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Before the Government Reform Committee
of the U.S. House of Representatives
On Status of Insurance Restitution for Holocaust victims and their heirs

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Good afternoon, Mr. Chairman, Congressman Waxman, and distinguished members of the Committee. My name is Michael Bazylar. I am Professor of Law at Whittier Law School, in Southern California, and a research fellow with the Holocaust Educational Trust in London, England. I also have recently completed a fellowship at the Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum in Washington D.C., and so it is a pleasure to return so soon to our nation's capitol.

I was born in Tashkent, Uzbekistan, a child of Holocaust survivors. I received my primary education in Lodz, Poland, and emigrated with my family to the United States as a refugee in 1964, at age 11.

My legal specialty is international law, and I am the author of over fifty articles in the area of international human rights law, international criminal law, and international trade. For the last eight years I have devoted my research and scholarship exclusively to the area of Holocaust restitution. In 1996, I held at Whittier Law School, my home institution, the first legal conference on the legal aspects of Holocaust restitution, focusing on the subject of dormant Swiss bank accounts, Holocaust-era insurance policies and Nazi looted art. Since that time, I have published a number of both scholarly and popular articles analyzing the various Holocaust restitution lawsuits filed in American courts, including Holocaust-era insurance. In April of this year, New York University Press published my book, Holocaust Justice: The Battle for Restitution in America's Courts, whose aim is to examine and compare and contrast the various the Holocaust restitution claims and settlements reached since 1998. When the United States

Supreme Court last June issued its decision in *American Insurance Association v. Garamendi*, both the majority decision of Justice Souter and the dissenting opinion of Justice Ginsburg cited to, and quoted from, my book.

I want to emphasize that I have not been involved in any of the lawsuits filed by Holocaust survivors or their heirs – even though I have been asked by law firms representing both the claimants and the European defendants to join their legal teams. My role is strictly that of the professor in the Ivory Tower analyzing the various claims being made and the responses to the claims. In assessing the claims, however, I have tried to climb down from that tower as much as possible to figure out as best as I can the actual situation of these various and complicated Holocaust-era claims. In fact, this is the primary aim of my book. In trying to figure out the situation on the ground, I keep in close touch with the individuals both in the United States and abroad, in and out of government involved in Holocaust restitution, including representatives of Jewish organizations both in the United States and Israel, lawyers for both sides involved in the litigation, and, most important, elderly Holocaust survivors who are faced with the complicated task of trying to make sense of the various Holocaust restitution settlements – from Swiss, Austrian, and French bank accounts, to German slave labor, to Holocaust-era insurance, to looted art, to Eastern European property restitution – and what benefits, if any, are they entitled from these settlements.

I also meet on a regular basis with Holocaust survivors and assist them *pro bono* with filling out the settlement claims forms, and then tracking how they are being dealt with after they file a claim.

I hope to be able to assist the Committee to assess how the Holocaust-era insurance process is doing. Since I am limited to five minutes, I will keep my remarks short, but hope to elucidate and expand on my testimony from the questions you may have for me.

I am also appending to my statement four summaries of insurance claims made by survivors with ICHEIC and the status of those claims. While these summaries are anecdotal, they present actual and, I believe, typical experiences of survivors as they try to deal with the ICHEIC claims process. They illustrate real-life examples of the points I discuss in my statement.

In October 1998, following pressure from the American federal and state government officials, public hearings on the matter, and lawsuits filed in American courts, six European insurance companies (later reduced to five) formed, in conjunction with the National Association of Insurance Commissioners (NAIC), the World Jewish Congress and the State of Israel, the International Commission on Holocaust Era Insurance Claims (ICHEIC).

Next month ICHEIC will mark its fifth anniversary. Sadly, it will do so under a continuing cloud of public distrust and skepticism over its poor performance in mishandling claims and in getting claims paid. This was not where we expected to be five years ago. It is also particularly disappointing in light of the unfulfilled promises made to this Committee in November 2001 to address the many serious problems plaguing ICHEIC and delaying justice for victims of the Holocaust.

We on the outside, like you in Congress, have struggled to make sense of ICHEIC and evaluate its troubled track record. Let me briefly review what I feel are the most critical failings that impact claimants:

Massive Pile Up of Unprocessed Claims

A number of principles were adopted by ICHEIC at the time it formed to take into account the unique challenges posed by the passage of time and the nature of the Holocaust. Among these were “relaxed” claim standards and the need to determine a fair mechanism for treating claims that are undocumented and do not name a company.

Living up to these principles has proved elusive. An initial experiment with well-documented claims in 1999, the so-called “Fast Track” process, was beset with problems and inconsistencies in the way companies interpreted “relaxed standards,” an early signal that oversight was necessary. This only worsened after the main claims process was initiated. Today, the consistent application of “relaxed standards” remains in serious dispute.

After five years – and up to this very day -- ICHEIC continues to wrestle “by consensus” with how to handle and resolve claims that do not name a company. These claims constitute the majority received from around the world. Deferred and disputed issues related to this category are currently

holding up thousands of claims filed since 2000. In reality, this means the claims process has not really commenced for the majority of ICHEIC claims, and claimants are not told the real reasons they are in limbo.

Disturbingly, and despite discussions that have spanned several years, it has not yet been decided how much the fixed payment for these claims will be and what system ICHEIC will employ to evaluate and approve their validity.

As the claims have piled up with nowhere to go, ICHEIC in the past year has shown no hesitation to throw money at the problem: they contracted with a top-tier consultant and former National Security Advisor, Sandy Berger, to develop standards for claims without a named company. If completed, these will be only the latest in a series of draft standards that have been developed since 2000 but never implemented. We all are waiting to see what will emerge and how many good-faith claims will be honored in the end.

Administration of claims by ICHEIC staff

While the pile up of unprocessed claims is perhaps the single most important unresolved issue in ICHEIC, and the cause for a good deal of paralysis, it is by no means the only unfinished element or gap in the claims process. Indeed, the failure to settle recurring disputes over the interpretation of rules and make the many technical adjustments that arise in an evolving claims process has also stymied resolution of a large number of claims that name a particular insurance company or where a match appears. As times passes, it has become apparent that the ICHEIC staff lacks the expertise in technical issues and oversight of the claims guidelines. To state it directly, the London office of ICHEIC, where administration and oversight of claims is done, has not put pressure on the companies. (has not “put their feet to the fire”) to resolve the claims. Over and over, I hear stories of survivors sending in their claims to ICHEIC, and waiting for years for a response from the companies, and no follow-up from ICHEIC.

Appeals Process

The right to an appeal is a fundamental element of fairness and due process in the context of a claims settlement process. ICHEIC has developed a confusing system for appeals involving three different appeals bodies: the

Appeals Tribunal for non-German claims; the Appeals Panel for the German claims; and, what appears to be, a separate appeal-like process only for Generali claims, done within the Generali Trust Fund in Israel. Each is based on different authority and follows somewhat different standards.

Moreover, there has been no publication of appeals decisions. This is in stark contrast to the settlement of the Swiss banks dormant account claims, where the decisions of the Swiss Claims Resolution Tribunal are publicly available and posted on the Tribunal website (www.crt-ii.org).

Being unable to review the actual appeal decisions made through these bodies, I was able only to review basic statistics. I do get the distinct impression that the appellate forum is turning out to be the only level of the ICHEIC process that may be capable of applying rules and standards consistently, leading to a relatively high percentage of reversals of company denials. The appeals stage may in fact be the place to resolve systematic failings of the process, a “Court of Real Resort” instead of “Last Resort.” If so, then the general claims process cannot render fair and uniform decisions, and all denied claimants or those feeling they have received unfairly low offers, should logically be encouraged to use the appeals option where the real and fair review of the claims is done. Pending claims should also be accepted or rejected by the companies, rather than held in abeyance, so a final decision can be made at the appellate level.

Conclusion

ICHEIC’s failure to perform adequately raises this question anew: after five years, has the private, voluntary model for claims resolution, touted as a desirable alternative to litigation in American courts, yielded the promised benefits to victims and claimants? I must sadly conclude that systematic problems plague ICHEIC, causing massive delays in resolution of claims, frequent decision reversals or reopening of cases, loss of trust among claimants that they are receiving fair and neutral treatment, unnecessary expenses, and lack of public confidence that the original objectives can be attained.

On the benchmark standards that we expect any claims settlement to meet, the ICHEIC Holocaust-era insurance claims process bears little resemblance to comparable class action settlements administered by American courts and

also compares unfavorably to them. The best comparison is the claims process currently ongoing in the settlement of the Holocaust Victim Asset Litigation, the Swiss banks settlement process, which also is confronted by the same set of historical problems which bedevil ICHEIC. On all the important measures -- establishing a historical record and audit trail on which claims settlements are based; consistent publication of names and creation of a comprehensive asset database; uniform and timely application of claims processing rules and standards consistent with the historical realities; independent oversight; transparency of decisions and timely disclosure of performance measures -- the ICHEIC claims process has been a major disappointment. ICHEIC's mission -- establishing a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust -- has not been fulfilled.

What can Congress do? Bringing to light these problems, such as being done today through this hearing, plays an important function in putting pressure on ICHEIC and its companies to move the process forward. As the various settlements of other Holocaust restitution claims have shown, constant and vigilant attention to these issues, by both federal and state officials, activist groups, and the media can play a critical role in a fair and expeditious resolution of long unrecognized World War II historical claims.

More specifically, I urge Congress to "federalize" California's Holocaust Victim Insurance Relief Act (the "HVIRA"), the law declared unconstitutional by the 5-4 majority of the Supreme Court in *AIA v. Garamendi*. As the Supreme Court decision makes clear, a federal law requiring foreign insurance companies doing business in the United States to disclose information about unpaid Holocaust-era insurance policies would not run afoul of the Constitution. While a federal HVIRA would not instantly solve the problems I discuss above, it would go a long way to deal with a major problem plaguing Holocaust-era insurance, publishing a comprehensive list of insurance policies issued in prewar Europe and matching those policies to the claims made so far. It would also allow the still-living Holocaust survivors worldwide, who were children or young adults during the Holocaust, and heirs of Holocaust victims to know once and for all whether their families had an unpaid Holocaust-era insurance policy. As has been said by others, the publication of names is the single most important resource enabling the public to participate in the Holocaust insurance claims process.

Thank you.

I. ICHEIC COMPANIES FAILING TO MAKE A DECISION ON CLAIMS
WITH DOCUMENTED PROOF OF INSURANCE
AND ICHEIC'S FAILURE TO FOLLOW-UP ON SUCH PENDING
CLAIMS

Claimant: ZEV JALON

Zev Jalon of Haifa, Israel has documentation regarding two life insurance policies issued by Riunione Adriatica di Sicurta S.p.A (RAS) presently owned by Allianz of Germany.

Mr. Jalon filed a claim with ICHEIC in 2000, shortly after the beginning of the ICHEIC claims process. The claim was transmitted to RAS. RAS has both the name of the insurance company and the actual policy numbers of the policies upon which he is making a claim.

Three years later, RAS still has not processed his claim, claiming that "due to the complexity of the issues involved, unfortunately, we are not able to communicate to you any decision at the moment."¹

Mr. Jalon has written to the ICHEIC offices in London seeking their assistance in helping to speed up the processing of the claim, but without ICHEIC taking any action on his behalf.²

Mr. Jalon has never been informed by either RAS or ICHEIC what is the "complexity" that is holding up RAS from making a decision on his claim, and why this "complexity" has not been resolved for the last three years.

Because the claim is in abeyance, not being accepted or rejected by RAS, Mr. Jalon is precluded from having his claim reviewed through the ICHEIC appeals process.

¹ RAS letter to Mr. Jalon (July 4, 2003)

² Letter by Mr. Jalon to ICHEIC, London (September 9, 2003)

II. ICHEIC DELAY AND FAILURE TO DISCLOSE CLAIM INFORMATION

Claimant: ESTHER BERGER LICHTIG

Esther Berger Lichtig and her sister Violet Berger Spiegel lived in Michalovce, Slovakia before the war.¹ Numerous members of the Berger family were murdered by the Nazis. Esther, now age is 83 and Violet, who is 85, survived the war by being slave laborers. Today both are living in Los Angeles and are in ill health. Esther is a widower and Violet takes care of her 95 year old husband.

In July of 1999 Mrs. Berger Lichtig filled out a Holocaust Insurance Claim Form.² In May of 2000 she filled out an ICHEIC claim form.³ In August of 2000 ICHEIC gave her two claim numbers⁴. In October 2000 Generali informed the family of a potential match in their archives.⁵ In November 2000 Generali wrote to the family and reported: "Our investigation has been unable of locate any life insurance..."⁶

In June of 2003 the sister's father and uncle's name appeared on the ICHEIC web site.⁷ Despite decades-old pleas, the family has not received confirmation, documentation nor an offer from ICHEIC.

¹ Family photographs of the Berger family

² Department of Insurance Holocaust Survivor Claim Form (July 28, 1999)

³ ICHEIC Claim form (May 16, 2000)

⁴ ICHEIC letter (August 7, 2000)

⁵ Generali letter (October 2, 2000)

⁶ Generali letter (November 15, 2000)

⁷ ICHEIC web site (June 17, 2003)

*Permission granted from Mrs. Lichtig, her son Irving and Violet Spiegel

III. ICHEIC COMPANIES DO NOT FOLLOW ICHEIC GUIDELINES

Claimant: IGA PIORO

Emil Goldman owned large lumber yards in Jazowsko, Poland. Emil's daughter, Iga was a young child when the Nazis marched into town. Her family was taken to a ghetto; Emil was murdered. After the war she and her mother were in a displaced persons camp and then immigrated from Germany to Venezuela, New York and finally Los Angeles. Before Iga's mother died, she told Iga that the family had several insurance policies with Assicurazioni Generali.

In September 1999 ICHEIC issued a Decision Memorandum¹ wherein it was agreed that: "when the existence of the contract has been established, the burden shifts to the companies...A company may present any evidence from its own records or external sources which would prove that a payment was made to the proper insured or beneficiary." In 2000 Iga applied to ICHEIC and was given claim numbers 14789 and 19095. In November 2000 ICHEIC issued another directive that: "ICHEIC companies will investigate the claims, applying relaxed standards of proof, which are to be liberally construed in favor of claimants."² In December 2000 Generali notified Iga that her Holocaust era insurance claim had been submitted to ICHEIC for processing.³ Despite the policy of relaxed standards of proof which were to be interpreted liberally in favor of the insured, Ms. Pioro's claim was rejected--although two Generali policies were identified--because Generali records were lacking: "we cannot but conclude that they were either cancelled or surrendered before 1936".⁴

At no time did ICHEIC or any member company supply proof or documentation that the policies were cancelled or surrendered. This "negative proof" --the inability of a company to find documentation--ought not inure to the detriment of the insured.

¹ ICHEIC Decision Memorandum

² ICHEIC letter to Burt Neuborne (November 21, 2000)

³ Generali letter to Ms. Pioro (December 1, 2000)

⁴ Generali letter to Ms. Pioro (February 28, 2001)

IV. ICHEIC AS A "COMPANY STORE" USED TO DENY AND
MINIMIZE CLAIMS

Claimant: FELICIA HABERFELD

Felicia Haberfeld is a 92 year old widow living in Los Angeles. Before the war her family lived in a palatial estate in Auschwitz, Poland. In 1939 Felicia and her husband set sail for the World's Fair in New York. During their return voyage, Germany invaded Poland and the ship, along with the Haberfelds, were forced to return to America. Fortunately Alfons and Felicia survived the war, their two year old daughter did not.

In April of 2000 Mrs. Haberfeld filled out a Holocaust era insurance claim.¹ In May 2000 ICHEIC, who was investigating the claim said that: "the company you named in your claim form is unfamiliar to us."² That company was Assicurazioni Generali--a founding member of ICHEIC.³ In September of 2000 Generali notified Mrs. Haberfeld that her inquiry to Generali would be regarded as an ICHEIC claim.⁴

On January 17, 2001 Generali acknowledged two policies purchased by the family, **purportedly applied the ICHEIC formula and offered Mrs. Haberfeld a total sum of \$500.00 for all claims.**⁵ In February 2002 Generali found another family policy but: "under the guidelines set forth by ICHEIC, Generali will not be able to offer payment to Mrs. Haberfeld..."⁶

¹ Haberfeld insurance claim (April 6, 2000)

² ICHEIC letter sent to Mrs Haberfeld (May 12, 2000)

³ Generali letter sent to Mrs. Haberfeld (April 14, 2000)

⁴ Generali letter sent to Mrs. Haberfeld (September 7, 2000)

⁵ Generali/ICHEIC offer to Mrs. Haberfeld (January 17, 2001)

⁶ Generali letter (February 28, 2002)

*All exhibits are attached to deposition transcript of Felicia Haberfeld in *Haberfeld v. Generali* BC250565