

TESTIMONY OF JACK RUBIN

SENATE FOREIGN RELATIONS COMMITTEE SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS

MAY 6, 2008

My name is Jack Rubin, and I live in Boynton Beach, Florida. I want to thank our own Senator Bill Nelson for holding this important hearing and for inviting me, as a Holocaust survivor, to speak my own mind about these issues of great concern. I would like to begin by stating how honored I am to be able to address this committee of the United States Senate. It is very humbling and historic, as I realize that I am one of a very small number of Holocaust survivors, which includes Elie Wiesel, who has ever had this privilege.

Last Thursday, May 1, was the 63rd anniversary of the day I was liberated. It was also Yom Hashoah, the Day of Remembrance, when Jews all over the world say a prayer for the 6 million martyrs, our loved ones and the loved ones of millions, who perished at the murderous hands of the Nazis and their collaborators. Today, the fact that I, a survivor of that indescribable hell now known as the Holocaust, will have my words become a part of the official record of this body is an honor and privilege I never imagined.

I am here, on behalf of thousands of Holocaust survivors and family members of Holocaust victims, to ask you to pass a companion to HR 1746, the Holocaust Insurance Accountability Act of 2007, without any further delays.

First, I would like to tell you about my life in the United States, and my activities over the years as an integral part of the local and national Holocaust survivor community. I was liberated as I said on May 1, 1945, from hell, by the U.S. Army. I then spent two years in a Displaced Persons Camp in Germany. In 1947, I was fortunate to come to America, and I settled in Connecticut. I learned the trade to become a furrier and was fortunate to be able to earn a living as a furrier and raise a beautiful family in Fairfield, Connecticut. I worked hard was able to retire in 1995, and in 1998 I moved to Boynton Beach. I have been very active in several Florida survivor groups, as well as my synagogue and other Jewish organizations in Palm Beach County. Over the years I like many survivors who have been dedicated to Holocaust education, having spoken to thousands of young people in public and private schools about the tragedy our people endured in the Holocaust. I also volunteer as a member of the Holocaust survivors' advisory committee of the Jewish Family and Children's Services of Palm Beach County, which serves the needy Holocaust survivors in our

community. In addition, I am a member of the Executive Committee of the Holocaust Survivors Foundation USA, Inc., which represents thousands of Holocaust survivors from all over the United States.

But I am here today to talk about the part of my family history that isn't so happy, our brutal treatment at the hands of the Nazis and their Hungarian puppets. I was born in 1928 in Vari, Czechoslovakia, which was annexed by Hungary in 1938. We lived in a building where my father's general store was also located. There was a sign that said the building and premises were insured by "Generali Moldavia." I am certain that my father, who was a careful business man, had all kinds of insurance, including life insurance, because he spoke about it often. From these conversations, I even remember the name of the agent, Mr. Joseph Schwartz.

Like all Jews in our town, we were forced out of our home in April of 1944 with only the clothes on our back and one suitcase each, and taken to the Beregsasztz Ghetto. There the Nazis forced everyone to turn over their jewelry, watches, wedding rings, and hand over everything of value. I was given a pail to go around and collect all valuables. We were then deported to Auschwitz, and that was the last time I saw my parents. I survived Auschwitz and three other camps. Needless to say, after the Holocaust, I had no way to find any papers such as insurance policies. Our home and

business was destroyed.

After ICHEIC was created, I applied because of the esteemed individuals and publicity encouraging applications. They promised to open company records and apply “relaxed standards of proof.” I filed two claims, naming my father Ferencz Rubin and my mother Rosa Rosenbaum-Rubin, and their birth years. I mentioned the sign on our building for “Generali Moldavia,” and the fact that the agent Mr. Schwartz was our agent, who also died in the Holocaust. This was all the information I had, but under the circumstances it was certainly enough to show we had insurance.

Four years later I received a letter from Generali stating that they had no records from their subsidiaries and no records of any policies in my family. This is absurd, because I know we had insurance. Yet Generali did not produce one piece of paper to justify its decision, and ICHEIC did not require the company to produce any proof. They did not even ask the company to give records from Generali Moldavia, a known subsidiary, and he did not require Generali to produce information about Mr. Schwartz, the agent from our town. Don't you think Generali, which even then was a global giant, would have kept information about its insurance agents, and about its subsidiaries? That's what big insurance companies do. But

ICHEIC just took Generali's word and my claim was denied.

Then, ICHEIC added insult to injury. They sent me a \$1,000 check and called it a "humanitarian payment." Really they were calling me a liar. They tried to give us \$1,000 to keep quiet, instead of giving what we demanded all along – the dignity of controlling our own rights, and finding out the truth, and getting what my father was promised when he trusted Generali with his family's security as his insurance company.

Other Holocaust survivors, who I speak with every day, are also beyond disappointed by the way ICHEIC treated us. We are outraged. If you want to get an angry reaction from survivors or their children or grandchildren, just mention ICHEIC. So many people I know had the same humiliating experience. Not only are we disgusted with the way our claims were handled, but we cannot believe ICHEIC took money and used it for ridiculous programs such as summer camp programs and paying college students to keep survivors company. Who made ICHEIC the king of our families' legacies?

Let's face it, ICHEIC was controlled by the insurance companies. Sure, there were Jewish organizations present but we never asked for them or anyone else to represent us. We, the survivors, did not ask the Claims Conference or Mr. Kent, or Mr. Eizenstat, or Mr. Eagleburger, to handle our

affairs. We can speak for ourselves, but ICHEIC denied us even that obvious level of respect. We question the “deals” that everyone talks about. But remember this – survivors did not agree to any deals, and did not agree to any legal peace. The fact that some groups took it upon themselves to pretend like they had that authority is not acceptable to us and never was.

ICHEIC was also conducted in secret. Why? To protect the companies, that’s why. Once again, we survivors were denied access to the truth. Stealing our money is bad enough, but concealing the truth from Holocaust survivors is a terrible thing. The companies betrayed us and up until now, the U.S. justice system has blocked our access to the truth. I am here today to ask you to fix this by passing HR 1746, because it will require the companies to open their records, and allow survivors and heirs to go to court for the truth.

I know ICHEIC was flawed because I know we had insurance but it wasn’t acknowledged. But I am fighting for this bill to honor my parents, because my father bought insurance to provide for us if something happened. I owe this to my parents. I can’t understand how anyone can even think we should be willing to settle for less.

And there is another thing. What about the millions of insurance

policies that went up in flames at Auschwitz, Dachau, and thousands of killing fields? I was one of the few who survived that hell. What about the millions who died? What about their insurance? Why should the insurance companies be the heirs of their Jewish customers? The survivors and the second generation agree on this point as well —there should be no legal peace for the companies until the Holocaust survivors have moral peace. We are far from that today, Mr. Chairman.

This is why I was one of several Holocaust survivors who appealed the recent “class action settlement” of the litigation against Generali. In 2006, the “class action lawyers” who were supposed to be representing us agreed to a settlement with Generali. Under the settlement, Generali’s obligations would have been limited to what was done by ICHEIC. The benefits from the settlement are very small in my opinion, but for those of us who tried ICHEIC and were denied, the impact of the settlement is clear. We get nothing. We are finished. ICHEIC decisions would be final.

Since I personally witnessed how ICHEIC did its business in secret, and allowed companies like Generali to deny claims without any supervision and oversight, and didn’t do any independent investigation and didn’t require the company to produce records to us, I believed this settlement would be a terrible disservice to survivors. Those of us who were denied in

ICHEIC would have no opportunity whatsoever to benefit from the settlement. Therefore, I joined several of other survivors and objected to the settlement. When the Judge approved it anyway, we appealed.

What else could we do? If the class action settlement is approved, our rights against Generali will truly be lost forever. I know my father had Generali insurance, but ICHEIC said no. ICHEIC said Generali behaved properly but I know it isn't so. I believe our appeal is valid because we know that ICHEIC did not serve the Holocaust survivors properly and the settlement embracing ICHEIC can't be correct. But if we lose the appeal, then Generali will be able to perpetrate the lie that we did not have insurance with that company. I felt we needed to do everything in our legal rights to protect our ability to get the truth one way or another.

So if this Congress does not act quickly to pass HR 1746, I am afraid that all the survivors' rights against Generali might be lost. I am not a lawyer but one sure way to restore our ability to get the truth from Generali or the other companies is to change the law *immediately*. If the Court of Appeals decides the class action appeal before Congress acts, I am afraid it will complicate matters. That decision could come any day. Please move swiftly and make it clear that the U.S. Congress does not endorse the denial of basic rights to survivors.

I want to remind this Committee that the legislation would not cost companies anything unless we prove our family had insurance. In that case, the companies would have to pay us and pay our lawyer too. If we lose, we get nothing and our lawyer would get nothing. This legislation would restore our ability to make decisions for ourselves with the advice of our own counsel. That is all we are asking for, Mr. Chairman.

Mr. Sid Zab Ludoff, an independent economist, has testified several times in Congress. He said the amount of money owed by the companies is at least \$17 billion. That is 17 billion, with a "b." That is a conservative estimate of what the companies stole. Yet at the same time tens of thousands of needy Holocaust survivors in these very United States are suffering without the care they need. I see many of them in Palm Beach County, and my HSF colleagues see this problem all over America. The local Jewish Family and Children's Services, where I volunteer, never has enough funds to meet the needs of the poor survivors. They cannot afford their medical expenses, or their medicines, eyeglasses, home care, nutrition, walkers, or dental care. They cannot afford their rent or utility bills. There are 80,000 survivors in the U.S. in this condition. Where is the justice in this?

It is now 2008. The companies succeeded in stonewalling us for 50

years. Then, in 1998, there was ICHEIC. To most of us, that has meant another 10 years of frustration and delay. Let's not get bogged down in obsessing over ICHEIC's successes or failures. It is over. Please focus on the companies' conduct, and on Holocaust survivors' rights to a full accounting of the companies' behavior.

I attended the House Financial Services Committee meeting and I wish every citizen in America could have seen it. Every person at that committee, including Chairman Barney Frank, showed such passion and respect for the rights of Holocaust survivors and showed that they truly understand the meaning of justice. They all ridiculed the arguments we are hearing today again from non-representative groups pretending to speak and act for Holocaust survivors. The Financial Services members insisted on a full accounting for the companies. They did not care about judging ICHEIC. They did not care about protecting reputations. They all said, simply, that the survivors should have our human rights restored by the Congress of the United States. Period. That is also how the survivors feel, Mr. Chairman.

Involvement in Other Restitution Matters

As a Holocaust survivor, I have witnessed first-hand many of the restitution proceedings over the past 10 years. This has not been a joy for

me, but it has been a solemn responsibility. From my standpoint, and I know my views are shared by many survivors, most of what has transpired has not been good. Only in rare instances have the survivors been treated with dignity and respect.

Because of the Holocaust, all of us were financially injured by several businesses and governments. The Nazi terror was so extensive that I and most survivors I know were victimized by so many Nazi collaborators and other profiteers that we have had a legal, economic, and moral stake in several "Holocaust restitution" matters. This includes German manufacturers using slave labor, Swiss banks profiting from dormant accounts and fencing looted assets, and insurance companies failing to pay their customers who entrusted them with their savings. In my case, since my home was annexed by Hungary during the war, I was one of about 60,000 Hungarian survivors now living whose property might have been on the Hungarian Gold Train and illegally taken by the United States Government after the end of the war.

Hungarian Gold Train Case.

The Gold Train case, *Rosner v. United States of America*, was filed in the United States District Court for the Southern District of Florida, in Miami. I was one of about 15 survivors who attended every hearing in that

case before the Honorable Patricia Seitz. We had the chance to see and hear for ourselves the kinds of legal and factual issues the Judge was taking into account. This gave us a concrete understanding about how our prospects were faring. Sometimes developments were good, and sometimes they weren't so good. But we were kept informed and had a great deal of input into the way the case was handled by our lawyers.

After nearly five years of litigation, the Gold Train case was settled with a cash payment of \$25.5 million to be used over a five (5) year period for social services for Hungarian survivors in need, the creation of an archive to collect and document the history of the Gold Train and Hungarian Jewry, and the issuance of an apology by the U.S. Government. Truthfully, we had all hoped for a larger financial recovery from the United States Government after all those years. But having sat through the case for almost five years, we understood that the Judge was doing her best to hear us as survivors and the children of prosperous families who had no way to prove in the year 2004 what the U.S. Government did with our property in the late 1940s.

Not that we didn't try. Our lawyers and the historians they hired spent over a year and a half going through documents in the National Archives, the Clinton Presidential Library, and archives in Israel and

Hungary to prove our connections to the property on the Gold Train. The Judge ordered the Government to open its records to our lawyers, and they found several smoking guns that helped our case a lot. Our lawyers took sworn depositions of the Army's historians and the Government's experts and obtained damning information about the Government's case. Our lawyers persuaded the Court to require the Government to submit for mediation with a prestigious mediator (current White House Counsel Fred Fielding) who could get the parties to the table. And, we the survivors and the clients were kept informed all the time.

Eventually, we decided to settle the case with \$25.5 million in cash, which would be distributed over a 5-year period to provide vital social services to Hungarian survivors in need all over the world. This wasn't an easy decision because each survivor believed he or she had a right to direct compensation, but the difficulty of proof made it risky to go to a trial. But those of us involved believed that to be able to get funds to supplement the desperate shortfall in social services for Hungarian survivors over a 5 year period, and to have a complete public archive of the Gold Train events, and to receive an apology from the strong but humble U.S. Government, was worth giving up our individual rights.

It was important that every class member was given a clear, complete

notice about the settlement and an opportunity to opt out of it if his or her own conscience dictated. Our lawyers insisted that every survivor be told the truth about the settlement in advance of the notice. Everyone was told that they might not receive any money themselves. Yet, only 100 Holocaust survivors chose to opt out. I firmly believe the overwhelming majority of survivors accepted the settlement because they knew the process had been fair, they were told what was going on along the way, and they had confidence in their own lawyers to do what was right, with our input. In other words, the survivors were treated as adults, with dignity and respect for our rights and ability to choose for ourselves what kind of legal and moral result was acceptable to settle the theft of our families' property and legacies.

I had the chance to address Judge Seitz to speak in favor of the settlement. Here is a part of the transcript from that hearing where I and my fellow Hungarian survivors spoke in favor of the settlement in September 2005.

I was here in March, Your Honor. As you remember, I gave a very short bitter speech [about how] as a 15 year old I was collecting all the valuables when I was in the ghetto. . . .

I know whatever the settlement will be given to us, it will give me much satisfaction that we will be able to help the needy Hungarian survivors.

. . . .

First, we survivors and our families had the opportunity to seek justice against the United States Government in this court of law under that government's very own laws. And to receive a fair hearing in that process. I have watched your honor preside over these hearings and although we didn't always agree with you we know you have been just and fair and tried to apply the law the best way you can.

Second, the survivors have had the opportunity to participate directly in this litigation. We spoke frequently with the lawyers as the case had its ups and downs. We sat in this courtroom and witnessed justice at work. When it came time to negotiate, we had real input and it was part of the settlement. We spoke with the Department of Justice. We spoke with other survivors. . . .

The settlement is one that the survivors feel they had a part in creating. All of its elements are important – specifying the dollars and the services, requiring strict reporting and auditing, using a fair distribution formula, receiving an apology. There were all important to us, and the fact that we had the chance to shape the settlement ourselves along with survivors from around the world was important, and unique.

Third, after reaching a settlement we had the chance to speak directly to this court about what it meant to us. And we had the chance to shake the hand of the Government's lawyers, and thank the United States for rescuing civilization in World War II, and providing many refugees such as ourselves with a home and a chance for a new life. And finally to thank the Government for finally being accountable for the Gold Train.

Thank you very much Judge Seitz in the name of all the Hungarian Holocaust survivors for your fairness and honesty.

57-58.

I was very proud to have been a part of the Gold Train case, especially after Judge Seitz announced her decision approving the settlement. She told the parties how proud she was to have presided over a case in which the plaintiffs and defendants were so well informed and able to make prudent judgments about the merits of the litigation.

Here, because of the outstanding work of the lawyers, we have been able to not only resolve the conflict, but to begin a healing process and bring closure. So this is one in which – it is the unusual case in which there is a compromise where I think that the whole of the compromise is better than the sum of the parts that any of us could have hoped for. I am just very proud of everyone in this courtroom and I thank all ... to have had the opportunity to meet all of you, to work with you, and to be part of this historic moment. God bless you all and God bless the United States.

Transcript of September 26, 2005 *Rosner* Final Fairness Hearing, at 147-48.

Mr. Chairman and members of this Committee, please look at the difference between what happened in the Gold Train case and what happened with our insurance policies. In the Gold Train case, we the survivors were represented by advocates of our own choosing. This never happened in ICHEIC, because surrogates not of our choosing were the ones at the table. We did not ask them to handle our insurance rights.

In the Gold Train case, our chosen representatives had the opportunity, under court supervision, to inspect all of the defendant's records. This never happened under ICHEIC. The companies kept all their documents and only showed us what they wanted to. ICHEIC had no authority to demand production of the kinds of files that would have given claimants the ability to see if the companies were lying or not.

In the Gold Train case, we could observe the decision maker at work – a United States Federal Judge who operated in open court, “in the sunshine” as we say in Florida. In ICHEIC, everything was secret and all survivors ever received were impersonal letters with mechanical denials, denials which came from a “claims process” we now know ICHEIC did nothing to supervise. In fact we now know from Albert Lewis that ICHEIC had an internal policy that without any documentation, claimants had a ‘heavy burden.’ This has been called a “phantom rule” because it is opposite of the “relaxed standard of proof” that was promised. You get the picture.

So my experience in the Gold Train case should be instructive to this committee. What survivors want and deserve are fairness, transparency, due process, respect, and the ability to make our own decisions about our families' financial legacies. If that happens, even outcomes that do not meet our most optimistic expectations will be acceptable and accepted. It

is simply disrespectful for the one group of people who suffered the unique crime now known as the Holocaust should have any less rights than any other consumer who is defrauded or cheated by corporations who exploit one or more catastrophes to deny us our rightful funds. This dignity and respect is precisely what ICHEIC denied us, and what the U.S. courts up until now have denied us. Please don't allow Congress to fall into that same column.

Swiss Bank Looted Assets Class Allocations.

In the Swiss Bank Class Action, I was among several dozen survivors and survivor groups from throughout the United States who objected to the district court's allocation of the Looted Assets Class portion of the settlement. So far that has been \$205 million. Judge Korman ruled that 75% of the Looted Assets class settlement funds should be given to the Former Soviet Union, while only 4% of the Looted Assets Funds were earmarked to help poor survivors in the United States. He concluded the FSU survivors were "poorer" and stated that the tens of thousands of admittedly indigent and elderly American survivors should look to the wealthy Jewish community in the U.S. for help.

We opposed this allocation because the U.S. represents 20% of the world's survivor population and nearly 30% of the world's death camp

survivors. We appealed the court's decision because we believed it was unfair and out of character with the basic notion of fair play of the U.S justice system. The Holocaust Survivors Foundation USA opposed the allocations because they stripped American survivors of their legal rights, providing nothing in return except insult.

The U.S. Survivors do not deny that there are needs in the FSU, but we think it is wrong for an American Judge to become a philanthropist with Survivors' money from a legal settlement. Remember, unlike what happened in the Hungarian Gold Train case, the Court and the lawyers did not tell the Holocaust survivors in the Swiss Bank case how the money would be distributed at the time of the settlement notice. Everyone was in the dark but somehow we were supposed to decide what was fair as a settlement with the Swiss banks without this basic knowledge. This was outrageous and remains a very sore spot for American survivors and our families.

The district court's allocation of the first \$205 million in Looted Assets funds was, unfortunately, affirmed by the appellate court.

Today, there is almost \$400 million from the Swiss settlement that has been sitting in the bank for over 8 years. It is

waiting to be distributed under a formula the Judge is supposed to reconsider. But how many survivors have died suffering without food, medicine, and home care while the Judge has been sitting on all this money? This has been a great tragedy that survivors cannot forget.

We also cannot understand why the U.S. Congress has not investigated this highly unusual set of judicial actions.

Claims Conference

Also, the Claims Conference is sitting on hundreds of millions of dollars. Survivors do not believe there has been an adequate accounting of the property obtained from Germany and the uses of those funds. We deserve a full accounting, because survivors are suffering. I am sure you have seen the news stories year in and year out, including a major article in the Associated Press last week, about how survivors everywhere are desperate for a more serious accounting by all these institutions including the Claims Conference. The needy survivors do not deserve to suffer again.

I hope you will require all institutions to make a complete audit of where the survivors' money has gone, because we know it isn't coming to those who were looted, or those in need.

Senator Nelson, you were one of the first public officials to recognize

the problems survivors were facing with long term care and other health care needs. You tried to help back in 1998 and 1999. Our community was and is grateful for the concern you showed for our fellow survivors in need. But the truth today is that not enough has been done. Not by the corporations and governments who injured us and stole from us, and not by the institutions who are supposed to be responsible for helping us.

When I hear Mr. Kent and the Claims Conference and its affiliated groups and clients echo the threats of the German Government to withhold additional support for Holocaust survivors because of HR 1746, it makes me very angry. How dare these groups come here and try to hold our rights hostage to such a threat from Germany. The German Government! Should Holocaust survivors be punished for standing up for our constitutional rights? God forbid. It is a shame, Mr. Kent, and shame on the German Government, and shame on the groups who are lobbying you behind the scenes pretending to have the interests of survivors at heart. They have no brief to interfere with our rights.

I have a simple question for Mr. Kent, and the other Claims Conference acolytes who are now opposing HR 1746. Putting aside the gross violation of our constitutional rights, if the reason HR 1746 shouldn't pass is to preserve the Claims Conference's negotiating status, what has the

CC actually done worth preserving? If 40,000 survivors in the U.S. live in poverty, and another 40,000 are so poor they cannot afford basic food, medicines, health care, home care, and the like, what has the CC really accomplished? What about the thousands of needy survivors in Israel, Europe, Canada, and South America.

We are supposed to give up our insurance rights Mr. Kent so you and your colleagues (most of who belong to organizations that get money from the Conference) can continue to beg for a few thousand dollars here and a few thousand dollars there from Germany? Meanwhile, tens of thousands of Holocaust survivors are suffering with enough food on their tables, heat in the winters, or medical care or medicines for their injuries? I am on the front lines, Mr. Chairman. I am the one out there having to tell needy survivors at the Jewish Family and Children's Services that there is not enough funds to pay for their medicines or their wheelchairs or their dental work or for someone to simply come clean the home of an elderly, frail survivor so they can live in dignity.

Common Theme

There is a common theme in the restitution area. There has been secrecy, and the deals have been made by people we did not appoint or approve. We have been denied the truth, and that is outrageous. We

survivors, who are the most affected, were not allowed to participate and the results are terrible. We need Congress to give meaning to the words “never again” that we always hear. We need Congress to take action to respect the rights of Holocaust survivors.

We are lucky in South Florida that nearly all of our representatives – led by Ileana Ros-Lehtinen and Robert Wexler, and joined by Ron Klein, Tim Mahoney, Debbie Wasserman-Schultz, Alcee Hastings, Kendrick Meek, and Lincoln Diaz-Balart, have co-sponsored HR 1746. They are willing to stand up to the powerful companies and the German Government and the State Department and confront this scandal head-on. All of the money the companies stole should be paid to the survivors or their legal heirs, or if there are no heirs, the money should be used to help needy Holocaust survivors. But we need a lot more support and we are counting on this Committee to move this legislation to passage in the Senate.

One of the things I heard in February in the Financial Services Committee is the idea for an extended process where the companies are once again trusted to pay claims without any judicial or governmental oversight. Mr. Eizenstat even suggested that the State Department be charged with reporting the results of this extended new ICHEIC-style process. Now we are hearing about a similar plan involving the State of New York Claims

Processing Office. PLEASE DO NOT FALL FOR THIS TRAP. Those who believed the companies would act honorably without the threat of legal liability had their chance, and it was called ICHEIC, and it is over. Let it stay over. Please, no more commissions, no more monitors, no more toothless reporting standards that are never honored and never enforced. No more weak substitutes for justice. We want our rights back, and nothing more will do in the year 2008.

I have submitted a few news articles on these subjects, which I hope you will allow for the record.

Thank you very much.

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The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(06/29/1997)

'Phantom Rule' May Have Limited Holocaust-Era Awards To Claimants

Former arbitrator says policy that should have favored survivors and heirs was not applied in many cases.

Stewart Ain - Staff Writer

When a commission investigating Holocaust-era life insurance policies ended its work in March after nine years, it boasted that it had awarded more than \$300 million to survivors and their heirs.

Now, a former commission arbitrator is criticizing the group's work, alleging that a "phantom rule" was used by some of the dozens of arbitrators, accounting in part for the denial of 84 percent of all claims filed.

The arbitrator, Albert B. Lewis, who is also a former New York State insurance superintendent, is calling for a reopening of these cases.

The "phantom rule," as Lewis described it, was that without an actual insurance policy in hand, either from the company or the claimant, the onus was on the claimant in seeking financial redress.

In fact, though, when the commission was established, the actual rules called for a more sympathetic stance toward the survivors and their heirs, specifying that there would be "relaxed standards of proof" favoring the claimant in determining the awards.

Lewis's comments follow that of other critics of the International Commission on Holocaust-Era Insurance Claims (ICHEIC), who have pointed out the wording of the 1998 memorandum of understanding signed by the six major European insurance companies that provided the money. The memorandum said the 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."

Lewis told The Jewish Week that Katrina Oakley, the commission's law administrator in London, had tried to pressure him into changing two awards that he granted to claimants. She complained that his interpretation of "relaxed standards of proof" differed from that of other arbitrators.

In an e-mail she sent Lewis on Nov. 26, 2003, Oakley wrote that she was "concerned" that his "interpretation is sufficiently different that it would set a precarious precedent."

Oakley wrote also that in cases where neither the heir nor the company was able to prove a policy's existence, "the appellant has a heavy burden of proof that" such a policy was issued.

Lewis said he refused to change his ruling and that the appellants were paid because the "phantom rule" Oakley cited "was never adopted by ICHEIC, nor was it included in the arbitrator's handbook."

"Ms. Oakley had no authority to promulgate any of ICHEIC's rules," Lewis said.

He relied instead, he said, on rules adopted by ICHEIC that said arbitrators should be more lenient, following the "principles of equity and justice." And he quoted the commission's chairman, Lawrence Eagleburger, as saying "there is intentionally built into the standards wide latitude and flexibility."

But Oakley delayed granting the contested awards, prompting Lewis on June 15, 2004, to send her an e-mail saying he considered her actions a "blatant attempt to pressure me as an arbitrator to reverse proposed monetary awards to claimants. It was a flagrant violation of the rules and it denied the claimants due process. ... Your unauthorized conduct in delaying [the] award during which [the claimant] is receiving no interest is an affront" to those who drew the rules and acted as arbitrators.

Elan Steinberg, a former member of the ICHEIC board, said he had never heard of the "phantom rule" and termed it a "smoking gun" for those who are still seeking payment of their relatives' Holocaust-era life insurance policies.

"We had agreed that we would use relaxed standards of proof, which is contrary to the adjudicator's letter," he said, referring to Oakley.

Steinberg, who left the commission in 2004, said he was “deeply saddened and troubled” by the high percentage of claim rejections.

“There should be no statute of limitations on justice,” he said.
“There is no question in my mind that these issues, which touch on the moral and ethical obligations we have to our Holocaust martyrs, must remain open.”

Sidney Zabłudoff, a retired U.S. government economist who was a consultant to Jewish claims restitution groups and has been highly critical of ICHEIC, said he had never before heard of the “phantom rule.”

Although he said it was “always clear” that documentary proof of each Jewish life insurance policy could never be found – he estimated that there were 870,000 of them in 1938 in what was later Nazi-occupied Europe – the commission’s rejection of 84 percent of claims “sounds a little high.”

“ICHEIC rules clearly state that there was to be a relaxed standard of proof and that if any evidence existed at all, the burden of proof shifted to the company,” he said.

The rule Oakley mentioned in her e-mail, Zabłudoff said, “is absolutely strange because it is against ICHEIC’s precedent.. I never heard anybody say that.”

Lewis said he was unable to review the cases before him in a detached way.

“You have to be made of wood not to feel the pain,” he said. “One woman of six siblings is living in Borough Park and said she had a sister who had a \$10,000 policy. I believed her. She said she went to five concentration camps and when she was liberated she couldn’t walk. She asked me to hurry up [with his review] because if she got something [from the policy] she would like to share it with her grandchildren. Is there an emotional involvement? Yes. Should I tell her she’s a liar? I gave her \$104,000. It was my last award. They were upset with that one too.”

The \$104,000 reflected the price of the insurance payoff adjusted for inflation over more than 60 years.

After his ruling, Lewis said he learned that the woman wrote to ICHEIC “wanting to know my mother’s name because she wanted to make a special prayer for her memory. ... If I had to do it again, I

would.”

Asked why he was coming forward now, Lewis said he was not aware of the high percentage of rejected claims until the commission released the figures in March. He said that of the more than 90,000 claims made, 78,814 – or 84 percent – were denied.

What’s more, 34,158 of the claimants received a \$1,000 humanitarian award, seemingly a token amount.

“Is a humanitarian award a mendicant award?” he asked.

“I’m appalled,” Lewis continued. “It indicates to me that something is wrong, and part of what might be wrong is that phantom rule that was put into the system.

“When ICHEIC was formed, [heirs] were urged to file their claims. Thus, they were given hope by ICHEIC that their claims would be heard, only to have them denied by ICHEIC. Is this tantamount to being indirectly labeled as fraudsters or liars? How much abuse must they take?”

Samuel Dubbin, a Miami lawyer who represents Holocaust survivors and their heirs, said he was aware that there had been “a lot of inexplicable denials” of claims. He noted that the ICHEIC process “resulted in the payment of less than 3 percent of all the policies owned by Jews at the beginning of World War II.”

Zabludoff said that of the more than 90,000 claims filed, only 16,000 were offered settlements as a result of documentary evidence or because of sketchy documentation that could be pieced together to prove a claim.

Lewis is calling for survivors and heirs to be able to press Holocaust-era claims in the courts, and he said he would ask the National Association of Insurance Commissioners to address this issue once more. He noted that the European insurance companies only began to address this issue after state insurance commissioners, who regulate the insurance industry in the United States, warned them that their Holocaust claims practices jeopardized their licenses in the U.S.

Dubbin noted that Congressional legislation is now being written that would require insurers to disclose all Holocaust-era policies and permit heirs to pursue their claims through the courts. Few names of Jewish policyholders from Eastern Europe were ever

published, despite the existence of ICHEIC. It is estimated that the value of those Holocaust-era policies is between \$17 billion and \$200 billion, according to a draft of the bill.

How much more money should be raised for Holocaust remembrance now must be balanced against the needs of survivors, he says.

While survivor groups have been criticizing the Claims Conference for some time, a firestorm erupted in June 2002, when Israel Singer, Claims Conference chairman and the son of Holocaust survivors, wrote an essay in the Jewish opinion magazine Sh'ma. He suggested a new organization be created to spend any leftover Holocaust restitution "to rebuild the Jewish soul and spirit" and "ensure the continued existence of the Jewish people" through education and other projects.

Singer also suggested using the restitution money for a voucher system to allow every Jewish child to attend Jewish day schools.

Survivors and Jewish leaders lashed out at Singer, saying the Claims Conference was seeking to perpetuate itself as an organization with funds that rightfully belong to survivors.

Others came to Singer's defense, agreeing that those who perished in the Holocaust would want remembrance and Jewish education to be their legacy, not only social welfare to the Nazis' victims.

Claims Conference officials say they don't have enough money to take care of all survivor needs. There are an estimated 500,000 to 800,000 Holocaust survivors worldwide. Of the 127,000 to 145,00 survivors who live in the U.S., about 40% rely on Medicare, Social Security and reparations to cover their rising health care costs, JTA reports.

The federations, Claims Conference officials insist, should be raising more money to aid survivors.

Hoffman does not think that is the federations' mission. "The Claims Conference is designed to address the needs of survivors in particular," he notes. "The federations have responsibility for all older persons in need."

The ugly specter of Jews fighting Jews is nothing new, he says. Every year in the community there is combat over the distribution of Jewish welfare campaign funds. What is new is how public these arguments have become, he says.

"It's uncomfortable to see it played out in the Wall Street Journal and The New York Times," he admits. "No one likes to see the family argument in print, but we'll get over it."

Clevelander Robert Goldberg, chairman of the UJC executive committee and its top volunteer, has urged the Claims Conference to resolve the controversy. "There are survivors in this country who are in need of home health care and not all of them are getting it," Goldberg says. He's asked the Claims Conference for a detailed accounting of the value of all its remaining East German property.

Holocaust and Jewish education is a worthy project, Goldberg adds. "But if I had to choose between helping a survivor and anything else, I would lean toward helping the survivor. That is our number one obligation."

Federations around the country are currently helping the survivor community, Goldberg says. But federations can only raise so much money.

By speaking out, Goldberg feels he and other federation leaders will ultimately persuade the Claims Conference to increase grants to survivors. "You can't force anybody to do anything, but we can drive them crazy," he says.

Through last September, the Claims Conference has received over \$1 billion from the German-Jewish property, either through sale of the property or compensation from Germany, The Jewish Week reports. Subtracting payments to rightful property owners and those expected to still make claims, and setting aside money for future survivor needs, the Claims Conference has thus far distributed \$451 million for survivor assistance. That was 80% of the available money, they say.

In Cleveland, the Holocaust Survivors Program of the Jewish Family Service Association receives \$150,000 annually from the Claims Conference. That pays for staff salaries, case management, assistance with reparation forms, a drop-in center called Europa Café, and up to six hours of home care weekly for about 30 people.

According to Michelle Keller of the Holocaust Survivors Program, she and her staff have seen about 800 to 1000 Holocaust survivors, many of whom just stop by to receive help in filling out the reparations forms. Others are alone and destitute.

"Some go without medication," says Keller. "They will choose heat over filling a prescription. Of if they need a pill twice a day, they will take it once a day."

For these people, Keller arranges for groceries to be delivered, provides transportation to link the isolated to the outside world, and sets up a schedule of home assistance, including personal care, laundry and light housekeeping. Most people get only two hours a week of help.

"Of course we could use more money," says Sue Biagianti, JFSA director of elder care services. "There's no way we can meet everyone's need."

Scarce funds mean some survivors who could use the aid had to be turned away. Others receiving help were removed from the program, Biagianti says.

The Claims Conference's stance is "incredibly disappointing," says former Clevelander Mark Talisman, a founding vice president of the U.S. Holocaust museum, who has been working on this problem pro bono for almost four years.

"Needy survivors are blown off and don't get the help they need. When billions of dollars are negotiated on behalf of survivors and they don't get the benefit of those dollars, it's unconscionable," says Talisman, who arranges exhibits and other projects through his Project Judaica Foundation.

Some survivors also don't think the Claims Conference represented their best interests in negotiating for reparations from the Swiss banks that confiscated Jewish wartime accounts and German industries that exploited slave labor.

In May 2001, the Holocaust Survivors Foundation, based in Florida and comprised of about 50 grass-roots survivor groups, appealed to Judge Edward Korman, who is overseeing the Swiss banks settlement. The foundation asked for additional money to help with the human services needs of U.S. survivors, says Sam Dubbin, Miami attorney for HSF and chairman of the Miami Jewish Community Relations Committee.

The judge had allocated 75% of the money - \$67 million - to survivors in the former Soviet Union and less than 1% - or \$215,000 - to those in the U.S., Dubbin says. While there is no doubt great need in the former Soviet Union, U.S. survivors call that distribution unfair.

The HSF eventually withdrew its appeal of the Swiss settlement with the understanding that U.S. survivors would get more help from a secondary distribution of leftover restitution funds, Dubbin says. So far survivors are still waiting.

The Association of Jewish Family and Children's Agencies has said \$30 million annually for five years would provide adequate home care for about 8,000 needy survivors in the U.S.

"For the Jewish community to stand by and allow restitution money to be hoarded so their fund-raising burdens can be alleviated now and in the future is wrong," says Dubbin. "The general community has an obligation for Holocaust education. It's a bizarre concept to say take the money and pay for their (survivors') memorial while their (immediate) needs are going unmet."

The average age of survivors is now 80; they are dying at a rapid pace, sometimes poor and alone. As Goldberg notes, the problem of assistance to survivors is one that will not be with us for too many more years. "I would not want the lesson to our children to be that we did not take care of the survivors."

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(07/06/2007)

Probe 'Phantom Rule,' Says Congressman

Rep. Engel, sponsor of Holocaust-era insurance disclosure bill, says former arbitrator has raised 'serous allegations' about denied claims.

Stewart Ain - Staff Writer

An investigation should be launched into charges of a so-called "phantom rule" favoring insurance companies being improperly used to decide Holocaust-era insurance claims, according to Rep. Eliot Engel (D-Bronx).



Engel was responding to a claim by Albert Lewis in *The Jewish Week* that he was pressured into applying this rule while he served as an arbitrator for the International Commission on Holocaust-Era Insurance Claims (ICHEIC).

"His charges should be looked into" by Congress or the Justice Department, Engel told *The Jewish Week*. "These are very serious allegations."

Lewis, a former New York State insurance superintendent, said he believes the "phantom rule" may have played a role in the commission's decision to deny 84 percent of all claims it reviewed.

Engel said he is co-sponsoring a bill that would require Holocaust-era insurance companies to disclose the names of all Holocaust-era policies and to permit federal courts to consider claims stemming from unpaid insurance claims.

ICHEIC, which was created to handle all Holocaust-era insurance claims, ceased operations earlier this year after saying the deadline for filing claims had ended and that it had resolved all outstanding claims. In all it awarded more than \$300 million to survivors and their heirs.

"You cannot put a timetable on justice," Engel insisted, "when we're talking about crimes as monumental as the Holocaust. In no way could you ever have a statute of limitations ... While some people want to slam the door on it and move on to more pleasant things, the victims and justice" should not allow that.

But passage of such legislation would do no more than "give rise to decades of further litigation on top of all the litigation that has already occurred," according to Peter Simshauser, a lawyer representing Assicurazioni Generali, the largest insurance writer at that time in Europe and one of six major European insurance companies that

provided the money.

He said claims had already been resolved through the actions of organizations such as ICHEIC that had been created by both the Bush and Clinton administrations.

“Generali has paid more than \$170 million with respect to these claims in reliance on those policies [of the Bush and Clinton administrations],” he said.

Asked about the high percentage of claims that had been rejected by ICHEIC, Simshauser insisted that Generali “was audited by independent authorities, including prominent international accounting firms, which have verified that its historical records are complete and enabled it to make a determination of which policies were in effect in 1936 and thereafter. And those findings were accepted by ICHIEC and its members, including State of Israel and the insurance commissioners in the United States.”

Another attorney involved with the case said the insurance companies “bent over backward” to side with claimants, but that many of the claims were invalid, accounting for the high percentage of rejected claims. “Standards were lenient, but some evidence was required,” said the attorney, who asked not to be named.

Nevertheless, Leo Rechter, director of the National Association of Jewish Child Holocaust Survivors, said he knew of individuals who submitted claims to collect the death benefits of their family members and were rebuffed because they had no documentation.

“Very few people kept the actual policy,” he said. “When you are running for your life, you don’t want to identify as a Jew.”

Alex Moskovic of Sound Hope, Fla., said he applied to ICHEIC when it was established in 1998 and didn’t receive a reply. He said he later saw the name of his father, Joseph Moskovic of Sobrance, Hungary, and two uncles — along with their hometowns — on the Web site of two insurance companies.

“In 2001 I received a \$1,000 check from a humanitarian fund” from ICHEIC, Moskovic said.

He said he believes he should have received more than that because “we had a store and two houses and were pretty well off. I was 13 when we were taken away and I remember them [his relatives] talking about policies.”

But Moskovic said he had no further details.

Esther Finder of Rockville, Md., president of the Generation After in Washington, D.C., said her organization and others have been sending letters to House members asking them to support the legislation.

Told Generali's position that its historical record is complete, she said: "I don't know that all the records have been made available. There is always another archive opening here and another there. The archive in Vienna just became available. It could be that not a single piece of paper is in there having to do with insurance claims, but we still need to open the process. ... I'm tired of hearing everyone's assurances. I'd like to see for myself that there is no paper in there. Show me."

Lewis, the former ICEIC arbitrator, provided The Jewish Week with copies of e-mails he said he had received from Katrina Oakley, the commission's law administrator in London, who suggested that he reconsider his decision to pay two claimants. (See June 29, page one.) Oakley said the two claimants didn't have copies of the policies and none of the insurance companies in ICHEIC claimed to have a record of those policies, therefore they should be denied.

Oakley cited the actions of another arbitrator who denied similar claims, noting that the rule is that when no written proof exists, the burden on the claimant is a "heavy one."

But Lewis said no such rule existed. And in a note to Oakley, Lewis wrote that he reviewed that arbitrator's records and found that he had granted awards "where there was no written evidence of a policy" simply based on anecdotal evidence.

"I had accepted such evidence in granting my monetary awards," Lewis wrote.

He then questioned why this arbitrator's other decisions granting awards based solely on anecdotal evidence was not sent to him.

"Were any other arbitrators similarly pressured by you and changed their awards?" he asked.

The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(08/24/2007)

Claims Conf. Revises Old Funding Formula

An added \$100 million to go to survivors over four years, as controversial Holocaust education funding is frozen.

Stewart Ain - Staff Writer

With no fanfare and little debate, the Claims Conference has overturned its controversial 17-year policy of setting aside 20 percent of its allocations for Holocaust education.

As a result, the group has decided to pump another \$112 million into social-service programs for survivors over the next four years while freezing funds for educational, documentation and research projects at \$18 million annually.

The 80/20 formula — 80 percent for survivor benefits and 20 percent for education programs — will be applied only to \$90 million of the conference's yearly allocation, the amount it had been distributing since 2003.

Julius Berman, chairman of the Conference on Jewish Material Claims Against Germany, said the action was taken last month at the group's annual meeting "because of the crying need for social welfare programs as survivors get older and sicker."

But Roman Kent, a survivor and the group's treasurer, said the move was in response to "pressure" from survivors. He said he spearheaded the effort to revise the allocation distribution.

"As long as survivors are in need, they come first," Kent said he has argued. "Even the rabbis acknowledged that if you have a sick man, you could break the sanctity of the Shabbos to help the sick."

Samuel Dubbin, a Miami lawyer who represents survivors, noted that the Claims Conference board met just a month after an Op-Ed article in The New York Times questioned the millions of dollars the group had spent for education, including "\$700,000 to a 'consultant' — a friend of the organization's president — who, in an interview with The Jewish Week, couldn't recall what he had been asked to consult on."

"While the conference supports many worthy projects, it is controlled not by survivors but by surrogates, and operates with limited oversight and financial accountability," wrote Thane Rosenbaum, a professor of law at Fordham University.

"They obviously decided that when it hit The New York Times, it was time to act," Dubbin said. "This decision just sharpens the focus on the continued expenditure for non-survivor needs and demands justification in light of the suffering those expenditures permit."

The 80-20 split has been the subject of debate even outside of the Claims Conference. In 2002, Israel Singer, then president of the Claims Conference, defended the allocation, telling the Jewish Telegraphic Agency, "The survivors are not the only heirs of Jewish property. They are the first beneficiaries, but not the only heirs. The Jewish way is to take care of those in need, but also to educate our children."

But as medical costs of survivors have increased as they aged — most are now about 80 — more and more people questioned the split. Just last year, Wolf Factor, chairman of the Foundation for the Benefit of Holocaust Victims in Israel, told JTA that Holocaust

commemoration and youth trips to Poland are not as immediately relevant as help for survivors.

He said he hoped that the Claims Conference and the State of Israel would "come to their senses and understand that honoring the memory of the Holocaust is not only to remember the dead, but essentially to remember the living who still need us."

The number of needy applicants approaching the foundation has increased by more than 60 percent since it was created in 1994. The foundation said that 40 percent of Israeli Holocaust survivors lived below or just barely above the poverty line. And it was reported that one-fourth of Israel's 280,000 survivors could not afford medications or the cost of a home health aide.

Just this week, the State of Israel announced that some 100,000 survivors would receive a \$285 increase in their monthly allowance. But no decision has yet been made about increased assistance for another 150,000 survivors in Israel who fled the Nazis by escaping to the Soviet Union.

Dubbin said that in 2004 there were a reported 175,000 survivors in the United States, at least 85,000 of whom were living at or below the poverty line or considered poor.

Berman, the Claims Conference board chairman, said \$18 million annually for education "is a good hunk of money" that would be sufficient to meet the "competing needs and priorities."

Since 2003, the Claims Conference's annual allocation had been \$90 million. It was increased this year to \$100 million and will jump to \$110 million next year, \$122 million in 2009 and \$135 million in 2010.

"The board usually makes its decisions year by year, but we decided that because of the [growing] needs we should tell social welfare agencies and the people that they will have more money," Berman said.

"The cost of living of a sick person is becoming astronomical," he added. "People are living longer and they are sicker and they need financial support in greater dimensions."

Menachem Rosensaft, founding chairman of the International Network of Children of Jewish Holocaust Survivors, called the Claims Conference's decision a "welcome step in the right direction.

"I've been aware that discussions were going on for years," he said. "The overriding mission of the Claims Conference is and must be to ensure that Holocaust survivors can live out their remaining years in dignity and with their basic needs met," he said. "Once that is accomplished, one can have a discussion as to how to apply remaining funds."

Asked if he supported allocations to educational projects, Rosensaft replied: "There are very legitimate Holocaust remembrance projects. Having said that, it is very clear that medical care and food for an elderly survivor trumps any cultural or educational project."

There are so many other organizations that also fund Holocaust education programs that funding from the Claims Conference is not necessary, maintains Leo Rechter, president of NAHOS (National Association of Jewish Child Holocaust Society).

He said he had just received the magazine of a major organization that is spending more than the Claims Conference on Holocaust education.

"We are very much in favor of educational efforts and we survivors go to classes and speak to high school and junior high school students" about the Holocaust, he said.

But Rechter maintained that some of the educational projects funded by the Claims Conference are nothing more than "pet projects" of board members who get them funded "for their own glorification."

He cited capital investments in St. Petersburg and Kishinev in Russia, cities in which "there were no survivors."

"St. Petersburg was not occupied by the Germans," Rechter said.

However, Eli Zborowski, another survivor and chairman of the American Society for Yad Vashem, said he supported the 80-20 mix because much of the money distributed by the Claims Conference comes from the sale of German Jewish property owned by Jews who had no heirs.

"Shouldn't part of the money go to remembering them?" he asked.

But David Mermelstein, president of the Miami Holocaust Survivors, said he believes the \$18 million annual education allocation should either be eliminated or cut in half to provide more money for needy survivors.

"The needs gets worse as we get older," he said. "Until now we didn't have to worry about wheelchairs. But today I helped a man get a wheelchair" who could not get to the synagogue without it.

"If they would only take a person who would go from state to state and visit some of the cities and see the need of the survivors, they would understand better," he said. "We tell them, but it is not the same as being there."

Asked what could be done if all \$18 million were allocated for the care of survivors, Mermelstein replied: "Just give us \$1 million and we could add to the hours of homecare" and other services.

Generali said it had received 3,300 more claims as the settlement has been pending, and Robert A. Swift, a Philadelphia lawyer for the Holocaust survivors, estimated that the company would pay another \$10 million on those and other claims made before the deadlines. Generali will pay about \$4 million in legal fees.

Mr. Dubbin has contended that Generali sold policies worth billions on which it has never paid claims. But Generali and the lawyers in the class-action suit take issue with Mr. Dubbin's estimates.

Mr. Dubbin also argued that Generali had failed to adequately publicize the settlement. He and other advocates for the survivors said that because Generali has refused to publish a full list of its policyholders, tens of thousands of Holocaust survivors and relatives have been unaware that they had reason to file a claim -- with the approval of the settlement they would be foreclosed from ever doing so.

Generali has published the names of many policyholders, but contends that survivors and relatives have other ways of knowing whether they are eligible to file claims.

Mr. Swift, who helped draw up the agreement, used almost the same words as Judge Daniels in characterizing the settlement.

In a statement distributed before the hearing, Generali said it viewed the settlement "as an important step in its longstanding commitment to bring fair closure to the Holocaust-era claims process."

In the late 1990s, American lawyers filed lawsuits against more than 20 European insurance companies, accusing them of refusing to pay claims on billions of dollars in policies they had sold to people who became victims of the Holocaust.

The other lawsuits were either dropped or resolved. The settlement ends the biggest case against Generali. But a handful of lawyers, including Mr. Dubbin, are continuing to appeal the earlier dismissal of a group of lawsuits against the insurers. In dismissing the case, Judge Michael B. Mukasey cited a Supreme Court ruling that dealing with Holocaust claims in United States courts could interfere with the president's ability to resolve international disputes.

In an interview, an aide to Representative Ileana Ros-Lehtinen, a Republican of Miami, said the lawmaker was planning to introduce legislation that would require Generali and other insurers to publish lists of policyholders -- a longstanding request of survivors and relatives -- and would attempt to provide jurisdiction for European insurance cases in American courts.

Generali says its policy is to pay valid claims and has denied accounts by Holocaust survivors that its representatives demanded copies of policies from people who had lost everything and death certificates for policyholders who died in camps.

In the settlement, the company acknowledges no wrongdoing.

"This is a sad day for Holocaust memory and historical justice," said Thane Rosenbaum, a son of Holocaust survivors and a professor at the Fordham University law school. "The only entity that really benefited from this is Generali. They avoided having to pay tens of thousands of claims and they avoided opening up their archives and historical records to reveal what happened, how and why."

The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(05/04/2007)

Holocaust Era Claims: Mission Not Accomplished

Yisroel Schulman

The International Commission on Holocaust Era Claims (ICHEIC), with a mandate to help policyholders and their heirs receive monies from unpaid Holocaust era insurance claims, held its final meeting in Washington, D.C., on March 20. After nine years, ICHEIC is out of business.

In the weeks following ICHEIC's closing, there have been articles chronicling that organization's alleged successes. While those same articles mention that ICHEIC has had its share of critics, not enough thoughtful analysis has been given to the commission's real failures.

ICHEIC is often lauded for having processed, free of charge, more than 90,000 claims and compensated more than 48,000 claimants. What is not made clear, however, is that, of these 48,000 claimants, about 34,000 of them received so-called humanitarian awards of \$1,000. Only 14,000 claimants who applied to the commission were compensated because their relatives were actually determined to have bought insurance policies.

To put this in perspective, the Conference on Jewish Material Claims Against Germany recently met with German Chancellor Angela Merkel to bring to her attention the fact that the German social security administration has denied ghetto pensions to about 61,000 of the approximately 70,000 survivors who applied for such compensation. With a failure rate of over 87 percent, the German program has been rightfully and widely criticized by survivors and Jewish and humanitarian organizations. Considering that ICHEIC has done only marginally better, why hasn't there been a similar public uproar?

Over the years, ICHEIC fostered the notion that claimants were denied compensation solely because they did not have adequate documentation regarding purchased insurance policies. However, we are aware of numerous claimants (only the commission knows the precise number who fall in this category) who, in fact, had definitive proof that policies were purchased, but were nonetheless denied compensation because the commission allowed the use of "negative evidence."

For example, if a claimant had a copy of an actual insurance policy that her relative had bought from the Generali Insurance Company, but the policy information did not appear in Generali's records, the "negative evidence" would lead to her application being denied. It was ICHEIC's decision to allow the use of "negative evidence," which certainly belies the claim of Lawrence Eagleburger, the commission's chairman, that the organization's principal purpose was to find claimants and pay them.

Other examples of ICHEIC's failings include the way in which it dealt with decisions made by the Generali Trust Fund (GTF). The trust fund was created to process claims concerning Generali and, in that capacity, had the authority to determine if claimants had compensable claims. As early as November 2002, ICHEIC had concerns that GTF's performance was below acceptable standards and, in late October 2004, the commission terminated its relationship with the trust fund, citing GTF's gross incompetence. Despite acknowledging GTF's sub-par performance, ICHEIC refused to review any of the fund's final decisions, thereby denying

claimants a fair decision-making process.

There has been mention in the press that ICHEIC, over its nine-year lifespan, spent approximately \$100 million on administrative expenses. Because the commission distributed about \$300 million to the 48,000 claimants noted above, for every \$3 that went to the heirs of insurance owners, about \$1 went to keep ICHEIC's bureaucracy afloat. The commission, which was funded with about \$550 million, is going out of business with monies left over.

According to various press reports, ICHEIC has disbursed between \$174 million and \$200 million through a humanitarian fund to support Holocaust education and needy survivors. Unanswered questions include who made these "humanitarian" decisions and, indeed, whether it was ever in ICHEIC's mandate to disburse money for philanthropic purposes.

Among those benefiting from the commission's largesse is a program called the "Initiative to Bring Jewish Literacy to Youth in the Former Soviet Union." From 2004 to 2006, ICHEIC spent \$3.4 million to send children to camp in St. Petersburg and Moscow. While a good cause, one would be hard-pressed to find a true nexus between that grant and ICHEIC's mission to facilitate the processing of insurance claims from the Holocaust period.

At the final commission meeting, Chairman Eagleburger is quoted as having said that ICHEIC "has achieved its goal of bringing a small measure of justice to those who have been denied it for so long." As a lawyer who has closely worked with ICHEIC claimants, I sadly disagree. For nine years, ICHEIC failed the very people it was created to serve. n

Yisroel Schulman is the president of the New York Legal Assistance Group (NYLAG), a not-for-profit organization. Laura Davis and Phyllis Brochstein, attorneys with NYLAG, contributed to this column. Based in New York City, since May, 2000 NYLAG has provided free legal services to over 50,000 Holocaust survivors and their heirs. www.nylag.org

Special To The Jewish Week

March 14, 2004

For Holocaust Survivors, It's Law Versus Morality

By ADAM LIPTAK

IN 1998, after Swiss banks agreed to pay \$1.25 billion for keeping the property of victims of the Nazis and for laundering the profits of Nazi slave labor, the question arose: how should the money be spent, given that only part of that sum could be traced back to individual who had their money stolen?

On Tuesday, a federal judge in Brooklyn ruled that the poverty of Holocaust survivors in the former Soviet Union required the bulk of the available money, saying that current need is more important than perfect restitution. In essence, he said survivors who live in richer countries should receive less than those in poorer ones.

But that answer leaves some people, including many Holocaust survivors, angry and frustrated. "The whole point of restitution is to compensate people for their actual suffering at the time of the crime," said Thane Rosenbaum, a law professor at Fordham University and the son of Holocaust survivors.

History rather than charity should supply the guiding principles, said Mr. Rosenbaum, the author of a forthcoming book, "The Morality of Justice," which argues that the legal system often fails to achieve moral results. The Swiss bank settlement, he says in the book, is such a case.

"From a moral perspective, it's the victims' money," Mr. Rosenbaum said, adding that it is up to survivors to determine how the money should be used.

Edward R. Korman, the chief judge of the federal district court in Brooklyn, acknowledged the difficulty of the problem. "A comparison of needy survivors is by definition an odious process," he wrote in the decision issued last week. But morality required him, he said, to send some 70 percent of what may amount to \$400 million to survivors in the former Soviet Union, and only 4 percent to survivors in the United States.

Of the 900,000 or so Jewish survivors of Nazi persecution, 19 percent to 27 percent live in the former Soviet Union while 14 percent to 19 percent live in the United States. Those in the former Soviet Union, the judge wrote, live in desperate poverty. The poverty of

some American survivors is by contrast "clearly less pressing," he said, given the public assistance and private charity available to them.

But Samuel J. Dubbin, a lawyer for the Holocaust Survivors Foundation-USA, which says it represents more than 50 organizations and 20,000 American survivors, objected to the judge's reasoning.

"You can't say that a survivor in need here is less worthy than a survivor in need in the former Soviet Union," he said. "The reason you can't say that is that this is survivor money. Maybe you could say that if this was community money, if this were charity."

Instead, the foundation asked Judge Korman to base future distributions on pro rata allocations to the nations where large numbers of survivors live and only then require distribution within those nations to the neediest survivors.

"There's not enough money to hand out to all the survivors, unfortunately," said Leo Rechter, a 76-year-old retired banker who was born in Vienna and spent the war in hiding. "The next best solution is that all the needy people be taken care of."

"The percentage of survivors' money in each country should be allocated to that country," said Mr. Rechter, whose father died at Auschwitz, "and from that money the needy people there should be taken care of."

Judge Korman rejected that and other alternatives. He wrote that trying to adjudicate claims individually would be unwieldy, expensive and in many cases impossible. A simple pro rata distribution, on the other hand, would yield "literally pennies to each of the millions of individuals" victimized by the Nazis, including all survivors and their heirs. He called the hybrid solution proposed by Mr. Dubbin and the survivors' foundation frivolous and inconsistent with law and morality.

Should other lawsuits for historical wrongs succeed, the problem in the Swiss bank case is likely to recur. Burt Neuborne, who represents the plaintiffs in the settlement, has written that some claims should by their nature give rise to indirect compensation in the form of social programs.

For instance, he said, if lawsuits seeking damages for American slavery ever produce damages, the proper response may be affirmative action or providing money to assist for poor blacks.

And Stuart E. Eizenstat, deputy treasury secretary from 1999 to 2001 and the author of "Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II," an account of the negotiations leading to the settlement, said such suits have an important moral and political aspect that may call for ignoring some usual legal remedies.

"A purely legal response," he said, "does not work."

In this case, all agree that the dispute needs a speedy resolution. The average survivor is 77 years old if living in Israel and 84 if living elsewhere. Their numbers, according to a report issued in 2000 by the court-appointed special master in the case, Judah Gribetz, are projected to fall by 6 to 8 percent each year through the end of the decade and faster afterward.



The Global News Service of the Jewish People

Survivors still seek justice

Edwin Black

Holocaust survivor groups and key congressional leaders have joined two separate issues — the opening of the Bad Arolsen archives on Holocaust victims and the quest to recover unpaid insurance claims — into a single cause.

NEW YORK (JTA) — Reaction to recent revelations of corporate complicity, unrevealed insurance company involvement and the great number of IBM punch cards among the papers in a secret archive in Bad Arolsen, Germany, have reignited a grass-roots campaign among Holocaust survivors to recover Nazi-era insurance claims against companies such as the Italian insurance giant Generali.

Following a series of revelations that began last year in Jewish media, grass-roots survivor and second-generation groups in Miami and New York have mounted a fierce campaign in Congress to supersede international agreements brokered by the State Department to settle insurance claims through the International Commission on Holocaust Era Insurance claims (ICHEIC), as well as a variety of adverse Supreme Court rulings that have denied survivors the right to sue to recover policy claims or disgorge profits from the insurance companies.

The groups have used revelations about the unreleased Bad Arolsen records as a rallying point to prove that their insurance claims have been pushed into oblivion. Key congressional leaders agree and have promised swift action.

Thus, two separate issues — the opening of the Bad Arolsen archives and the quest to recover unpaid insurance claims — have been joined into a single cause among survivor groups and key congressional leaders.

The latest round of efforts began last fall, when officials of survivor groups unsuccessfully demanded that ICHEIC and other authorities postpone the final disposition of claims pending further research in the International Tracing Service files at Bad Arolsen. The groups include such elected bodies as the Miami-based Holocaust Survivors Foundation USA and the Queens, N.Y.-based National Association of Jewish Child Holocaust Survivors.

The International Tracing Service, or ITS, was established by the Allies after the war to help families trace Holocaust and war victims. The Allies forwarded millions of captured documents to

the facility in Bad Arolsen. The International Red Cross was given custody and control of the archives, which provided information on individuals only to survivors and their families. A typical family request could take years to process.

In January, Holocaust survivors petitioned federal Judge George Daniels to reject a settlement with Generali because ICHEIC had failed to publish the names of all Jews whom the company insured before World War II. The petition, which included numerous quotations from the Jewish media about Bad Arolsen's insurance documentation, decried the alleged rush to judgment.

Judge Daniels temporarily delayed a decision, but ultimately finalized the permanent settlement with a limited extension for claims based on discoveries that might emerge from the Bad Arolsen archive.

Having lost in court — and convinced that established Jewish organizations would not aid them — survivor groups lobbied Congress to link the campaign to open Bad Arolsen to the separate campaign to recover insurance claims and compel disclosure of the names of those insured.

On March 28, U.S. Rep. Ileana Ros-Lehtinen (R-Fla.) introduced the Holocaust Insurance Accountability Act of 2007, to enthusiastic support on both sides of the aisle.

The act seeks to supersede international agreements brokered by the State Department to settle insurance claims through ICHEIC. The bill concludes that ICHEIC, which is due to terminate operations soon, "did not make sufficient effort to investigate" or compile the names of Holocaust-era insureds or the claims due to survivors. The bill adds that recent media disclosures about the contents of Bad Arolsen have given new justification to such legislation.

In response, a representative for ICHEIC said the commission had accomplished its mission of identifying and settling unpaid Holocaust-era life insurance claims by processing more than 90,000 claims and distributing more than \$306 million to more than 48,000 claimants. More than half of the funds distributed via ICHEIC were the result of ICHEIC's archival research and matching work, the representative said.

Still, Ros-Lehtinen's bill would require insurers to disclose comprehensive lists of Jewish policyholders from the Nazi era. The legislation also would enable federal lawsuits to recovery money from insurers, thus overruling ICHEIC's final word and a variety of Supreme Court rulings that have denied survivors' rights to sue or gain access to policyholder names.

The proposed law thus would trump both the executive and judicial branches on Holocaust-era insurance.

The same day that Ros-Lehtinen's bill was introduced, Rep. Robert Wexler (D-Fla.), chairman of the House Foreign Affairs Committee's Subcommittee on Europe, convened an extraordinary hearing on Bad Arolsen. The purpose was to orchestrate congressional pressure on the 11 governments — the United States, France, England, Belgium, Greece, Luxembourg, Netherlands, Poland, Israel, Italy and Germany — that control the ITS to rush full access to its archives, providing the insurance information that has been submerged for decades.

Members of the Foreign Affairs Committee sat stony and grim-faced, some holding back tears, as the hearing unfolded about the Bad Arolsen archives and their impact on survivors' decades-long effort to recover their insurance claims. Survivor David Schaecter of Miami, who admitted he was "emotionally overcome," spoke of impoverished survivors in South Florida who cannot afford housing or medicine because their insurance payouts were first denied by the insurance companies and then by ICHEIC.

"I am begging this Congress," he implored, "to please believe us. We have been wrongly stripped of our pride and property."

Leo Rechter of Queens pleaded, "Open up Bad Arolsen to expose the Holocaust profiteers."

Rep. Albio Sires (D-N.J.) held back tears both in the hearing room and in the corridor. Wexler promised to fast-track legislation and action to open Bad Arolsen.

"We will take the next step and then the next step, and then the next step," Wexler said.