

**Testimony of  
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House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law**

**September 22, 2010**

As many of you know, I have devoted a substantial part of my public career to keeping the cause of justice for Holocaust survivors and their families before the world's consciousness going back to the Carter Administration. As the Special Representative of the President and Secretary of State on Holocaust Issues during the Clinton Administration, I engaged in negotiations with Switzerland, Germany, Austria, France, and a number of central and eastern European countries in order to deal with the unfinished business of the Shoah. These negotiations, which covered bank accounts, slave and forced labor, the recovery of Nazi-looted art, the return of communal property, and the payments of thousands of long dormant insurance policies belonging to Holocaust victims and their heirs, ignored for decades after the end of World War II, resulted in the settlement of class action cases and the disbursement of more than \$8 billion in benefits to Jewish victims of the Holocaust and their families as well as to non-Jewish victims of Nazi persecution.

I have by no means been alone in these efforts. Instead, I have always enjoyed bipartisan support from Members and former Members of Congress. Whether Democrats or Republicans controlled the Congress or the White House, I could count on their leaders to support our efforts to achieve a measure of justice for survivors and their heirs.

In this bipartisan spirit, the Obama Administration has given renewed and enhanced attention to doing everything possible to help survivors. It recognizes the urgency of the task as survivors' time grows short. As his stirring remarks at the Days of Remembrance commemoration last year show, President Obama has a deep commitment to this cause. I also know from working with her during the Clinton Administration, and also since then, no one in this country has a deeper commitment to Holocaust justice and a more profound understanding of how to achieve it than Secretary of State Hillary Rodham Clinton.

Just over a year ago Secretary Clinton honored me by naming me head of the U.S. delegation to the Prague Holocaust Era Assets Conference. Of the five

international Holocaust conferences at which I have led the U.S. delegation – the London Gold Conference of 1997, the Washington Conference on Nazi Looted Art in 1998, the Stockholm Conference on Holocaust Education of January 2000, and the Vilnius Conference on Cultural Property of October 2000 – the Prague Conference was the one that covered the most comprehensive set of issues in the most detailed manner. This conference concluded on June 30, 2009 with the issuance of a document called the Terezin Declaration endorsed by the forty-seven nations that participated. For the first time in the history of such conferences, the Terezin Declaration dealt with the social welfare needs of Holocaust survivors and other victims of Nazi persecution. It also covered immovable or real property, Jewish cemeteries, Nazi confiscated and looted art, Judaica and Jewish cultural property, archival materials, and Holocaust education, remembrance, research, and memorial sites.

In June 2010, we negotiated Guidelines and Best Practices for the Restitution and Compensation of Real (Immovable) Property to which over 40 countries have agreed. A new European Shoah Legacy Institute in Terezin has been created to help oversee implementation of these Guidelines and Best Practices, as well as the other commitments in the Terezin Declaration.

As has been the case throughout all of the international negotiations on Holocaust-era issues, U.S. leadership played an essential role in the creation of the Terezin Declaration and the Best Practices and Guidelines. It was yet another reminder, if any more were needed, that everything we have achieved in the past 15 years has depended on one thing – the credibility of the U.S. Government. Other countries have cooperated with us and followed our lead because they knew they could depend upon the United States to stand behind the agreements we negotiated. I believe that, however well intentioned, H.R. 4596 would undermine the credibility of the U.S. Government with the countries with whom we have been dealing on these highly emotional Holocaust-related issues.

Since we commenced our negotiations, companies and countries alike have paid billions of dollars to Holocaust victims and their families. In return they have only sought assurances that they would not be sued further in U.S. courts. The many agreements we reached provided compensation to victims of the Shoah and their families, and to non-Jewish victims of the Nazis, included an understanding that the United States Government would do all it could to provide “legal peace” to them. The U.S. Government has filed Statements of Interest to back up that understanding against additional litigation, which the courts have uniformly accepted as a proper statement of U.S. foreign policy.

The legislation before us, however, threatens to undo all these accomplishments and to end this legal peace. It therefore also threatens to undermine the faith other nations and companies placed in the United States when they agreed to these historic settlements. These views are not unique to me or to the Administration. As I shall discuss more fully later in my testimony, the State Department is not alone in opposing H.R. 4596. Leading Jewish Non-Governmental Organizations, which are also the leading advocates for Holocaust survivors and their families in the United States, oppose this bill as well.

Thousands of companies and numerous nations, some close allies, paid billions of dollars pursuant to the settlements we negotiated, with the full agreement of the class action lawyers, and major Jewish organizations. Were H.R. 4596 enacted, those countries and companies would be open to yet another round of litigation by a new set of lawyers. This is not appropriate. It would not only impugn the credibility of the United States of America, but it would hold out the expectation to survivors of recoveries in court that would have virtually no chance of being realized.

We recognize and we applaud the bill's noble intentions. We oppose it, however, because we fear that H.R. 4596 would, if enacted, replace an existing and successful claims resolution process with open-ended and quite probably fruitless litigation against certain European insurance companies that can be reached by U.S. courts. We also fear that it would reopen claims already settled in U.S. courts or resolved by an international commission created by U.S. state insurance commissioners and Jewish NGOs, and supported by the U.S. government. In other words, this bill would quite likely provide no real benefit to survivors now in their waning years, but instead potentially jeopardize their existing benefits and raise false hopes. I will explain more fully why that is the case, but first let me focus on what has been achieved over the past dozen years for Nazi victims and their heirs through the very negotiated agreements this bill threatens to unravel.

### **Bipartisan Support for Negotiated Resolution of Holocaust-related Claims**

The last three administrations, Democrat and Republican alike, have worked closely with victims' advocates and their representatives to ensure the implementation of Holocaust claims agreements concluded between 1995 and 2001. These agreements, as I have noted already, have provided more than eight billion dollars in compensation to more than a million and a half survivors of Nazi persecution and their heirs residing all over the world. While no amount of money

can ever truly compensate for Nazi crimes, these payments by governments and companies involved in the Holocaust should not be dismissed out of hand. It was the first time in recorded history that private companies agreed to such compensation. In return for this historic action, they deserve the “legal peace” we negotiated with them to encourage them to make these payments in the first instance.

President Clinton’s Administration achieved these payments largely through a negotiated settlement of lawsuits and negotiations with foreign governments. These negotiations also included victims’ representatives and private companies that had profited from the Shoah. Such agreements meant that the money was paid out much faster -- and to a much larger segment of survivors and heirs -- than would have been the case had a few claimants pursued their claims through litigation in the U.S. Most victims, in fact, would probably not have received anything, for it is unlikely that they would have prevailed in a court of law owing to stricter rules of evidence, to statutes of limitation, and to legal defenses available to the defendants that were mainly governments or companies that could afford lengthy litigation.

The class action lawyers who brought these Holocaust-related suits included some of the toughest, most capable, and most dedicated litigation attorneys in the United States. Recognizing the substantial legal hurdles they faced, they agreed to dismiss their cases in return for substantial settlements. They also accepted only about one percent of the total recovery in legal fees. Should this bill become law, costly litigation will be the result, and everyone – lawyer and claimant alike – will end up the loser.

### **Immediate Post-World War II Efforts to Pay Claims**

Let me explain briefly how European insurers initially handled insurance claims in the period immediately following World War II. In Eastern Europe, communist governments nationalized insurance companies and refused payments to claimants. In other cases, some insurers ignored claims when claimants could not produce adequate documentation, a practice which ignored the uniqueness of the Holocaust. Starting in the 1950s, insurance policies and other assets were compensated on a larger scale by German state compensation programs. However, this effort failed to cover all policies issued to Holocaust victims, in significant part because many insurance companies from other countries wrote policies on persons later killed in the Holocaust. Nevertheless, there were various, if incomplete, efforts by insurers in Western Europe to pay a portion of the claims in the post war period.

## **International Commission on Holocaust Era Insurance Claims (ICHEIC)**

Renewed interest in Holocaust-era claims in the 1990s led to creation of the International Commission on Holocaust Era Insurance Claims, or ICHEIC. This Commission, which was established in 1998 by the National Association of Insurance Commissioners in partnership with a number of European insurance companies and which was headed by former Secretary of State Lawrence Eagleburger, had on its board a broad range of Holocaust advocates. These included representatives from the State of Israel, from Jewish organizations, and from U.S. state insurance regulators. This Commission became the primary vehicle for settling insurance claims.

### **ICHEIC's Inclusion of Many European Insurance Companies**

ICHEIC enlisted insurance companies from Germany, Switzerland, France, the Netherlands, and Italy as members. These companies bound themselves to its principles and standards, which were designed to help victims and their families overcome decades of obfuscation, delay, and denial by foreign insurance companies.

ICHEIC also reached separate operating agreements with other European insurers through the Sjoa Foundation of the Netherlands, with Belgium's Buysse Commission, and with the National Fund of the Republic of Austria for the Victims of National Socialism. Austrian insurers, using ICHEIC's relaxed standards, established a separate process to pay claims pursuant to a bilateral agreement between the United States and Austria. Thus, ICHEIC's coverage and influence encompassed a substantial portion of the companies that had issued life insurance policies across Europe before World War II. Among them were insurance companies well beyond the judicial reach of the United States.

### **State Insurance Regulators and Jewish NGOs on ICHEIC's Board**

The state insurance regulators and the representatives of Jewish claims organizations who were also part of ICHEIC were fierce in their pursuit of the interests of the Holocaust victims. They insisted on unfettered access to the archives in 15 relevant countries in order to search for policies. They also insisted on making public more than 500,000 names of Holocaust victims who were possible policyholders.

## Pomeroy – Ferras Report

To establish a factual basis for processing claims, ICHEIC commissioned experts to undertake a study on the number and value of life insurance policies issued to Jewish victims. This study, which is called the Pomeroy-Ferras Report,<sup>1</sup> provided solid evidence about the size and type of insurance products issued in each European insurance market prior to World War II. Subcommittee Members may wish to read that report, which is available at [www.icheic.org](http://www.icheic.org).

Since Section Two, the “Findings” section of H.R. 4596, does not cite this important study, please allow me here to list a few of its key points:

- In general, the propensity to buy insurance was higher among Jews than among non-Jews in Europe.
- Residents of Germany, Austria, and the Low Countries had a higher propensity to insure than did those residing in Eastern Europe.
- Even in relatively wealthy Germany, the value of the average life insurance policy issued between 1933 and 1938 in local currency tended to be only about \$300 to \$400 (actual value in Reichsmarks at that time).
- Urban, professional Jews in Germany probably had higher value policies, the average value of which may have been around \$1,200.
- The estimates of the proportion of unpaid policies claimed by survivors and their families immediately following World War II, in the case of Germany, varied from 15.5% to 32.5%.
- The percentage of unpaid insurance policies issued by insurers in Eastern Europe was higher than in Western Europe, but the propensity to insure in Eastern Europe was lower.

The ICHEIC payments process took account of the facts and assessments reported in this study. Its payments reflected the fact that Jews had higher value policies than others. But it is important to bear in mind that a substantial number of the policies belonging to Jewish victims were paid in the immediate post war period.

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<sup>1</sup> See Pomeroy-Ferras Report at <http://www.icheic.org/pdf/Pomeroy-Ferras%20Report.pdf>

ICHEIC's challenge in 1998, then, was to pay not the entirety but the unprocessed *remainder* of these policies – the hardest cases.

### Claims Friendly Process vs. H.R. 4596

To do this, ICHEIC set up a claims-friendly process. This process encouraged people to file claims with ICHEIC even if they only suspected, but could not prove, that someone in their family was the beneficiary of life insurance policies in effect during the Nazi era. ICHEIC sent these claims to all insurance companies that did business in the country where the policy would have been issued to try and find the policy. To ensure that the companies were correctly processing claims, ICHEIC sent in auditors to confirm that the process was thorough. In addition, at no cost to claimants, ICHEIC then undertook research in archives and government files in an effort to locate evidence of a policy. This was critical as the records of some companies had been destroyed during the war. Thus, ICHEIC's research efforts made it possible for many claimants to obtain payments when they had no information regarding policies covering their relatives. Lenient standards of evidence existed and claims were processed without regard to the kinds of legal defenses, such as Statutes of Limitation, Laches, and Jurisdiction, which would have been available to insurers in U.S. courts. Finally, ICHEIC included many European insurance companies that were well beyond the judicial reach of U.S. courts.

During ICHEIC's nine years of existence, it received roughly 91,000 claims. Only about 31,000 of these applications, however, were able to name a company. This was understandable. Many claimants were very young at the time of the Holocaust and may not have known the details of their relatives' policies. Even if they were adults when they took out a policy, it would be easy to forget the name of the insurer over the intervening six decades. ICHEIC therefore designated applications filed by victims or heirs that failed to name a company as "unnamed claims, a category of 60,000 claims." (Note: Each ICHEIC claim could involve more than one policyholder.)

### ICHEIC Matches Unnamed Claims With Policies

To address the problem of "unidentifiable claims," ICHEIC organized a major research effort. It worked with both insurance companies and archives in many countries to create a list of more than 500,000 names of possible policyholders, and it published these names on the Internet. The publication was not only useful for claimants in filing claims but assisted in the processing of claims. The information

from the research in archives was available for companies and ICHEIC to use to supplement their records. In this way, ICHEIC could take a claim that had very little information and do the research necessary to transform it into a “matched claim” – one that is linked to a policy issued by a specific insurance company. ICHEIC was thus able to transform 8,000 claims that originally did not name an insurer into claims linked to an actual policy. ICHEIC then paid out nearly \$100 million to the 8,000 who had originally filed an “unnamed claim.” These claimants would have had no chance of success in U.S. courts.

### ICHEIC’s External Research Process

ICHEIC’s External Research is still available.<sup>2</sup> Anyone reading the report will recognize that the research was superior to anything that a U.S. court could have established and supervised. This is because ICHEIC was seen as an international entity engaged in a cooperative effort with the voluntary participation of European companies. This gave it far better access than litigation would have allowed.

### Payments to Claimants with Credible Stories

What is more, even if its research failed to find a policy or any documents at all to support claims, ICHEIC’s applicants could at least receive a payment of \$1,000 if they could provide any credible anecdotal evidence. In other words, as long as they told a convincing story, they could get paid despite the absence of any documents supporting the claim. 31,000 claims fell into this category. None of these would have had any realistic chance of success in U.S. courts.

### Payments to Claimants Holding Policies of Nationalized Companies

ICHEIC also paid some 2,900 claims against defunct insurance companies or companies nationalized under communism immediately after World War II. Such nationalized companies lacked a successor able to pay claims. No one holding such claims would have been successful in a U.S. court proceeding.

### **Summary of Total Payments by ICHEIC**

In total, ICHEIC paid out \$300 million on 48,000 claims. ICHEIC also paid out \$169 million for social welfare programs intended to benefit Holocaust survivors

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<sup>2</sup> External Research report is available at the ICHEIC website:  
<http://www.icheic.org/pdf/Research%20Report-0404.pdf> .

whether they were beneficiaries of insurance policies or not. If one excludes the 31,000 claims based purely on anecdotes, 17,000 documented claims totaling \$270 million were paid. This amounts to an average payment of about \$16,000 per claim. Additional information is contained in ICHEIC's final report: "Finding Claimants and Paying Them: The Creation and Working of the International Commission on Holocaust Era Insurance Claims."<sup>3</sup>

### **The Italian Insurer Generali**

The Italian insurance company Generali deserves special mention. It issued life and dowry policies throughout Europe prior to World War II. A founding member of ICHEIC, Generali paid the largest number of claims during ICHEIC's existence and it has since paid additional claims through a voluntary settlement in which, separately from ICHEIC, Generali came to terms with plaintiffs in a class action suit in U.S. courts. According to Generali, it agreed to this settlement *after* the plaintiffs' claims had been dismissed.

Generali has paid out approximately \$135 million in claims via the ICHEIC process (\$100 million was an initial non-refundable contribution to ICHEIC at the time of joining, and the other \$35 million was committed as part of the class settlement). Generali reports that between 3,500 and 4,000 claimants benefited from the \$135 million in payouts. Generali also reports that an additional \$9 million was paid to some 700 heirs pursuant to a second part of the class action settlement, which enabled claimants who missed the ICHEIC claims deadline to nevertheless have their claims processed. Furthermore, Generali also reports that it contributed another \$48 million to other foundations handling insurance claims, including foundations in Israel, Germany, Austria and the Netherlands. It has also voluntarily paid another \$3 million to claimants outside the ICHEIC process and the class settlement. In total, together with settlements of individual lawsuits, Generali has paid out more than \$200 million to thousands of claimants through voluntary settlements.

### **Austrian General Settlement Fund**

Austria merits mention as well. Under the terms of a bilateral agreement with the United States, Austria created the Austrian General Settlement Fund for assets

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<sup>3</sup> <http://www.icheic.org/pdf/ICHEIC%20Legacy%20Document.pdf>

confiscated from Jews following the Nazi takeover of that country. Over \$200 million was set aside to settle asset claims. In addition, this Fund uses ICHEIC's relaxed standards of evidence when it reviews insurance claims, and it has thus far paid out \$23.2 million of the \$25 million it has allocated for such claims. Four thousand claimants have received an average individual payment of \$5,800.

### **Swiss Banks**

Only two Swiss insurers, Winterthur and Zurich, participated in ICHEIC. Other Swiss insurers, however, were part of the Swiss bank settlement, which has allocated \$50 million to pay insurance claims. Despite an extensive research and outreach effort, the Swiss bank claims process has been able to locate and approve only a little more than 100 insurance claims to date. But the sums paid out are not insubstantial, for this process has allocated or distributed nearly \$1.3 million so far. The Swiss companies in ICHEIC have also paid slightly more than 50 claims, totaling slightly less than one million dollars. The numbers of insurance claims and the payments generated by both claims processes may seem small, but they are nevertheless consistent with the findings of ICHEIC's external research.

### **Legal Peace**

In our negotiations in the wake of class action suits against German companies in the year 2000, the German defendants insisted on "legal peace" — that is, on the dismissal of current suits and on protection against future suits. Negotiating the terms for legal peace was excruciatingly difficult. Ultimately, the class action lawyers, Jewish organizations representing Holocaust survivors, German industry, and the German government agreed that the U.S. government, in return for contributions from German companies, would file a Statement of Interest in any such future suits. These Statements of Interest make clear that it is in the foreign policy interests of the United States that current and future cases be dismissed. As indicated, these Statements of Interest have been issued by the U.S. and upheld by courts.

These negotiations resulted in a settlement worth ten billion DM (\$5 billion). Hundreds of German companies provided half of this amount, and the German government the other half. Included among the German companies that contributed were all German insurers, even those founded after 1945, the vast majority of which have no business interest in the United States. I negotiated the portion of this settlement passed on to ICHEIC — \$281 million — directly with former Secretary of State Eagleburger, the head of ICHEIC, and agreed to by all

parties and stakeholders. Several Eastern European governments, including Poland, were deeply involved in the negotiations as well.

Similarly, in our two agreements with Austria, which totaled some \$800 million and which also included an insurance component, contributions came both from the Austrian government and from the Austrian private sector, with the same understanding on “legal peace.” Indeed, the German model formed the basis of the Austrian agreement.

If this bill were to be enacted, it would interfere with the idea of “legal peace” established in these settlements, thereby upsetting the very basis for the payment of billions of dollars to Holocaust survivors and their heirs. It would also impugn and effectively revoke commitments to file Statements of Interest made by the Executive Branch of the U. S. Government to foreign entities. If this should happen, the ability of the U.S. Government to be a credible negotiating partner on other Holocaust-related issues thereafter would be impaired. Our current efforts, under the June 2010 Guidelines and Best Practices, to encourage the countries of Central and Eastern Europe to restitute or compensate for confiscation of real (immovable) property, and to use the imputed value of heirless Jewish property to provide social welfare benefits to needy Holocaust survivors, would become immeasurably more difficult.

### **Section 2(9) and Section 3(b) of H.R. 4596**

H.R. 4596 states that “companies holding Holocaust-era insurance policies continue to withhold names of owners and beneficiaries of thousand of insurance policies sold to Jewish customers prior to World War II” (Section 2(9)). This contention, which fails to acknowledge ICHEIC’s requirement that independent auditors confirm that the search of company files was thorough, is arguable. The bill also asserts that ICHEIC paid only a small fraction of the thousands of insurance policies issued by European insurers. Of course not all insurance policies issued by European insurers could be paid. In part, this is due to the tragic fact that entire families were exterminated, leaving no beneficiary. In part, it is also due to the fact that living heirs had no information about possible insurance policies owned by their loved one who perished in the Holocaust. But, no better process could have been developed through litigation to help potential claimants identify appropriate insurance policies.

The available evidence provided by ICHEIC’s experts, who used country-by-country data on premiums paid to determine the total value of all policies issued in

European countries, stands in contrast to assertion in Section 2 (9) of H.R. 4596, cited above. As I noted earlier, the empirically-based Pomeroy-Ferras report revealed that the total life insurance market, particularly in Eastern Europe, was much smaller than many of ICHEIC's critics suggest. These critics have failed to put forth reliable historical evidence for their estimates of the size of Europe's pre-World War II insurance market.

Section 3 (b) of this bill would permit states to pass laws which would impose on insurers the requirement ... "to disclose information regarding any covered policy...." But, as I have described above, ICHEIC companies and cooperating partners have already effectively provided the disclosure demanded in this bill to claimants. Moreover, courts have frowned on states interjecting themselves into what are U.S. Government foreign policy decisions to support "legal peace" in return for billions of dollars in compensation. This is an area which has been in the purview of the U.S. Government, not states. Indeed, it was for this reason that U.S. state Insurance commissioners, who were and remain deeply committed to justice for Holocaust victims, took a leadership role in creating ICHEIC in the first instance as a national and international body to deal with foreign insurance companies, and also cooperated closely with the State Department in doing so.

### **Class Action Counsel Robert Swift on Generali Audits**

The Generali insurance company provides a case in point regarding the thoroughness of recent audits of ICHEIC companies. The class action counsel in the Generali settlement, working under the supervision of a U.S. district court judge, gained unfettered access to Generali's files to determine independently that the claims process in the class action settlement with Generali was being effectively and fairly conducted. Last March, the same class action counsel in the Generali settlement, Robert A. Swift, wrote to House Foreign Affairs Committee Chairman Howard Berman about what he had found in those files. In this letter he noted that he had reviewed Generali's archival information and could attest that he had obtained from Generali whatever documents he had requested. Moreover, he said, he had performed an audit of 300 randomly selected claims processed by Generali and had found no material discrepancies.

Mr. Swift also stated that, while he is an ardent supporter of compensation for Holocaust survivors, he does not believe H.R. 4596 is helpful. Instead, he regards H.R. 4596 as an attempt to "rescind a Class action release which is court approved." If this bill is enacted, Mr. Swift noted, it could subject the United States to a "taking" claim. That is, if enacted, H.R. 4596 would deprive the

insurance companies of the benefits of a class action settlement for which they may be able to sue the United States.

The practical effect of this bill, then, would be to encourage lawyers to file lawsuits that they know could not succeed in court on the merits but might force insurers into another round of endless negotiations. This bill, while placing new and onerous demands on insurers and providing further remuneration for lawyers, is thus doomed to disappoint claimants who think they have valid but unpaid policies hidden away someplace, and that if they could be found would permit them to recover under strict rules of evidence and in face of legal defenses that would almost certainly be asserted.

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

When considering this bill, it is also important to remember that, though ICHEIC ceased operations in March 2007, the European insurance companies that were part of ICHEIC have voluntarily agreed to continue to review any new Holocaust-related insurance claim under the same relaxed evidentiary standards ICHEIC used. Now, even if ICHEIC had previously reviewed and rejected the claim, the insurance companies will reopen a case if a claimant brings new evidence to their attention. Moreover, ever since ICHEIC's closure, the Holocaust Claims Processing Office (HCPO) in New York has been sending claims to European insurance companies. The HCPO does this in the belief that these insurers are handling such claims fairly.

All ICHEIC participating insurance companies, which include Generali, have agreed to this post-ICHEIC process. The German Insurance Association does not even require that an individual identify the name of the insurance company. Instead, it forwards such an unnamed claim to several dozen relevant members for review.

Thus, there is already an active process for handling both new insurance claims and previously rejected claims when new information comes to light. This is being done at no cost to the claimant. It is also being monitored by the State Department's Office of Holocaust Issues. We publicly invite any person who believes that they have a Holocaust-era insurance claim to bring this to our attention. Either directly or through the New York State Holocaust Claims Processing Office, we will forward the claim to the appropriate insurance entity and insist that they thoroughly research the claim and provide us with the results of their research. We will also continue to work with the Holocaust Claims

Processing Office in New York to enlist the support of that office as a victims' advocate.

### **Opposition to Legislation from Major Jewish Organizations**

In May 2008 virtually all major Jewish organizations strongly opposed a bill, H.R. 1746, that was similar to this one. They submitted letters expressing their opposition to a committee hearing chaired by Senator Bill Nelson. This year numerous major Jewish organizations have once again written to Congress to express opposition to this bill. In a June 17, 2010 letter to Chairman Conyers, six major Jewish organizations stated that the proposed legislation “effectively repudiates and reopens previous agreements, which undermines negotiations with Germany and others.” The signatories to this letter also stated: “We do not want to trade away the real and immediate benefits to so many survivors provided by such negotiations for the elusive promise of redress that H.R. 4596 may bring to very few individuals and their lawyers.” Finally, this letter also argues that H.R. 4596, would show “disregard” for our “country’s role with respect to future agreements which are still needed, but also raises questions about the ability of the U.S. to abide by its promises.” I agree wholeheartedly with these sentiments. I could not have expressed them better or more clearly myself.

### **Problems with Continued Litigation**

As these organizations rightly point out, and as I have just argued as well, if this bill is passed, it may end voluntary cooperation on Holocaust-era insurance claims and foster a new round of potentially endless, fruitless, and costly litigation. Such litigation would surely face nearly insurmountable legal obstacles. If a claimant could not succeed when ICHEIC, which processed claims under very relaxed evidentiary standards, was in operation, or now, when ICHEIC insurers use the same relaxed standards, what prospect would such a claimant have in a new lawsuit where he or she would face much stricter rules of evidence and procedure?

### **Bill’s Impact on the Authority of the President**

One final point: The United States has long believed that Holocaust-era insurance claims should be resolved through negotiation and cooperation with relevant parties. This approach has successfully encouraged European governments and companies to provide funds through voluntary settlements in preference to litigation and coercive sanctions. This approach has also allowed the State

Department to act as a facilitator and to assist parties in reaching negotiated settlements of class action lawsuits.

It has therefore long been the policy of several administrations to favor alternate dispute resolution mechanisms in Holocaust claims cases. Past and present administrations, Democratic and Republican alike, have as a result decided that ICHEIC “... should be regarded as the *exclusive forum and remedy* for claims within its purview.”<sup>4</sup> Experience has proven the wisdom of this policy. We have obtained greater benefits more quickly for the greatest number of victims and heirs through alternate dispute resolution mechanisms than they have been able to achieve through litigation. What is more, as the United States Supreme Court explained in its *Garamendi* decision, enforcement of state laws inconsistent with the claims settlement agreements negotiated by the President “... would mean that the President could not wield the full ‘coercive power of the national economy’ as a tool of diplomacy in negotiating a process for settling claims ... .” Such state laws would also “... ‘compromise[s] the very capacity of the President to speak for the Nation with one voice in dealing with other governments’ to resolve claims against European companies arising out of World War II.”<sup>5</sup>

## **CONCLUSION**

For all these reasons, I hope that this subcommittee rejects H.R. 4596. I also urge Holocaust survivors or heirs of Holocaust survivors and other victims of Nazi persecution and their attorneys to submit their claims instead to the State Department Office of Holocaust Issues and to the New York State Holocaust Claims Processing Office. I assure you that we in the State Department will work with this office to ensure that such claims are forwarded to the appropriate insurance companies or parties and we will insist that they thoroughly research these claims and report their results to us. In other words, we will do everything we can to ensure, in a much more effective way than the litigation recommended by H. R. 4596 could do, that claims are properly considered, ICHEIC’s liberal rules are followed, and full payments are made where merited. We will be the advocate of American claimants in this process, and we will certainly keep the Congress fully informed of the progress of these claims.

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<sup>4</sup> (Note: Quotation from an October 27, 2009 filing with the U.S. Court of Appeals for the Second Circuit by Assistant Attorney General Tony West and State Department Legal Adviser Harold Hongju Koh. See *In re Assicurazioni Generali S.P.A.*, Nos. 05-5612-cv, 05-5310-cv.)

<sup>5</sup> (See *American Ins. Assn. V. Garamendi*, U.S. 396 (2003))

Thank you.

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ORGANIZATIONS WRITING TO OPPOSE HR 4596 IN JUNE 2010

Anti-Defamation League, the American Jewish Committee, B'nai B'rith International, the Conference on Jewish Material Claims Against Germany, the World Jewish Congress, and the World Jewish Restitution Organization .