

STATEMENT OF DANIEL KADDEN
BEFORE THE U.S. HOUSE GOVERNMENT REFORM COMMITTEE

HEARING ON STATUS OF INSURANCE RESTITUTION FOR
HOLOCAUST VICTIMS

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Chairman Davis, Representative Waxman, Members of the Committee:

My name is Daniel Kadden. Thank you for inviting me here today. Along with many Holocaust survivor leaders across this country that I work with closely, I want to express my appreciation to you for your continued concern about the fate of thousands of Holocaust-era insurance claims and your willingness to candidly examine the record of the International Commission on Holocaust-era Insurance Claims.

Public scrutiny of ICHEIC and its very public mission has been sorely lacking over the past 5 years, largely due to the reluctance of ICHEIC itself to engage with the public. I believe this Committee is performing an important and timely service in attempting to shine light on the continuing difficulties thousands of survivors in the U.S. and around the world face in getting their good-faith claims investigated and paid.

Everyone who cares about the survivors is deeply disappointed with the current situation, all the more because the original tasks the newly-formed Commission took on in 1998 seemed to hold great promise:

- To create a claims settlement framework that accounts for the historical realities surrounding the Holocaust: that the vast majority of potential claimants do not possess documentation or reliable knowledge of details of their family insurance coverage.
- To craft a claims processing system that is fair, accountable and verifiable and provides for prompt payment of all valid claims.
- To establish an administrative process that supports this work efficiently and with transparency, provides for necessary funding and ensures the representation and involvement of key stakeholders.

An honest evaluation of the ICHEIC's performance leads me to the conclusion that it has earned a failing score in each of these areas. And unfortunately we see precious little being done by the ICHEIC administration to acknowledge and address these problems.

In my remarks today, I want to focus on the central issue before us, the publication of policyholder names, as well as fundamental accountability issues that I believe are going to determine whether ICHEIC has even a chance of gaining a passing grade in the weeks and months ahead.

Let me emphasize that the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process. For claimants, the lists demonstrate transparency of the entire process and accountability of the companies.

ICHEIC committed itself in its 1998 charter to publish policyholder names as an integral part of the claims resolution process. However, this promise has not been adequately met.

A great deal has been said about the 2002 agreement by the German insurers to provide names to the ICHEIC. While these companies have still been allowed to withhold a significant number of records, a large volume of names were released and these were used in a rigorous matching exercise to identify hundreds of thousands of likely Jewish policyholders in Hitler's Germany.

On a personal note, allow me to share with you my own recent experience with the German policyholder list. Both sides of my family are German Jews from the Hitler era. My parents and grandparents were all Holocaust survivors. Previous archival research by ICHEIC had identified one of my grandfathers as an insurance policyholder, the first time we had direct evidence of this. In reviewing the new names this past spring, I was able to locate my other grandfather, four great uncles, a great aunt, and about 25 additional relatives.

It is a bittersweet thing to see the names of people – some who didn't survive the Holocaust and whom I never met -- and to think about what this really signifies: families investing in their future, parents providing for their children, young couples buying a piece of security. As we know, it was all for naught, and now the surviving generation and the children of survivors like myself must reconstruct family information, notify far-flung cousins of the possibility for filing a claim, and gird ourselves for what will likely be a frustrating and joyless experience in the pursuit of justice.

The publication of the German list demonstrates the value of names as a core element of the claims process. It is an important achievement that argues for the expansion of this successful model to other companies and regions of Europe so that the greatest number of insured victims can be compiled and published. But

ICHEIC cannot rest its laurels on the German list alone and argue they have now fulfilled their obligation to provide names to the public. It must be followed by other lists that represent the widest possible range of affected policyholders.

Unfortunately, other companies and governments have not been nearly as forthcoming in this regard. Apart from the German names, the remainder of names found on the ICHEIC list is mostly from archival research conducted by ICHEIC itself, and this mostly in German public archives. The number of published names provided by the non-German companies on the ICHEIC – AXA, RAS, Winterthur, Zurich and Generali – amount to only a tiny percentage of the total. The persistent refusal of France to release hundreds of thousands of insurance records now well over 60 years old, citing data protection concerns, contrasts sharply with the more flexible attitude of the Dutch, Italian and now German, governments. Austria, once home to a vibrant and prosperous Jewish community, remains uncooperative to this day. There is much work still to be done.

To make matters worse, ICHEIC has been unable or unwilling to share with the public all the information it has obtained. For example, while about 9,000 names of Generali policyholders appear on the weblist, an additional 80,000 names provided by that company several years ago remain in the ICHEIC database but out of public view.

For three years, we have been promised more of these Generali names, that some undisclosed percentage actually match up with names of Jewish Holocaust victims. While any additional names would be welcome, we are left with a bitter question: why only now, near the scheduled end of the claims filing period? What forces conspired to suppress these names?

This episode with the Generali list is only one aspect of ICHEIC's overall poor record on names. The "voluntary" and "cooperative" process has not yielded adequate results. It is important to note that there remain significant troves of records in a number of European locations, especially Poland. On several occasions I heard Chairman Eagleburger promise, "no stone will be left unturned" in the search for names. There are undeniably a number of stones left to turn, and very little time to do it.

In the aftermath of the disappointing Supreme Court decision, it has now become a compelling Federal interest to ensure the full disclosure of names. We look to you here in Congress to help us finish this important task by enacting appropriate legislation and encouraging the Executive Branch to get behind efforts to disclose company and European archival lists that will shed light and help bring closure to these claims issues.

Let me turn now to another critical issue. One of the most striking weaknesses of the ICHEIC model is the failure to develop and sustain adequate oversight of the

claims process. Some observers early on in the process expressed concern that ICHEIC aspired to be little more than a "post office" receiving claims from around the world, and then delivering the claims to the various companies for investigation and resolution.

Addressing the numerous problems and delays afflicting his organization, Chairman Eagleburger, appearing before this Committee in November of 2001, promised ICHEIC was more than a post office, that he would institute a "policing" function to ensure rules and standards are followed. Those assurances have not been fulfilled, and as we approach the sixth year of ICHEIC's existence, the failure to step up and exercise vigorous and comprehensive oversight amounts to something close to negligence.

There has been little or no administration of the various settlement agreements reached with the companies and governments, no mechanism created to bring companies into compliance with agreed-upon rules, poor supervision of outsourced claims handling services. The list goes on; it is a lengthy one.

The most damaging result of lack of oversight has been the undermining of the claims review process. The truth is that these problems have been fully identified and aired among ICHEIC members for over 3 years. They are common knowledge. An oversight committee led by Lord Archer in Great Britain – acting very much in the capacity of a special audit team -- last year found and documented systematic violations of the claims guidelines, improper denials, and flagrant disregard by companies of evidence supporting claims, but little came of the scathing report.

The Archer Committee evaporated, and today, the companies continue to operate largely without oversight. There are no standard requirements the companies must meet when investigating a claim. Denials do not have to be justified. There is no tracking of outstanding claims. Claims that ICHEIC has itself matched with its large policyholder database are turned over to the appropriate company, but there is no follow-up to see that the companies act on the evidence presented to them and pay valid claims.

In this sense, ICHEIC is much more than a post office passing along claims; it is, sad to say, a storefront enabling a consortium of companies to effectively deny thousands of claims as they see fit under the guise of a U.S.-sanctioned settlement.

Because the companies make the claims determinations supposedly based on adopted ICHEIC standards, the solution of course must be based on checking every decision for compliance. This is the basic safeguard ensuring an independent and verifiable claims process. Without it, the integrity of the process is undermined.

But there is no sign that a serious oversight function will be activated and that actions or decisions by the companies under the banner "ICHEIC Claims Process" are going to be systematically scrutinized.

For the public, the most immediate and visible failing of ICHEIC is in the area of openness and transparency. On the simplest level we can see that essential documents describing the ICHEIC process are, inexplicably, even now not to be found on the Commission's public website. The Memorandum of Understanding – the charter document of ICHEIC -- is among the missing, although many other posted documents refer specifically to it. This begs the question: why is ICHEIC uncomfortable with sharing its founding document?

Equally puzzling, ICHEIC has chosen to refrain from reporting to the public any but the most cursory statistics about its claims process. Even its own members do not have access to the single most relevant performance measure for any claims process: the number of final settlements concluded. It goes simply unreported, and we are left to guess if it is actually known by anybody beyond the individual companies. Does ICHEIC ask for this? Given the resistance to any sort of oversight, do they even think to ask?

ICHEIC's finances are also consistently concealed in darkness. What little we know is the result of occasional leaks to the press. This is unsettling enough, given the unique public work ICHEIC is engaged in. Concerns were raised further last year when financial improprieties led to the dismissal of ICHEIC's Chief of Staff and his subsequent professional disbarment.

Promises made to publicly share audits and financial statements have never been honored over 4 years of the Commission's operation. The recent public disclosure of budget projections merely amplifies questions about the fiscal record of ICHEIC since 1998.

The claimants are also bewildered by the lack of consistency and uniformity of the process they have pinned some hopes on. Claimants expect to be treated equally and fairly in any publicly sanctioned claims settlement process. However, uniformity and consistency in ICHEIC's rules & procedures has not been achieved, reflecting the predominance of the companies in shaping the process to fit their own needs. As a result, the public interest has been ill served and the rights of claimants compromised.

The best way to describe the claims process is "Balkanized". The promising work accomplished early on to create uniform system-wide standards foundered and was undercut by various initiatives by the companies to establish separate settlement agreements with ICHEIC, each reflecting special concessions sought and won by the different companies.

First came an agreement with Dutch insurers who were allowed to retain their own established claims standards, followed by Generali, the German insurers and German Foundation, and finally the French and Swiss companies. Recently an additional accord was reached with the Belgians, and negotiations continue with the Austrians.

Each agreement features a financial cap, variations in how companies handle and value claims, and how they conduct appeals and audits. Generali came up with an additional innovation: the transfer of all claims work to a special foundation set up in Israel for that purpose, the Generali Trust Fund, forcing claimants and ICHEIC staff to triangulate in a confusing manner between both Generali and its Foundation.

The last issue I want to highlight here today is quite apart from the claims process, but it deserves equally serious attention from all of us. This year ICHEIC embarked on a new mission first envisioned at the time it was founded – that of a humanitarian foundation – when it announced that it would begin distributing worldwide at least \$162 million in General Humanitarian Funds – mostly from the settlement with German industry -- to Survivor social services and other programs it deems appropriate, over a ten year period.

The principle of full accountability in this area is based on well-established public standards guiding non-profit philanthropies. We expect nothing less than disclosure of all disbursements, fund balances and associated administrative costs. We are particularly concerned that no co-mingling of funds or overlap occurs with ICHEIC's claims-related functions and general administrative expenses. Such overlap would clearly violate the "humanitarian" purpose for which these funds were provided.

Furthermore, ICHEIC has a special obligation to involve the community in its decisions regarding humanitarian distributions, which will impact many local communities in various countries. We hope that Members of Congress can impress upon the ICHEIC administration and the managers of the Fund to meet these reasonable standards.

In conclusion, I want to simply highlight some of the logical avenues for solutions to the serious problems my fellow witnesses and I have identified:

- A sweeping reorganization is in order to inject a public accountability ethic into the operations of ICHEIC
- Independent oversight involving outside experts and an expanded role for regulators is probably the only way to save the credibility of the claims process

- There must be full disclosure of detailed claims data, particularly the most basic performance measure of all -- the number of settled claims by each company
- Publication of all appeals decisions
- Regular detailed financial disclosure of the ICHEIC General Humanitarian Fund, including all associated administrative costs
- Open the plenary sessions of the Commission to the public

Thank you again, Mr. Chairman and Representative Waxman, for your ongoing concern. I'll be happy to answer questions and look forward to continuing a constructive dialogue in the future.