



MEMORANDUM

October 8, 2019

To: Senate Committee on the Judiciary
Attention: Jason Covey

From: Baird Webel, Specialist in Financial Economics, bwebel@crs.loc.gov, 7-0652

Subject: **Holocaust-Era Insurance Claims Hearing Questions**

This memorandum responds to the questions for the record submitted by Senator Ben Sasse following my testimony at the September 17, 2019 hearing. Senator Sasse's questions are reproduced below in italics, followed by a CRS response. Those questions directed at other witnesses have been omitted. I am happy to respond to any further questions and can be contacted at the email or telephone number listed above.

For all witnesses, what's your best estimate for the percentage of Holocaust victims that had life insurance policies and how much those policies were collectively valued? How do these numbers compare to our best estimates of how many and how much have been paid out?

CRS cannot provide an independent estimate of policy valuations, but can analyze the best available estimates provided by outside experts. Estimates for the number of insurance policies and their monetary values should be considered at best very imprecise given the lack of information due to the chaos of World War II and the post-war period, the passage of time, and the absence of information about policyholders (particularly on religious affiliation) recorded at the time policies were issued. An International Commission on Holocaust-Era Insurance Claims (ICHEIC) task force produced a report, known generally as the *Pomeroy-Ferras Report*,¹ that addresses similar questions. Pomeroy-Ferras did not produce a single estimate, but instead produced a range of values for various factors that are used in the estimates. Critics of the ICHEIC process, by contrast, often rely on estimates produced by the economist Mr. Sidney Zabłudoff.²

The ICHEIC process combined the propensity of the Jewish population to purchase life insurance policies with their propensity to purchase higher value policies, so an estimate of policy numbers cannot be cleanly derived from the ICHEIC documents. Depending on the assumptions that might be made about the ICHEIC values, one could derive a likely range of between 500,000 and 800,000 policies. Mr. Zabłudoff estimates that there were approximately 875,000 Jewish life insurance policies.

¹ The task force was led by Glenn Pomeroy, the then-North Dakota Commissioner of Insurance, and Phillippe Ferras of AXA Insurance. Its report was published April 26, 2005, and is available at <https://icheic.ushmm.org/docs-documents.html>.

² Mr. Zabłudoff published one set of estimates in "At Issue: Restitution of Holocaust-Era Assets: Promises and Reality," *Jewish Political Studies Review*, vol. 19, no. 1/2, Spring 2007, pp. 3-14, at <http://jcpa.org/article/restitution-of-holocaust-era-assets-promises-and-reality/>. Mr. Zabłudoff also supplied CRS additional detail on his estimations.

The collective current day valuation of Jewish life insurance policies prior to the Holocaust is subject to particular uncertainty based on when one chooses to convert from pre-war currencies into dollars and what index one chooses to bring the currency value into the present day. Using the ICHEIC ranges, the total value of Jewish life insurance policies can be estimated at between approximately \$9 billion and \$13 billion. Mr. Zabludoff's method produces an approximate amount of \$37 billion. These amounts are in 2019 dollars using the respective ICHEIC and Zabludoff methods up until the early 2000s and then adjusting with U.S. bond rates.³

Estimating what proportion of these policies have been "paid" and the valuation of "unpaid" policies introduces additional complications. For example, a substantial number of policyholders were compensated through West German programs in the 1950s, but the amounts that were paid were in Deutsche Marks (DM), and thus affected by the effective devaluation that occurred when the DM was created in 1948. In the ICHEIC process, these claims were considered paid, while Mr. Zabludoff's estimates recognize the current value that was paid in the 1950s, but considers a substantial amount of the value of such policies as unpaid.

The ICHEIC process considered a range of estimates for the percentage of unpaid policies from 50%-80% for eastern Europe and Austria, and from 10%-20% in western Europe.⁴ Mr. Zabludoff estimated 90% unpaid in eastern Europe, 80% in Austria, and 30% in western Europe.⁵ Using the various ICHEIC value ranges, one can derive estimates from approximately \$1.9 billion to \$5.5 billion for the total value of unpaid policies prior to the ICHEIC process in 2019 dollars. According to the hearing testimony, Mr. Zabludoff estimates this figure to be \$25 billion.⁶ Both of these figures are derived using long-term bond rates as the index to arrive at current day value, but differ substantially on how they convert into dollars. Mr. Zabludoff generally converts all the amounts into dollars in 1938 (for pre-war amounts) or in the 1950s (for the post-war West German compensation). ICHEIC valuations left western European amounts in the national currencies and then paid in those currencies, or converted to dollars in the then-present day. For eastern European policies, the amounts were converted into dollars and brought to the then-present day using multipliers that were reduced from market rates partly due to the nationalization of the eastern European insurance companies by the communist regimes following World War II.

The ICHEIC process, which finished in 2007, reported that it facilitated payment offers of about \$306 million to 48,263 claimants. An additional \$169 million was allocated to a "humanitarian fund" for Holocaust survivors and Holocaust education and remembrance. These amounts would be approximately \$505 million and \$279 million respectively adjusted with long-term bond rates to 2019 as has been done with the "unpaid" figures above.

Mr. Webel and Mr. Eizenstat, can you give us some history of what happened to insurers and other private financial institutions in Eastern Bloc countries? Where should we consider the responsibility for those policies to be located?

Insurers and other financial institutions in eastern Europe were nationalized by communist governments and in some cases absorbed by some combined company after the fact or in some cases simply dissolved as being unnecessary in a communist economic system. For domestic insurers in those countries, there

³ Mr. Zabludoff indicates that "30-year" rates were used in his calculations. Since 30-year U.S. Treasury bonds were not issued continuously since the 1930s, CRS calculations are based on 10-year bond rates.

⁴ For a set of lower value burial policies in the Netherlands, ICHEIC estimated 100% payment. These figures are from the Pomeroy-Ferras Report.

⁵ Mr. Zabludoff estimated 0% payment for burial policies in the Netherlands.

⁶ CRS calculations based on Mr. Zabludoff's work from 2008 and adjusted forward using long-term bond rates results in a figure closer to \$30 billion in 2019 dollars.

was often no successor company, or the records from the time period may have been destroyed. For foreign companies that were previously active in Eastern Europe, the parent company or a successor may have carried on doing business in western Europe and may be extant today, with the Italian company Assicurazioni Generali S.p.A (hereinafter “Generali”) being the most prominent of these.

Responsibility for such policies is far from straightforward and will vary from company to company and vary depending on the specific policy language. For a policy that was written by a domestic company that was then nationalized, one would normally look to the government that undertook the nationalization, although, of course, one could also argue that these governments no longer exist either following their collapse in 1989-1990. For policies that were written in eastern Europe by western European companies still in existence, those companies typically cite the nationalizations as absolving them from fulfilling the policy contracts.⁷ Critics of the companies, however, note that, in some cases, these companies received compensation for the nationalization, and thus claim that the companies should bear responsibility today. In addition, in some cases, the original policy language indicated that the policies were payable by the company regardless of the country and were payable in gold or dollars. These policies could arguably be considered the responsibility of the issuing company regardless of nationalization.

Mr. Webel and Mr. Eizenstat, from the perspective of an individual claimant, can you compare pursuing a claim through the ICHEIC process with pursuing a cause of action under the proposed legislation?

According to the ICHEIC (see <https://icheic.ushmm.org/claims.html>), the ICHEIC process was designed to pay claims under relaxed standards of proof compared to a typical policy claims process. In cases where a claimant was able to name a particular company, the claim was forwarded to the company, which committed to process it according to the relaxed standards. There was an appeals process if the claimant was unhappy with the offer made by the company. If a claimant was unable to identify a company, ICHEIC sent the claim to all of the participating companies for investigation. If no information was found to match a claim to a company, ICHEIC would consider the claimant’s documentation under their standards for humanitarian payments (which were generally lower than the policy value). ICHEIC processed claims at no cost to the claimant.

Legislation proposed most recently in the 115th Congress (S. 258) would have granted claimants the ability to bring civil actions in order to enforce insurance policies in U.S. courts notwithstanding executive agreements with foreign governments. Claimants could have been awarded the amount of proceeds due under the policy, with interest calculated at 6% per year, and treble damages if a court found the insurer acted in bad faith. Claimants would also have been eligible to be awarded attorney’s fees. This civil action would have taken place under the judicial standards of evidence and proof generally applicable to such actions, except that some previous judgments or releases would not have barred a claimant from the ability to file a civil suit, and suits could not have been deemed untimely if the suit were filed not later than 10 years after the date of enactment. S. 258 also would have opened the possibility for states to enact their own laws free from preemption due to an executive agreement. If particular states enact specific laws on the subject, this may also change how an individual claimant might pursue a claim.

⁷ For example: “Generali branches in these regions were nationalized by the Communist governments that came into power immediately after WWII, and consequently Generali lost ownership of the assets held in these countries as reserves for payment of the policies (the insureds’ policies themselves also were nationalized). Generali decided for humanitarian reasons to make payments on these policies to insureds and heirs...” Generali, “Holocaust-Era Insurance Programs,” at <https://www.generali.com/info/holocaust>.

In general, supporters of the legislation have argued that both the ICHEIC process and previous agreements between the United States and European governments failed to compensate a significant number of Holocaust survivors and/or their heirs and beneficiaries. Some of those critical of ICHEIC and supportive of the proposed legislation acknowledge that the standards of proof placed on a claimant in an American court of law would likely be far more stringent than those exercised by ICHEIC. However, they argue that in light of ICHEIC's closure, the courts represent one of the few, if not the only, remaining avenues by which to pursue claims. Opponents of such legislation often argued that by effectively reversing past commitments made by the U.S. government—specifically, the granting of legal peace to German companies—the bills could damage future cooperation with European governments on other Holocaust compensation and restitution issues. They add that the legal and historical complexities of substantiating the existence and value of Holocaust-era insurance policies also make it unlikely that claims would be satisfactorily settled in American courts. Critics maintain that it was precisely this fact that drove U.S. insurance regulators, the Claims Conference, and others to back ICHEIC. In addition, given the likelihood of legal challenges from European insurers, some question whether claims could ever be resolved within a reasonable period of time.

Many of those involved in past efforts to resolve claims—including representatives of past U.S. Administrations, the NAIC, European governments, the Claims Conference, and the State of Israel—maintain that ICHEIC, in spite of its faults, offered individuals a better vehicle than any previously available mechanisms. Given that European insurers' participation in ICHEIC was based on the condition that ICHEIC would be an exclusive mechanism to resolve claims, many argue that it could be difficult to obtain additional financial commitments from these companies. Furthermore, some argue that significant obstacles could prevent successful litigation against European insurers. These include difficulties in establishing both the existence and present-day value of policies.

Mr. Webel and Mr. Eizenstat, can you give us a sense of what other compensation efforts have been undertaken in the context of the Holocaust? How have they been administered? Beyond the Holocaust, are there other processes in other contexts that we should consider instructive or cautionary?

The 1952 Luxembourg Reparations Agreement between the Federal Republic of Germany (West Germany), Israel, and the Conference on Jewish Material Claims against Germany (Claims Conference) marked the first and most significant of a series of postwar West German initiatives that have resulted in total German government payments of an estimated \$84 billion (about €76 billion) to Jewish and non-Jewish victims of Nazi crimes and their heirs.⁸ In the 1990s, renewed attention to Holocaust-era issues included a U.S. court settlement with Swiss banks regarding Holocaust-era bank accounts in response to class action lawsuits and broad settlement funds established separately by the German, Austrian, and French governments to compensate victims of forced and slave labor and looted assets among other crimes. ICHEIC was included as part of this German effort. As a specialist in insurance issues, I have no particular expertise in the non-insurance compensation efforts and would defer to Mr. Eizenstat's experience in this area.

⁸ This figure represents the present-day value of all payments through the year 2018, as reported by the German Ministry of Finance. German Ministry of Finance, *Compensation for National Socialist Injustice*, January 27, 2018, at https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.html.

