

TESTIMONY OF THE
NATIONAL ASSOCIATION OF INSURANCE
COMMISSIONERS

BEFORE THE
HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON GOVERNMENT REFORM

TO REVIEW THE STATUS OF INSURANCE RESTITUTION
FOR HOLOCAUST VICTIMS AND THEIR HEIRS

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**Testimony of New York Superintendent of Insurance Gregory V. Serio
House Committee on Government Reform
September 16, 2003**

Good afternoon, Mr. Chairman. As the chair of the National Association of Insurance Commissioners' International Holocaust Commission Task Force and as the Superintendent of Insurance of the State of New York, the state with the largest Holocaust survivor population, I would like to thank you, Representative Waxman, and the Committee on Government Reform for inviting me today to speak on this very important matter.

The Role of the National Association of Insurance Commissioners

I would like to take this opportunity to speak today in my capacity as Chair of the National Association Insurance Commissioners' International Holocaust Commission Task Force and as the New York Superintendent of Insurance. The National Association of Insurance Commissioners (NAIC) has been in the forefront of efforts to ensure a just resolution of Holocaust victims' unresolved legitimate claims for assets lost during the Holocaust. The issue of unpaid insurance policies of Holocaust victims has been an on-going priority of the NAIC for the past seven years and the Commissioners comprising the NAIC stand committed to aggressively driving the claims resolution process until every Holocaust survivor and their families have been justly compensated. Time, however, is most definitely not our friend. As the Holocaust survivor population has aged and perhaps, more importantly, have awaited justice for more than fifty years, it is our moral duty and our stated objective to ensure full and final claim settlement and provide the relief that the survivors and their families deserve.

In September of 1997, the NAIC, under the leadership of its past president and North Dakota Commissioner of Insurance Glenn Pomeroy and former New York Superintendent of Insurance Neil D. Levin, established a Holocaust Insurance Issues Working Group to examine this issue and to make a recommendation as to the appropriate role for the NAIC and state insurance departments in helping Holocaust victims, survivors and their heirs resolve claims arising out of insurance policies issued during the Holocaust era.

The NAIC Working Group included regulators from 27 states. It conducted 6 hearings in 1997 and early 1998 throughout the country at which approximately 1200 people provided personal accounts of insurance policies purchased by them or their families during the Holocaust era and which remained unpaid. The Working Group also looked at the progress of several state insurance departments, including New York and California, that were encouraging potential claimants to provide information that might help facilitate claims payments and were storing this information in databases. Commissioners also questioned and took testimony from representatives of several of the largest European insurance companies that have been identified in this matter.

In April 1998, Superintendent Levin, the Commissioner of California, four European insurance companies (Allianz, AXA-UAP, Zurich and Generali), as well as the World Jewish Restitution Organization, the World Jewish Congress and the Conference of Jewish Material Claims Against Germany, gathered in the offices of the New York State Insurance Department and entered into a Memorandum of Intent that set out six criteria for the resolution of these unpaid insurance claims.

These criteria were: (1) establishment of a process to investigate the insurance claims of Holocaust survivors; (2) consultation with European government officials and the insurance industry about this problem; (3) establishment of an international commission comprised of governmental authorities, insurers and world Jewish organizations; (4) establishment of a just mechanism for resolution of unpaid claims; (5) exemption from state regulatory actions and legislation for insurers participating in the process and efforts to resolve all litigation against these insurers; and (6) establishment of a fund to provide humanitarian relief to Holocaust survivors.

Immediately following this historic event, the NAIC established the International Holocaust Commission Task Force (NAIC Task Force) to succeed the NAIC Working Group. Commissioner Pomeroy of North Dakota was appointed Chair, and Superintendent Levin, Vice-Chair. The goal of the NAIC Task Force was to work with European insurance regulators, European insurers and Holocaust survivors to establish the international commission contemplated in the Memorandum of Intent to facilitate claims payments to Holocaust victims, survivors and their heirs.

Negotiations among the NAIC Task Force, the European insurance companies and the Jewish groups continued throughout the summer of 1998. The NAIC Task Force also met with European insurance regulators from France, Germany, Italy, Austria and Switzerland in an effort to enlist their support for the international commission.

These negotiations resulted in the execution of a Memorandum of Understanding on August 13, 1998 by Zurich and the members of the NAIC Task Force. This was followed shortly by execution of the Memorandum of Understanding by Allianz, AZA-UAP, Basler, Winterthur and Generali. I should add that the Swiss company Basler,

though an original MOU signatory, pulled out of the International Commission shortly after its inception. The Memorandum of Understanding was also signed by the World Jewish Restitution Organization, the Conference of Jewish Material Claims against Germany and 49 insurance commissioners of the United States. As you are aware, the International Commission on Holocaust Era Insurance Claims (International Commission) is chaired by former U.S. Secretary of State Lawrence Eagleburger and staffed by a group of dedicated people intent on ensuring resolution of unpaid holocaust insurance policies.

The Memorandum of Understanding established the International Commission to investigate and resolve unpaid insurance claims of Holocaust victims, survivors and their heirs. The original members of the International Commission consisted of three United States Insurance Commissioners (including Superintendent Levin), three representatives from the State of Israel and international Jewish and survivor organizations, and six representatives from European insurance companies and European insurance regulators. Allianz, AXA-UAP, Generali, Winterthur and Zurich were the insurance companies that are members of the International Commission. Since its formation, additional representatives from the State of Israel and international Jewish organizations, as well as representatives from other foreign governments have joined either as members or observers. The Dutch Association of Insurers and the German Insurance Association have also signed the Memorandum of Understanding and become members of the International Commission.

The current American regulators, in addition to New York, who are participants in the International Commission, are California Commissioner John Garamendi, Florida

Commissioner Tom Gallagher, Illinois Director Tony Clark and Pennsylvania Commissioner Diane Koken. State commissioners have sought to act collectively through the NAIC and the International Commission in order to seek timely and uniform solutions to the problems presented by Holocaust era insurance issues. It is in everyone's best interest -- regulators, claimants and companies -- to have these issues handled efficiently in order to achieve swift resolution of these issues.

The International Commission has established a uniform procedure to investigate and resolve all unpaid insurance claims. On February 15, 2000, the International Commission launched an extensive worldwide outreach program and commenced its claims resolution process. The outreach program was launched with a press conference in Washington, D.C. Press conferences were also held in Budapest, Hungary, Tel Aviv, Israel, Buenos Aires, Argentina and San Paulo, Brazil. Other countries launching their media outreach at that time included: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Chile, Czech Republic, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Moldavia, Netherlands, Poland, Romania, Slovakia, South Africa, Sweden, Switzerland, Ukraine, United Kingdom, Uruguay and Venezuela. The outreach program includes the establishment of call centers by which claimants can call a toll-free number 24 hours a day to request claim forms and to ask any questions they may have. To date, the call centers had received over 405,473 calls and distributed 109,617 claim packets. In addition, the International Commission has established a website -- www-icheic.org. The website has received 519,013 hits and 43,663 claim forms have been downloaded. To date, the International Commission had received approximately 92,000 inquiries, 32,000 of which are outside the International Commission's jurisdiction. The

original deadline for filing claims was February 15, 2002. This deadline was recently extended until December 31, 2003 to allow the International Commission sufficient time to publish additional names of policyholders on its website and give adequate time for the public to review the lists.

The goal of the claims resolution process is to handle insurance claims of Holocaust victims, survivors, and their heirs in an expeditious and fair manner. The process is free of charge to claimants and uses relaxed standards of proof that acknowledge the passage of time and the practical difficulties of locating relevant documents. As part of the claims resolution process, the International Commission has adopted valuation guidelines that take into account the fact that the insurance policies at issue originated in many different currencies, companies and countries. The valuation procedures also account for the issues of devaluation of local currencies, nationalization, inflation and interest. Lastly, for claimants who disagree with the final determination of their claim, the process also includes an appeals process.

The New York State Holocaust Claims Processing Office (New York Claims Office) has turned more than 2,280 insurance claims over to the International Commission for processing. In total, there have been over 3,250 offers valuing approximately \$42.5 million made to Holocaust survivors and their heirs through the processes of the International Commission. Acknowledging the low number of claims resolved and under significant pressure from its insurance commissioner members, in early 2003, the International Commission, in conjunction with the NAIC Task Force, conducted a review of the offers as well as denials on well-documented claims issued by the companies through 2002. This review identified areas where improvements in claims

processing by the International Commission and the companies were warranted. In consultation with the companies affected, the International Commission established new procedures to ensure that necessary adjustments to the process be made promptly to ensure claimants benefit from these improvements with a minimum of delay. More recently, this review was extended to encompass all offers and denials on well-documented claims made by the companies to date.

The NAIC Task Force and the member states of the International Commission continue to work actively with the International Commission to resolve all issues relating to claims processing. In 2003, as a result of an agreement reached with the German Government in which the Association of German Insurers joined the International Commission, German insurance companies began making payments on Holocaust era insurance claims in accordance with all of the practices and procedures of the International Commission. The Dutch Association of Insurers has also been making payments in accordance with all of the practices of the International Commission.

The International Commission has also undertaken an audit process in which the participating insurance companies have agreed to provide full access to all of their relevant records, books and archives to independent auditing firms. The NAIC Task Force and the member states of the International Commission are committed to close supervision of this audit process to assure its effectiveness. The International Commission also retained a well-known and respected consultant to explore external archives for evidence of Holocaust era insurance claims. Research has been undertaken or is ongoing in the archives in Germany, Austria, Poland, Czech Republic, Hungary,

Romania, Greece, Ukraine, Slovakia and the Baltic States and this research has been used to provide claimants with additional evidence to support their claims.

In April 2000, the International Commission first published names of policyholders of Holocaust era insurance policies and has updated it several times since. These names were obtained from the member companies of the International Commission and from research conducted by the International Commission's consultant in independent outside archives in Europe. In total, nearly 520,000 names have now been published on the website. The member companies of the International Commission will contribute over 12,000 new names of policyholders over the next 1 to 2 months. The majority of these names will be provided from portfolios covering Eastern Europe, Italy and Switzerland.

The website has recorded approximately 430,000 searches by claimants and others. It is our belief that the International Commission website contains the vast majority of Jewish policyholder names of those who might have held policies written by European insurance companies before 1945 that can be compiled given the passage of more than 60 years since the Holocaust.

The International Commission also established a humanitarian fund designed to assist Holocaust survivors and other Holocaust-related humanitarian purposes. As part of the agreement with the Association of German Insurers and the European insurers, the companies contributed a substantial amount to the humanitarian fund of the International Commission. In early 2003, the International Commission began distribution of humanitarian funds by allocating \$132 million to social welfare organizations aiding survivors worldwide. The International Commission is also planning to distribute funds

to claimants who have not identified the company against which they have a claim and is considering programs for future distribution of humanitarian funds.

The Role of New York State

A number of states have established Holocaust era claims offices or have staff specifically designated to assist Holocaust victims recover assets. I offer the experience of New York as an example of what legislatures and regulators around the country have done in this regard.

In 1997, following New York State's investigation of Holocaust assets held by the Swiss banks, Governor George E. Pataki and Superintendent of Insurance Levin began to examine the issue of unpaid insurance policies issued to Holocaust victims. In September 1997, Governor Pataki established the New York Claims Office.¹ The New York Claims Office was designed to assist Holocaust victims, survivors and their heirs in their attempts to recover Holocaust era assets deposited in European banks, to recover monies never paid in connection with insurance policies issued by European insurance companies and to recover art works that were lost, stolen or looted in the war period. The New York Claims Office was created to be an advocate for claimants by helping alleviate any cost and bureaucratic hardships they might encounter in trying to pursue their claims on their own, as well as to bring leverage to negotiations with the banks and insurance companies through the aggregation of claims.

The New York Claims Office offers its services free of charge to claimants worldwide. To date, the New York Claims Office has received 4,120 inquiries concerning insurance policies from 29 countries and 45 states (1,419 inquiries from New

York State residents). A total of 2,279 insurance claims have been filed covering 4,700 policies (635 claims from New York State residents). The New York Claims Office has been working with insurance companies and appropriate European regulatory insurance authorities to resolve these claims since 1997 and has assisted the International Commission since inception. This challenging task encompasses working with documents in multiple foreign languages and the laws of several countries. The New York Claims Office has a staff of highly trained Claims Specialists available to assist claimants in resolving their claims. The New York Claims Office offers assistance in eight languages (Czech, French, German, Italian, Polish, Russian, Spanish and Ukrainian), in addition to English.

At the same time, the New York State Legislature also became deeply concerned about allegations that certain insurers doing business in New York, either directly or through affiliates, failed to honor their commitments under insurance policies issued during the World War II era. Although such policies were issued outside of New York, New York is home to one of the largest Holocaust survivor populations in the United States. The Legislature determined that this state has a clear and substantial interest in ensuring that justice is effected for New York citizens.

As a result, the Legislature passed Governor Pataki's Program Legislation, which became law on July 8, 1998. Chapter 259 of the Laws of 1998 added Article 27, the "Holocaust Victims Insurance Act of 1998," to the New York Insurance Law (the Act). The Act requires New York State insurers that are affiliated with insurers that did business in areas under Nazi influence during the Holocaust era to file annual reports and

¹ The New York State Holocaust Claims Processing Office is located at One State Street, New York, NY 10004, in the Offices of the New York State Banking Department. The New York Claims Office has a toll

to resolve all unpaid insurance policies issued to Holocaust victims. Most importantly, the Act encourages such insurers to participate in the International Commission in order to reach a just and expeditious resolution of this issue.

The Holocaust Victims Insurance Act of 1998 has bolstered the work of the New York Claims Office and the International Commission. The Act principally provides that: (a) insurers doing business in New York shall promptly investigate and resolve claims they receive from individuals they know or should know are Holocaust victims or heirs; and (b) insurers affected by the Act shall submit reports to the Superintendent annually beginning January 30, 1999 and for the next ten years providing information regarding whether the insurer or any affiliate could possibly be expected to have issued an insurance policy to a Holocaust victim, between January 1, 1920 and December 31, 1945 and how the insurer has resolved any unpaid insurance policies issued to Holocaust victims.

While the Act establishes an important framework by which New York can assist in the resolution of unpaid insurance policies held by Holocaust victims, survivors, and their heirs, the Act also acknowledges the global context of the issue, involving, as it does, Holocaust victims, survivors and their heirs, insurers and regulators in several different countries and jurisdictions. Thus, the Act provides that insurers' reporting requirements under the Act may be waived periodically by the Superintendent if the insurer is meaningfully participating in the International Commission.

This discretionary authority granted to the Superintendent was and continues to be a significant incentive to the insurance companies that are doing business in New York to

participate in the International Commission to resolve insurance claims of Holocaust victims, survivors and heirs in an expeditious and equitable fashion.

As you evaluate the progress of the International Commission in its efforts to achieve a measure of justice for Holocaust insurance claimants and consider whether federal legislation is warranted, I believe it is important to take note that the International Commission is the first and only organization of its kind formed to serve as a mechanism for resolving claims on unpaid Holocaust era insurance policies. This means the commission has, starting from scratch, addressed a multitude of complex issues, both with regard to evaluation claims and claims processes. This has been far from simple and the initial execution has been far from perfect.

The International Commission has addressed many of the early challenges and some of the initial missteps by establishing and publicizing by means of an extensive and comprehensive outreach effort, a claim process accessible to claimants all over the world who speak a variety of languages. Claims, often with incomplete and nonexistent records, are evaluated in accordance with International Commission's relaxed standard of proof and valuation guidelines. These guidelines take into account the variety of currencies and types of policies as well as the manner they were lost, including blocked accounts and the realities of the post-war economic history of Europe, and the nationalization of company assets by the postwar Communist regimes. For claimants who feel their claims have been misjudged, the International Commission has also created an appeals process. Finally, the International Commission's work researching and compiling the names of pre-war policyholders has resulted in extensive lists of policyholders accessible to the public via the Internet.

With this in mind, the state regulators involved in the International Commission have endeavored to speak uniformly and consistently in order to resolve all unpaid insurance claims as quickly as possible. The International Commission distributes claims figures on a bi-monthly basis to the Commissioners in order for us to monitor progress on claims processing. This information, together with quarterly statistics from the International Commission, is posted to the NAIC website for Commissioners to track the progress of the claims of their constituents. Relevant information on the distribution of the humanitarian funds has also been posted to the NAIC website so that Commissioners are informed as to the funds reaching survivors in their states. In addition, representatives of the International Commission meet and report on recent developments on a quarterly basis to the NAIC Task Force and monthly conference calls have been scheduled. The NAIC Task Force and the member states of the International Commission continue to believe that the International Commission, particularly with its revamped organization and the addition of important outside advisors, is still the best available way to ultimately ensure payment of claims to Holocaust era victims and their heirs at no cost and with relaxed standards of proof. Now that all agreements with the companies have been completed, the International Commission is focused on resolving all claims that have been filed and processed as expeditiously as possible. The NAIC Task Force is actively working with the International Commission to resolve all outstanding claims and ensure that companies are complying with the guidelines of the International Commission.

Thank you for the opportunity to speak to you today.