

**Testimony of**

**The Honorable J.D. Bindenagel**

**Former U.S. Ambassador for Holocaust Issues**

**Vice President for Community, Government and International Affairs**

**DePaul University**

**Chicago, IL**

**Before The**

**Senate Committee on the Judiciary**

**Hearing on**

**“Holocaust-Era Claims in the 21<sup>st</sup> Century”**

**Wednesday, June 20, 2012**

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Mr. Chairman, Members of the Committee,

I appreciate the opportunity to appear before you today to discuss issues concerning the bilateral agreements regarding unpaid, Holocaust-era insurance claims in the 21<sup>st</sup> century. As the former U.S. Ambassador for Holocaust Issues,<sup>1</sup> I recognize the importance of ensuring that unpaid insurance policies issued in Europe during the Holocaust era are honored and that related issues are resolved expeditiously.

The overarching interest in the negotiations with regard to unpaid insurance claims was to bring a measure of justice for Holocaust survivors and other victims of the Nazi era. No price can be put on the suffering that the victims of Nazi era atrocities endured, but the moral imperative was and remains to provide some measure of justice to these victims, and to do so expeditiously. We set out, as concerned parties, governments, and non-governmental organizations to resolve Holocaust-era insurance issues through dialogue, negotiation and cooperation rather than subject victims and their families to the prolonged uncertainty and delay that would accompany mass litigation against the industry.

The United States pursued this opportunity to seek justice for victims of the Nazi era because we recognized that we could advance the interests of many U.S. citizens who were also

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<sup>1</sup> As of this summer, I will become an unpaid Senior Advisor for Strategy XXI and will be advising on corporate social responsibility matters, particularly relating to conflict minerals and the Middle East, with no current plans to work on issues pertaining to the topic of the hearing.

Holocaust survivors. However, these issues go beyond any single nation, and international efforts to try to right past injustices would demonstrate that the international community can and will hold accountable those who commit grave wrongs. We also saw the chance to engage Central and Eastern European countries in a dialogue that would not only benefit their individual citizens, but also demonstrate in tangible ways that Western democracies have, at their core, fundamental moral precepts, most especially the sanctity of human dignity. Further, we sought to support the relationship between Germany and the newly independent and democratic nations of Central and Eastern Europe at a time when old wounds easily could have complicated their political relations.

This process culminated with the establishment in 1998 of the International Commission on Holocaust Era Insurance Claims (ICHEIC) with 550 million dollars, half of which came from the settlement of lawsuits against Germany, and the remainder from several insurance companies located in Western Europe. Ultimately, the ICHEIC process included nearly all insurance companies in Europe that had issued a significant number of insurance policies to Holocaust victims or their beneficiaries. ICHEIC created a website containing over 550,000 names of possible policy holders and over time has paid some 48,000 claimants \$306 million, which is out of 90,000 applications which were analyzed using relaxed standards of evidence which might otherwise have been insufficient in a court of law. ICHEIC also has paid another \$169 million for humanitarian programs for the benefit of Holocaust survivors worldwide.

### **The ICHEIC Process**

The area of insurance posed huge logistical and historical problems. Not only had records sometimes been destroyed, but many European insurance companies had been left bankrupt at the end of World War II and/or had been nationalized (especially in communist Eastern Europe). German insurance companies that survived the war and the German Government had paid many life insurance policies in the two decades following the end of World War II, and addressed other Holocaust-related claims through various social welfare programs. However, the fall of the Berlin Wall and the collapse of communism opened an opportunity to seek redress, including claims for the payment of benefits from the insurance

policies of deceased victims. Faced with an immense task, the U.S. government turned to the leaders of the National Association of Insurance Commissioners (NAIC) to create the International Commission on Holocaust Era Insurance Claims (ICHEIC).

In the 1990s, U.S. state insurance regulators sought to address issues raised by Holocaust survivors seeking the proceeds of mainly unpaid pre-war life insurance policies. The insurance regulators recognized the difficulties that survivors and heirs would face if they filed lawsuits against insurance companies. Many lacked any documentation and faced statutes of limitation regarding their claims, to say nothing of the effort and costs involved. In response, regulators explored routes other than litigation to resolve unpaid claims. The individual states insurance regulators in the United States working through their National Association of Insurance Commissioners identified the companies most likely affected and worked with those companies to arrive at a means of resolving the conflict outside the courts.

U.S. regulators, European companies and Holocaust survivor representatives established the ICHEIC in August 1998. The Commission selected former U.S. Secretary of State Lawrence S. Eagleburger as its chairman. Working largely by consensus, ICHEIC established processes to identify claimants, locate unpaid insurance policies, and assist Holocaust survivors and their families in resolving claims. Survivors and their heirs, most of whom could provide no documentation beyond anecdotal information, were able to submit inquiries and claims to insurers and partner entities, at no cost and in their native language. ICHEIC, in close cooperation with 75 European insurance companies and a number of partner entities, then resolved more than 90,000 claims.

To build on information provided by claimants, ICHEIC conducted extensive archival research to locate documents related to Holocaust-era life insurance policies. Working with all available relevant archives in 15 countries, ICHEIC researchers located almost 78,000 policy specific records. This research was used by ICHEIC's members to augment the often limited information provided with claims. Working closely with European insurance companies, ICHEIC established protocols that ensured that information provided by claimants was matched to all available and relevant surviving records in any companies' possession.

Claims that identified an issuing company were sent to that company or its present day successor. Claims on policies written by Eastern European companies that were nationalized or liquidated after the war and have no present-day successor, were reviewed and settled via ICHEIC's in-house process. To ensure the broadest possible reach, anecdotal claims that did not identify a specific insurance company were circulated to all companies that did business in the policyholders' country of residence. Anecdotal claims which, despite ICHEIC's relaxed standards of proof and research efforts, could not be linked to a specific policy were reviewed through ICHEIC's humanitarian claims process.

In short, the ICHEIC process went to great lengths to be claims-driven and claimant-friendly, and included vocal advocates of the claimants. One had only to file a claim and specify the name and home town of the Nazi victim, but if a claimant lacked any further information about a policy, even if the claimant could not name an insurance company, ICHEIC undertook the research to identify the company and the policy. No lawyers were needed to file a claim. Claimants could also access a website, where there appeared over 550,000 names of likely policyholders, regardless whether they were outstanding or compensated (or paid) in the past, in search of a deceased relative who was a Nazi victim. Moreover, virtually all significant insurers of Holocaust victims participated in the ICHEIC process, either directly as ICHEIC members (including affiliates acquired by the original 5 major European insurers), or indirectly through special agreements with national associations of insurance companies.

I appreciate the concerns of some U.S. survivors who continue to see the insurance issue as an ongoing one, and want to file additional lawsuits against European insurers. The ICHEIC process was not perfect, and indeed, could not have been given the disruptions wrought by World War II in Europe. Most claimants, however, were nevertheless far better off using the ICHEIC process than they would have been in pursuing litigation. The U.S. government was convinced that had claimants relied solely on lawsuits, few would likely have been successful in obtaining information or payments even after years of costly litigation, including because of strict rules of evidence and the multiple defenses which could have been offered by present-day

insurance companies with respect to policies allegedly written by predecessor companies decades ago.

Accepting again that ICHEIC was not perfect, some key numbers from ICHEIC will help to summarize what was achieved regarding insurance claims. ICHEIC paid some 48,000 claimants, out of over 90,000 claims analyzed, paying out \$306 million. The main categories among the \$306 million in payments included the following:

- ICHEIC made about 5,500 offers totaling \$121.1 million to claimants able to identify an insurance company.
- ICHEIC member companies located nearly 8,000 policies and paid out about \$100 million on applications that failed to name an insurer.
- ICHEIC made more than 31,000 humanitarian awards for a total of \$31.28 million on claims that were based only on anecdotal evidence.
- ICHEIC made nearly 2,900 awards for a total of about \$31 million on claims relating to Eastern European insurance companies that were nationalized by communist regimes and no longer existed.
- ICHEIC committed \$169 million to humanitarian programs that benefit Holocaust survivors worldwide. Over \$50 million in leftover money at the end of the ICHEIC process was added to the Humanitarian funds, setting aside the residual money for claimants

### **Post-ICHEIC Claims Processing**

ICHEIC as an organization formally ceased operations in March 2007. The most important development since then is the continuing commitment of all the companies that participated in the ICHEIC process to process claims under a relaxed standard of proof. That is,

despite ICHEIC having closed down, anyone who believes that an ICHEIC insurance company has failed to pay a claim may send his application to the company or to the Holocaust Claims Processing Office of the New York State Banking Commission and that claim will be analyzed.

Alternatively, in cases involving a German company which cannot be identified, the claimant can also send the claim to the German Insurance Association (GDV), an umbrella organization for 468 German and non-German insurance companies who are doing business in Germany. Similar commitments also have been made by those insurance companies that either joined or cooperated with ICHEIC, including the Italian insurer Generali and insurance companies in the Netherlands. The GDV has reported on the statistics of continuing claims, which include 219 new inquiries for insurance policies of Holocaust victims, as of June 18, 2012. Of these inquiries, 102 policies were identified, 41 were eligible for compensation and 61 had been previously paid by companies, the German government or ICHEIC. Some claims are still being reviewed. Most of the remaining claims were rejected because they had been paid previously or because no information could be found regarding the claimed policy, despite the GDV's research efforts. The GDV has continued to publish statistics on its website regarding post-ICHEIC claims processing (attached).

Despite the extensive efforts of ICHEIC, we need to give the victims and their heirs the confidence that everything was done to track down information on insurance policies whose proceeds were confiscated by the Nazi regime and whose beneficiaries remain unpaid. To provide this assurance, ICHEIC companies have renewed their commitment to continue accepting Holocaust-related claims despite the end of ICHEIC operations. In addition, the New York State Holocaust Claims Processing Office is committed to continuing to coordinate and facilitate the submission of new claims to insurance companies. The idea is ensure that anyone who still has a legitimate claim not considered by ICHEIC will still have a way to submit that claim for analysis. The insurance companies' continuing commitment to this on-going process can be seen by the continued outreach efforts, an example of which can be found in an advertisement in the Washington Post, p. 12c, of June 18, 2012 (attached). The fulfillment of the U.S. Government commitment to comprehensive and enduring legal peace, set in the July 17, 2000, agreement is equally important to the continued resolution of outstanding claims.

## **Conclusion**

The purpose of ICHEIC was to pay unpaid insurance claims and/or provide information on insurance policies so that victims of the Nazis could achieve some measure of justice and closure. But the ICHEIC process was not designed or intended to address the ongoing social needs of survivors, many of whom live in poverty and deprivation. It is unacceptable that those who have suffered so grievously during their lives should have to continue to suffer in their declining years. Survivors who live in poverty often lack access to needed home care, medication, and dental care.

The United States worked to address these separate and ongoing social welfare needs through other means. For example, the 10 billion Deutsch Mark agreement reached between the U. S. and German Governments in 2000, not only provided additional funding for the ICHEIC process, but also provided funds for social welfare payments to survivors. That agreement also did not affect German programs, or bilateral or multilateral agreements that have addressed the consequences of the National Socialist era and World War II. Moreover, since the signing of that agreement, which also established the German Foundation for “Remembrance, Responsibility and Future,” I would like to note that the Conference on Jewish Material Claims Against Germany has continued its ongoing bilateral negotiations with the Federal Republic of Germany to address the needs of aging Holocaust Survivors. These negotiations have led to changes in the criteria of the compensation programs that have led to thousands of Holocaust Survivors receiving life-time pensions or one time payments. Most important, since 2004, the German Federal Government has provided desperately needed funds for “home care” for Nazi victims.

Although these additional sums were small, in 2010, the German Government greatly increased funding to provide €10 million for “homecare” funding for 2011. Significantly, after difficult negotiations in 2011, a multiyear “home care” agreement for 2012, 2013 and 2014 for €126.7 million, €136.7 million and €140 million, respectively, was finalized. These agreements,

which supplement the ICHEIC process and other Holocaust litigation settlements, will provide over €13 million (or \$650 million) for “homecare” funding, which represent a dramatic increase in the services that can be received by needy Holocaust survivors. These agreements provide food, medicine, personal services and nursing care to those who suffered unbearable horror during the Holocaust. These services are the lifeline for tens of thousands of Holocaust survivors worldwide. It is clear that these bilateral agreements have resulted in tangible benefits to those that need it most – wherever they may live.

Years after millions perished in the horrific events of the Holocaust, the Holocaust serves as a continuing reminder of what can happen when we allow racial, ethnic and religious differences to divide a local, regional or even international community. The images of malnourished men, women and children worked to death in concentration camps in support of the Nazi war effort, gassed in chambers and burned like rags continue to haunt and remind us of the importance of tolerance and the need to fight anti-Semitism and xenophobic nationalism. The ICHEIC process represented one of many ways that the United States addressed, and continues to address, the plight of Holocaust survivors. While by no means perfect, taken together, these efforts have made a significant difference in the lives of Holocaust survivors, and will continue to do so into the future.

Thank you.

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Ambassador J.D. Bindenagel served as U.S. Special Envoy for Holocaust Issues from 1998 to 2002. He previously has testified at Congressional hearings on the negotiation and implementation of the agreements regarding the International Commission on Holocaust Era Insurance Claims (ICHEIC), based on the prominent roles he has played representing the U.S. Government in negotiations that led to the creation of the Foundation Remembrance, Responsibility and Future in Germany as part of the 2001 U.S.-German Holocaust Settlement, and to the creation of similar foundations that were part of Holocaust litigation settlements relating to France, Austria and Switzerland, and based on his having served as the official U.S. Government Observer with the National Association of Insurance Commissioners with respect to the creation and implementation of ICHEIC. For the last seven years, he has served as a Vice President at DePaul University in Chicago.