the due process ruling back to the 9th Circuit Court of Appeals. The Court heard oral argument on May 8, 2002.

On July 15, 2002, the Court of Appeals ruled that the statute was not unconstitutional for any of the reasons set forth by plaintiffs (amended Opinion attached as Exhibit 3).

The Court of Appeals denied plaintiffs' request for rehearing en banc on September 9, 2002.

On September 13, 2002 the insurers requested that the Court stay the ruling pending their request to the United States Supreme Court that it hear the case.

Prior to the injunction, which prevented the California Department of Insurance from enforcing the statute, approximately 1,500 California insurers submitted reports.

Four groups representing approximately eight insurers provided reports that fully comply with the statute.

Four groups representing approximately forty-three California insurers provided partial, incomplete submissions, such as policy information regarding unpaid policies issued to Holocaust victims.

The Department has further questions regarding the reports submitted by five groups representing approximately fifty-eight insurers.

Approximately one hundred insurers refused to comply.

The remainder, and overwhelming majority of the insurers reported that they either wrote no insurance in Europe during the applicable time period or that they searched and were unable to find any data responsive to the statute.

