

Nos. 18-1447 & 19-351

IN THE
Supreme Court of the United States

REPUBLIC OF HUNGARY, *et al.*,
Petitioners,

v.

ROSALIE SIMON, *et al.*,
Respondents.

FEDERAL REPUBLIC OF GERMANY, *et al.*,
Petitioners,

v.

ALAN PHILIPP, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

**BRIEF OF *AMICI CURIAE*
HOLOCAUST SURVIVORS FOUNDATION,
USA, INC., RENEE FIRESTONE,
DAVID MERMELSTEIN, DAVID SCHAECTER,
KLAIRE FIRESTONE, THOMAS WEISS, M.D.,
AND NAOMI VILKO, M.D.
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	v
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	5
I. The Circuit Court Correctly Held that Petitioners’ Confiscation of the Respond- ents’ Property Violated International Law Under FSIA Section 1605(a)(3) and that FSIA Jurisdiction Precludes the Discretionary Defense of Comity.....	5
II. Prior Court Decisions Departing from Established Constitutional Principles in Favor of Standardless “Foreign Policy” Considerations Allowed Global Insurers Who Collaborated with the Third Reich to Retain Billions of Dollars in Insurance Proceeds They Owe to Holocaust Victims and Families.....	6
A. States Legislate to Protect Survivors and Heirs and Insurers Respond by Creating ICHEIC – 1998.....	6
B. German Foundation Agreement – 2000.....	7
C. <i>Garamendi</i> Decision and Executive Preemption.	8
D. <i>Justice</i> Ginsburg’s Prescient Dissent.	10
E. <i>Garamendi</i> Dissent’s Deconstruction of Majority Reasoning.	12

TABLE OF CONTENTS—Continued

	Page
F. The U.S. Government Changed its “Foreign Policy” in the Middle of the Litigation, Proving the Dangers of Deciding Cases Based on Foreign Policy and Abandoning Traditional Constitutional Principles	17
G. Expansion of <i>Garamendi</i> Preemption Based on Additional Misrepresentations of U.S. Foreign Policy	20
III. It Would Be Physically Impossible and Emotionally Traumatic To Require Hungarian Holocaust Survivors in the United States To Litigate Their Rights In Hungary	26
A. Naomi Vilko.....	27
B. David Mermelstein.....	27
C. Renee Firestone.....	29
D. Klara Firestore	30
IV. Survivors’ Ability to Personally Participate in Holocaust Restitution Proceedings is a Valuable Element of the Justice System.....	30
CONCLUSION	34

TABLE OF CONTENTS—Continued

APPENDIX	Page
APPENDIX A: Statement of David Mermelstein, United States Senate Judiciary Committee, Hearing on Holocaust Era Insurance Claims (September 17, 2019)	1a
APPENDIX B: Statement of Jack Rubin, United States House of Representatives, Committee on Foreign Affairs Joint Subcommittee Hearing, Subcommittee on Europe, Eurasia, and Emerging Threats, Subcommittee on the Middle East and North Africa The Struggles of Recovering Assets for Holocaust Survivors (September 18, 2014).....	7a
APPENDIX C: Statement of Klara Firestone, United States House of Representatives Committee on Foreign Affairs, The Struggles of Recovering Assets for Holocaust Survivors (September 18, 2014)	37a
APPENDIX D: Statement of Renee Firestone, United States Senate Committee on the Judiciary, Holocaust Era Claims in the 21st Century (June 20, 2012)	56a
APPENDIX E: Statement of David Schaecter, U.S. House of Representatives, Committee on Foreign Affairs, Righting the Enduring Wrongs of the Holocaust: Insurance Accountability and Rail Justice (November 16, 2011).	75a

TABLE OF CONTENTS—Continued

	Page
APPENDIX F: Statement of Herbert Karliner, U.S. House of Representatives, Committee on Foreign Affairs, Righting the Enduring Wrongs of the Holocaust: Insurance Accountability and Rail Justice (November 16, 2011).	82a
APPENDIX G: Testimony of Alex Moskovic, House of Representatives, Committee on Foreign Affairs, Subcommittee on Europe (October 3, 2007)	89a
APPENDIX H: Fairness Hearing Before the Hon. Patricia A. Seitz, 3., United States District Judge, in <i>Rosner v. United States</i> , Case No. 01-1859 in the United States District Court for the Southern District of Florida (September 26, 2005)	94a
APPENDIX I: Statement of Dr. Tom Weiss, United States House of Representatives, Committee on Banking and Financial Services (February 12, 1998)	110a

TABLE OF AUTHORITIES

CASES	Page(s)
<i>American Insurance Association v. Garamendi</i> , 539 U.S. 396 (2003).....	<i>passim</i>
<i>Barclay’s Bank PLC v. Franchise Tax Bd.</i> , 512 U.S. 298 (1994).....	23
<i>Buxbaum v. Assicurazioni Generali</i> , 33 N.Y.S.2d 496 (N.Y. Sup. Ct. 1942)	19
<i>Dames & Moore v. Regan</i> , 453 U.S. 654 (1981).....	9, 13
<i>Gerling Global Reinsurance Corp. v. Kelso</i> , No. 00-16163 (9th Cir. 2000)	17
<i>Hamdan v. Rumsfeld</i> , 126 S. Ct. 2749 (2006).....	16
<i>In re Assicurazioni Generali, S.p.A</i> <i>Insurance Litig.</i> , 228 F.Supp.2d 348 (S.D.N.Y. 2002).....	21
<i>Medellin v. Texas</i> , 128 S.Ct.1346 (2008).....	16
<i>Philipp v. Federal Republic of Germany</i> , 894 F.3d 406 (D.C. Cir. 2018).....	5, 17
<i>Rosner v. United States</i> , 231 F.Supp.2d 1202 (S.D.Fla. 2002) ..	30, 31, 32
<i>Simon v. Republic of Hungary</i> , 812 F.3d 127 (D.C. Cir. 2016).....	5, 17, 26
<i>United States v. Belmont</i> , 301 U.S. 324 (1937).....	9, 13, 14
<i>United States v. Pink</i> , 315 U.S. 203 (1942).....	9, 13, 14

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Weiss v. Assicurazioni Generali, S.p.A</i> , 592 F.3d 113 (2d Cir. 2010)	26
<i>Zschernig v. Miller</i> , 389 U.S. 429 (1968).....	9, 10, 13
 STATUTES	
28 U.S.C. §1605(a)(3).....	2, 5
 INTERNATIONAL INSTRUMENTS	
German Foundation Agreement, 39 Int'l Legal Materials 1298 (2000)	<i>passim</i>
 COURT FILINGS	
Brief for Amicus Curiae the United States of America in Support of Affirmance in <i>Gerling Global Reinsurance Corp. v.</i> <i>Kelso</i> , Case No. 00-16163.....	19
Brief for the United States as Amicus Curiae Supporting Petitioners, <i>American Insurance Association, et al., v. Harry Low, Insurance Commissioner, State of California</i> , Case Nos. 02-722 and 02-733, 2003 WL 721754	20
Transcript of Final Approval Hearing, <i>Rosner v. United States</i> , No. 01-1859-civ (S.D. Fla. Sept. 26, 2005).....	32, 33, 34

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES	Page(s)
David Mermelstein and Samuel J. Dubbin, Responses to Senate Judiciary Questions (October 17, 2019), <i>available at</i> https://www.judiciary.senate.gov/imo/media/doc/Dubbin-Mermelstein%20Responses%20to%20QFRs.pdf	7
Gerald Feldman, <i>Allianz and the German Insurance Business, 1933-1945</i>	7
Holocaust Survivors Foundation USA, Inc., www.hsf-usa.org (last visited Oct. 28, 2020)	1
Letter from Naomi Vilko, M.D. to Samuel J. Dubbin, P.A. (January 24, 2018), <i>available at</i> http://www.hsf-usa.com/wp-content/uploads/2018/02/LTR-re-Hungary-Litigation-Jan-24-2018.pdf ; http://www.hsf-usa.com/class-action-lawsuit-against-hungary-and-hungarian-railway/	27
Video, U.S. Senate Judiciary Committee hearing of September 17, 2019, http://www.hsf-usa.com/judiciary-committee-hearing-unpaid-holocaust-insurance-claims/ ...	7
James Moll, <i>The Last Days</i> , Steven Spielberg, Shoah Foundation (1998).....	29
Letter from State Department Legal Adviser to Department of Justice Appellate Staff Director, August 19, 2009.....	25

TABLE OF AUTHORITIES—Continued

	Page(s)
Sidney Zabludoff, “The International Commission of Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation,” <i>Jewish Political Studies Review</i> (Spring 2005).....	12
Statement of Dr. Tom Weiss, U.S. House of Representatives Committee on Banking and Financial Services (February 12, 1998).....	26
Statement of Klara Firestone, U.S. House of Representatives Committee on Foreign Affairs, <i>The Struggles of Recovering Assets for Holocaust Survivors</i> (Sept. 18, 2014)....	30
Statement of Samuel J. Dubbin, Counsel, Holocaust Survivors Foundation USA, Before the United States Senate Judiciary Committee, Hearing on Holocaust Era Insurance Claims (September 17, 2019), <i>available at</i> https://www.judiciary.senate.gov/imo/media/doc/Dubbin%20Testimony.pdf	7
Stuart E. Eizenstat, <i>Imperfect Justice</i> (2003).....	14
Testimony of David Schaefer, U.S. House Committee on Foreign Affairs, <i>Righting the Enduring Wrongs of the Holocaust: Insurance Accountability and Rail Justice</i> (Nov. 16, 2011)	5

TABLE OF AUTHORITIES—Continued

	Page(s)
Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Financial Services Committee (Feb. 7, 2008).....	11-12
Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Foreign Affairs Committee Subcommittee on Europe (Oct. 3, 2007).....	12
U.S. Department of State – The JUST Act Report, March 2020	25
U.S. Dept. of Justice, Civil Division, Memorandum (Sept. 25, 2008)	22, 23
U.S. Dept. of Justice, Office of the Solicitor General, Memorandum (Sept. 25, 2008).....	23, 24

INTEREST OF *AMICI CURIAE*

The Holocaust Survivors Foundation USA, Inc. (HSF), is a national coalition of Holocaust survivor groups and their elected leaders, which formed in 2000 to call attention to the inadequacy of high-profile “restitution” activities, and the dire circumstances faced by Holocaust survivors in the United States and throughout the world, half of whom live in or near poverty.¹

HSF members, including the *Amici*, participated in various Holocaust restitution processes and litigation, either as direct claimants, or as organization leaders advocating for others who were not as fortunate. They have testified before the U.S. Congress about restitution issues, the need for open Holocaust records and archives, and the widespread suffering that tens of thousands of survivors have endured *after* the Holocaust from the unique physical and emotional harms survivors suffer today, due to the crimes of the German Nazi regime.²

HSF and several of the *Amici* here who are Hungarian survivors and children of Hungarian survivors filed an *amicus curiae* brief in the Circuit Court in *Simon* to describe the unique problems litigation of the case in Hungary would impose on survivors and their families, as well as the value of an

¹ No counsel for either party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amici curiae* made a monetary contribution to the preparation or submission of this brief. Counsel for the parties have consented to the filing of *amicus* briefs through letters filed with the Clerk of the Court.

² See generally www.hsf-usa.org.

American forum where they could participate and follow the proceedings. With the Court's grant of certiorari, *Amici* wish to address that issue here, as well as the Petitioners' efforts to have non-statutory free-form "foreign policy" considerations be imposed to evade U.S. court jurisdiction established by Congress.

SUMMARY OF ARGUMENT

The U.S. Survivors support the Respondents' position in both *Philipp* and *Simon*, and the Court of Appeal's decisions below, that Germany's and Hungary's (and their instrumentalities') theft of the Respondents' (and their ancestors') property as an integral part of the Holocaust *constitute genocide* and a taking of rights in property in violation of international law under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §1605(a)(3). Further, once FSIA jurisdiction is satisfied, the Petitioners are not entitled to avoid the U.S. courts by invoking "prudential" doctrines such as comity.

In addition, the *Amici* include Hungarian survivors and children of Hungarian survivors. Section III addresses the unique obstacles they would face if the District Court's ruling had stood and required "prudential exhaustion" in Hungary.

The U.S. Survivor *Amici* are making this important effort to support the Respondents in both cases because, sadly, U.S. courts at all levels have employed the kinds of standardless, discretionary "doctrines" or methodologies urged here by Petitioners to deny Holocaust survivors and heirs of Holocaust victims the rights, protections, and benefits of existing and well-established judicial principles and doctrines. The results have allowed Holocaust profiteers to escape accountability and deny survivors the opportunity to

seek material and moral restitution available under the law.

The U.S. Survivor *Amici* will focus on one area in which the courts' deviation from existing concrete standards in favor of standardless "foreign policy" considerations allowed corporations that collaborated with the Nazis and profited from the Holocaust to retain billions of dollars in unjust enrichment – insurance. Several of the *Amici* here, and thousands of survivors who are (or were) members of HSF member organizations, attempted to recover unpaid family insurance policies sold by Allianz, Generali, AXA, and other global insurers, but were denied the same rights as every other American to their day in court to vindicate their claims.

The Court's decision in *American Insurance Association v. Garamendi* eschewed traditional rules of constitutional adjudication and held that Holocaust survivors and heirs' insurance rights under state law were subordinate to the "foreign policy" of the executive branch. The Court held state disclosure laws (and by implication survivors' and heirs' common law contract rights) were preempted without any act of Federal lawmaking such as a treaty, statute, or preemptive executive agreement.

The dissent, written by Justice Ruth Bader Ginsburg, and joined by Justices Scalia, Thomas, and Stevens, made it clear that the Court majority had deviated from accepted canons of constitutional adjudication and in the process set the stage for massive unjust enrichment for the insurers, at the expense of Jewish Holocaust victims and victims' families. As *Amici* show here, the *Garamendi* Court's deviation from accepted constitutional law analysis handed a multi-billion dollar windfall to global insurers who collabo-

rated with the Nazis and refused to pay Holocaust victims their policy benefits after the war.

Amici urge this Court to follow Justice Ginsburg's lead and demand that Hungary and Germany (in these cases), and their instrumentalities, not be allowed to conjure an "exception" such as the one *Garamendi* allowed in order to allow insurers to avoid being accountable for their financial crimes and other wrongs.

As David Schaecter, President of HSF, testified before the U.S. House of Representatives Foreign Affairs Committee in 2011:

No one can ever repay us for the murder and destruction of the Holocaust. However, the Nazis and their collaborators also perpetrated a massive theft of the European Jewish people's property and assets. They even used some of the looted assets forcefully taken from our people to finance the war effort, and transport us to the hells of Auschwitz-Birkenau. Yet, companies that profited from the Holocaust such as Allianz, Generali, and the others have never been held accountable. We have been robbed of our family histories and legacies, and the world needs to know these companies are inflated and tainted by Holocaust profits.

It pains me to say that half of the survivors in the United States live below or near the poverty line, and cannot afford the home care, dental care, medicines, eyeglasses, wheelchairs, and even food they need.

It is an outrage that the insurance companies have failed to pay over \$20 billion they

owe to Holocaust victims, while so many survivors are living in misery, dying before their time.

Testimony of David Schaecter, U.S. House Foreign Affairs Committee, November 16, 2011, App. 78a.

ARGUMENT

I. The Circuit Court Correctly Held that Petitioners' Confiscation of the Respondents' Property Violated International Law Under FSIA Section 1605(a)(3) and that FSIA Jurisdiction Precludes the Discretionary Defense of Comity.

The U.S. Survivor *Amici* agree with the Circuit Court's holdings below that the Petitioners' taking of Respondents' property in the perpetration of the Holocaust constitutes a "taking in violation of international law" for purposes of 28 U.S.C. §1605(a)(3) of the Foreign Sovereign Immunities Act ("FSIA"), and that with the establishment of FSIA jurisdiction, the Petitioners are not entitled to escape jurisdiction via the discretionary doctrine of "comity." The Respondents, and several *amici curiae*, have provided the Court with excellent technical analyses supporting the Circuit Court's decisions below.³ *Amici* will focus on the catastrophic impact that have resulted from courts' scrapping traditional legal protections in favor of shifting and unaccountable "foreign policy" considerations.

³ *Simon v. Republic of Hungary*, 812 F.3d 127 (D.C. Cir. 2016); *Philipp v. Federal Republic of Germany*, 894 F.3d 406 (D.C. Cir. 2018).

II. Prior Court Decisions Departing from Established Constitutional Principles in Favor of Standardless “Foreign Policy” Considerations Allowed Global Insurers Who Collaborated with the Third Reich to Retain Billions of Dollars in Insurance Proceeds They Owe to Holocaust Victims and Families.

Before World War II, hundreds of thousands of European Jews purchased life, annuity, dowry, and education policies from insurers such as Allianz and Munich Re of Germany, Assicurazioni Generali, S.p.A. of Italy, AXA of France, and Swiss Re, Swiss Life, and Basler Leben of Switzerland, to name a some of the most prominent. After the Holocaust, as survivors struggled to reconstruct their lives, the insurers demanded original policy documents and death certificates, and used other shameful tactics to cheat survivors and heirs.

A. States Legislate to Protect Survivors and Heirs and Insurers Respond by Creating ICHEIC – 1998.

In the late 1990s, there was growing public information about corporate complicity and profiteering in the Holocaust, with insurance policies as a prominent example. In 1998, New York, Florida, and other states enacted laws to require the companies operating within their jurisdictions to publish the names of policy holders and, if settlements were not reached, to allow beneficiaries and heirs to bring lawsuits (comparable to typical state insurance consumer laws).

To counter these state laws, in 1998, the insurers created the International Commission for Holocaust

Era Insurance Claims, or “ICHEIC,” promising to address the problem on a “non-binding, non-adversarial” basis. All parties agreed regulators retained their right to enforce their state’s laws, and all claimants retained their rights to go to court if they did not accept an ICHEIC settlement. Nevertheless, as Justice Ginsburg detailed in her dissent, ICHEIC was highly dysfunctional and failed to deliver anything close to its promises, including desultory production of policy information after five full years.⁴

B. German Foundation Agreement – 2000.

Meanwhile, to resolve survivors’ lawsuits for slave and forced labor exploited by German manufacturers, the U.S. government and Germany entered into an executive agreement (“German Foundation Agreement”) in the year 2000. At Germany’s insistence, the Agreement was expanded to address claims against German insurers, providing that German insurers would participate in ICHEIC.⁵ However, although Germany asked President Clinton to immunize its

⁴ There is a substantial body of information about ICHEIC’s history, and the insurers’ behavior, in the record of the U.S. Senate Judiciary Committee hearing of September 17, 2019. <http://www.hsf-usa.com/judiciary-committee-hearing-unpaid-holocaust-insurance-claims/>. <https://www.judiciary.senate.gov/imo/media/doc/Dubbin-Mermelstein%20Responses%20to%20QFRs.pdf>; <https://www.judiciary.senate.gov/imo/media/doc/Dubbin%20Testimony.pdf>.

⁵ Allianz, whose Chairman Kurt Schmitt became Hitler’s second minister of economics, insured the construction of Auschwitz and other camps and ghettos, at the same time it was selling life insurance to European Jews. Gerald Feldman, *Allianz and the German Insurance Business, 1933-1945*, at 409-415. By 1933, Allianz barred Jews from its offices. Feldman, at 521 (letter from Gertud Becker).

insurers from litigation in return, the U.S. government refused. Instead the U.S. agreed to file “statements of interest” in U.S. courts stating that dismissal of claims against German insurers on *other* legal grounds was in U.S. foreign policy interests, but that *the Agreement and ICHEIC themselves did not call for dismissal* of survivors’ claims against any German insurer.

The limited nature of the U.S. government undertakings in the Agreement was explicitly stated in Annex B: “The United States will recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine).” It adds: “*The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal.*” [Text of Agreement and Annex] (Emphasis supplied).

C. *Garamendi* Decision and Executive Preemption.

During this time period, the California Insurance commissioner subpoenaed several insurers’ records pursuant to California’s disclosure law. The insurers sued to block the subpoenas, claiming their constitutional rights were being violated. After failing in the district court and the Ninth Circuit, the insurers succeeded in this Court. In *Garamendi*, in a 5-4 decision, the Court held that although the U.S.-Germany Agreement did not directly or indirectly preempt any state law, and even though there is no Federal treaty or statute preempting state disclosure laws, the state law was *preempted* by a “federal executive policy” favoring “non-adversarial resolution” of Holocaust victims’ claims in ICHEIC. The source of

the Executive “policy” was letters and Congressional testimony of State Department officials, as well as the statement of interest provided for in the U.S.-Germany executive agreement.

The Court painted with a very broad brush to burnish the Executive’s authority over foreign policy, and extolled the “unquestioned superiority” of foreign policy over state’s power. (“There is, of course, no question that at some point an exercise of state power that touches on foreign relations must yield to the National Government’s policy,” and “[n]or is there any question that there is executive authority to decide what that policy should be [a]lthough the source of the President’s power to act in foreign affairs does not enjoy an textual detail. . . .”) 539 U.S. at 413.

The Court also found that the President’s authority extended to making executive agreements requiring no Congressional approval to settle claims of U.S. nationals against foreign governments, citing *United States v. Pink*, 315 U.S. 203, 223 (1942); *United States v. Belmont*, 301 U.S. 324, 330-331 (1937), and *Dames & Moore v. Regan*, 453 U.S. 654, 679 (1981). The Court found: “Making executive agreements to settle claims of American nationals against foreign governments is a particularly longstanding practice, the first example being as early as 1799,” and concluded “that the President’s control of foreign relations includes the settlement of claims is indisputable.” 539 U.S. at 415.

The Court then dismissed the major differences between the cases it believed supported broad executive power, e.g. that prior agreements settled claims against foreign governments, not companies, and that the other agreements were expressly preemptive, while the German Agreement was not. The gap was filled by *Zschernig v. Miller*, 389 U.S. 429 (1968),

because the “foreign policy those agreements embody” could preempt state law:

But petitioners and the United States as amicus curiae both have to acknowledge that the agreements include no preemption clause, and so leave their claim of preemption to rest on asserted interference with the foreign policy those agreements embody. Reliance is placed on our decision in Zschernig v. Miller, 389 U.S. 429 (1968).

Id., at 416-417 (Emphasis supplied).

D. Justice Ginsburg’s Prescient Dissent.

Justice Ginsburg’s dissent thoroughly exposed the majority’s departure from established norms and principles of constitutional adjudication, which require an act of Federal lawmaking with preemptive effect as a requirement to preempt state law, beginning with this concise summary:

Although the federal approach differs from California’s, no executive agreement or other formal expression of foreign policy disapproves state disclosure laws like the HVIRA. Absent a clear statement aimed at disclosure requirements by the “one voice” to which courts properly defer in matters of foreign affairs, I would leave intact California’s enactment.

539 U.S. at 430 (Ginsburg, J., dissenting)(Emphasis supplied).

Justice Ginsburg’s dissent began by emphasizing the unprecedented harm inflicted by the insurers against Jewish policy holders:

[T]he Nazi regimentation of inhumanity we characterize as the Holocaust, marked most horrifically by genocide and enslavement, also entailed widespread destruction and confiscation, and theft of property belonging to Jews. For insurance policies issued in Germany and other countries under Nazi control, historical evidence bears out, the combined forces of the German Government and the insurance industry engaged in larcenous takings of gigantic proportions.

Id.

In that regard, Justice Ginsburg explained that the ICHEIC was a private commission the insurers created which had failed survivors in every respect. It was repeatedly “on the verge of collapse;” represented barely one-third of the Holocaust era insurance market; did not expand for many years to include all German insurers as Germany agreed; it paid “only a tiny proportion” of the claims received; paid less in claims (\$38.2 million) after five (5) years than it had spent on expenses (\$40 million); and its “non-binding directive” to publish lists of unpaid Holocaust era policies “had not yielded significant compliance at the time this case reached the Court.” 539 U.S. at 432-433.

In the end, as in the beginning as Justice Ginsburg explained, ICHEIC, unhindered by oversight by any state or federal authority, proved to be a spectacular success for the insurance companies and a disaster for survivors and their families. When it closed in 2007, the total amount paid for the actual settlement of claims (\$250 million) and “humanitarian” payments (\$200 million), represented less than three percent (3%) of the \$17 billion in insurance proceeds owed to

Jewish families in 2007 values. The number of unpaid policies for which claimants accepted a settlement, the result was also less than 3% – ICHEIC – 14,186, out of the 875,000 policies owned by Jewish families in Europe in 1938. *See* Testimony of Sidney J. Zabludoff before the U.S. House of Representatives Financial Services Committee, February 7, 2008, and the U.S. House of Representatives Foreign Affairs Committee Subcommittee on Europe, October 3, 2007. *See also* Sidney Zabludoff, “The International Commission of Holocaust-Era Insurance Claims: Excellent Concept but Inept Implementation,” *Jewish Political Studies Review* 17:1-2 (Spring 2005). According to Mr. Zabludoff, the value of unpaid policies today is \$25 billion.

E. Garamendi Dissent’s Deconstruction of Majority Reasoning.

Justice Ginsburg’s dissent thoroughly addressed the unprecedented, and harmful, elements in the Court’s decision. First, all of the agreements analyzed by the Court had specifically preempted state law or “suspended” litigation in U.S. courts, *id.*, at 437-438, whereas the German agreement not only did not preempt state law, they did not even address the sole subject of the California law – disclosure of policy information:

The Court states that if the executive ‘agreements here had expressly preempted laws like HVIRA, the issue would be straightforward.’ *One can safely demur to that statement, for, as the Court acknowledges, no executive agreement before us expressly preempts the HVIRA. Indeed, no*

agreement so much as mentions the HVIRA's sole concern: public disclosure.

Id., at 438 (citations omitted)(Emphasis supplied).

Justice Ginsburg then zeroed in on the heart of the majority decision – the unprecedented elevation of “foreign policy objectives” to preempt state law: “Despite the absence of express preemption, the Court holds that the HVIRA interferes with foreign policy objectives implicit in the executive agreements,” relying on *Zschernig*:

We have not relied on *Zschernig* since it was decided, and I would not resurrect that decision here. The notion of “dormant foreign affairs preemption” with which *Zschernig* is associated resonates most audibly when a state action “reflect[s] a state policy critical of foreign governments and involve[s] ‘sitting in judgment’ on them.” The HVIRA entails no such state action or policy. It takes no position on any contemporary foreign government and requires no assessment of any existing foreign regime. It is directed solely at private insurers doing business in California, and it requires them solely to disclose information in their or their affiliates’ possession or control. I would not extend *Zschernig* into this dissimilar domain.

Id. at 439-440 (citations omitted).

Justice Ginsburg also observed that in implying that not only disclosure laws but actual claims by Holocaust survivors and heirs would be eliminated by the “foreign policy” embodied in the agreements, the Court was giving the insurance industry more than they and Germany had bargained for:

“Neither would I stretch *Belmont, Pink, or Dames & Moore* to support implied preemption by executive agreement. In each of those cases, the Court gave effect to the express terms of an executive agreement. . . . Here, however, none of the executive agreements extinguish any underlying claim for relief. . . .

Id. at 440-441. She added:

The United States has agreed to file precatory statements advising courts that dismissing Holocaust-era claims accords with American foreign policy, *but the German Foundation Agreement confirms that such statements have no legally binding effect*. It remains uncertain, therefore, whether even litigation on Holocaust insurance claims must be abated in deference to the German Foundation Agreement or the parallel agreements with Austria and France. Indeed, ambiguity on the point seems to have been the studied aim of the American negotiating team. See Eizenstat, *Imperfect Justice*, at 272-273 (describing the “double negative” that satisfied German negotiators and preserved the flexibility sought by Justice Department litigators).

Id. at 441.

Justice Ginsburg added:

“If it is uncertain whether insurance *litigation* may continue given the executive agreements on which the Court relies, it should be abundantly clear that those agreements leave the *disclosure* laws like the HVIRA untouched. The contrast with the

Litvinov Assignment at issue in *Belmont* and *Pink* is marked. That agreement spoke directly to claim assignment in no uncertain terms. *Belmont* and *Pink* confirmed that state law could not invalidate the very assignments accomplished by the agreement.”

Id. at 441 (Emphasis in original). She concluded:

Here, the Court invalidates a state disclosure law on grounds of conflict with foreign policy “embod[ied]” in certain executive agreements, *ante*, at 2388, although those agreements do not refer to state disclosure laws specifically, or even to information disclosure generally. It therefore is surely an exaggeration to assert that the “HVIRA threatens to frustrate the operation of the particular mechanism the President has chosen” to resolve Holocaust-era claims. *Ante*, at 2392. If that were so, one might expect to find some reference to laws like the HVIRA in the later-in-time executive agreements. There is none.

Id. at 441.

The dissent also criticized the majority’s reliance on “policy statements” of lower level Executive officials such as a letter from a Treasury Department official, or congressional testimony stating that a company’s participation in ICHEIC should give them “safe haven from sanctions, subpoenas, and hearings relative to the Holocaust period:”

We have never premised foreign affairs pre-emption on statements of that order . . . We should not do so here lest we place the considerable power of the foreign affairs

preemption in the hands of individual sub-Cabinet members of the Executive Branch. . . . [N]o authoritative text accords such officials the power to invalidate state law simply by conveying the Executive's views on matters of federal policy. The displacement of state law by preemption properly requires a considerably more formal and binding federal instrument.

Id. at 442.⁶

The dissent also rejected the Court's judicial activism in granting broad, sweeping power to lower level executive branch officials to strike down a state law when neither the President nor Congress had acted with the clarity or force of Federal law to overrule the States' authority:

Sustaining the [California law] would not compromise the President's ability to speak with one voice for the Nation. . . . *To the contrary, by declining to invalidate the [California law] in this case, we would reserve foreign affairs preemption for circumstances where the President, acting under statutory or constitutional authority, has spoken clearly to the issue at hand. . . . "[T]he Framers did not make the judiciary the overseer of our government."* And judges should not be the expositors of the Nation's foreign policy, which is the role they play by acting when the President himself has not taken a clear stand.

⁶ Subsequent preemption decisions of this Court rejected the executive branch's ability to preempt state law without express constitutional or statutory authorization. *Medellin v. Texas*, 128 S.Ct. 1346 (2008); *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006).

As I see it, courts step out of their proper role when they rely on no legislative or even executive text, but only an inference and implication, to preempt state laws on foreign affairs grounds.

Id. at 442-43 (Emphasis supplied).

The concerns raised by Justice Ginsburg's dissent in *Garamendi* sound a clear warning for the *Simon* and *Philipp* cases. Petitioners ask the Court to abandon the long-established principles of statutory construction applied by the Court of Appeals below, and allow standardless Executive branch "foreign policy" to dictate the rights of Holocaust survivors and heirs of Holocaust victims. In *Garamendi*, this approach inflicted significant pain, insult, and financial injury to Holocaust survivors and their families, and handed a multi-billion windfall to global insurers who collaborated with the Nazis and profited from the Holocaust.

F. The U.S. Government Changed its "Foreign Policy" in the Middle of the Litigation, Proving the Dangers of Deciding Cases Based on Foreign Policy and Abandoning Traditional Constitutional Principles.

The dangers of the Court's approach in *Garamendi* were lurking within the case file already, because the position the Department of Justice presented to the Court in 2002-2003 was the opposite of the position it advanced in 2000, leading to the Court's split decision in favor of the insurers.

In the year 2000, its brief in the Ninth Circuit in *Gerling v. Kelso*, the case that came to this Court as

Garamendi, the Clinton Administration, which had negotiated the German Foundation Agreement, made it clear that *neither* the U.S.-German agreement, *nor* the policy underlying any agreement, *nor* any company's participation in ICHEIC, independently justified dismissal of survivors' claims for payment of unpaid insurance policies in lawsuits in U.S. courts, *or* preempted the California statute. The United States Government position in 2000 was clear:

- the United States “has not undertaken a duty to achieve legal peace for German companies against state litigation and regulatory action.”(p. 8).

- the Foundation Agreement itself does not preclude individuals from filing suit on their insurance policies in court” (p.8).

- the Agreement does not “mandate that individual policyholders or beneficiaries bring their claims in ICHEIC.” (p. 8-9).

- the American Insurance Association (AIA) "is mistaken in asserting that the Foundation Agreement is in 'direct conflict' with California law, if by this AIA means to suggest that the Agreement by its terms preempts the California statute.” (p.9).

- the District Court “overestimated the Agreement's ultimate legal effect when it predicted that the Agreement would make the Foundation an ‘exclusive remedy’ as a matter of U.S. law.” (p. 9, note 4).⁷

⁷ The term “exclusive remedy” never meant what the US government argued. According to ICHEIC minutes, ICHEIC was always intended to be “exclusive” only for claimants who *accepted*

See Brief for Amicus Curiae the United States of America in Support of Affirmance in *Gerling Global Reinsurance Corp. v. Kelso*, Case No. 00-16163, etc. in the United States Court of Appeals for the Ninth Circuit, at 7-9. (“DOJ Ninth Circuit Brief”).

However, in 2002-2003, when the case went to the Supreme Court, the Department of Justice reversed the Government’s position from two years earlier on several crucial points:

The State Department has repeatedly stated that ICHEIC “should be recognized as the exclusive remedy for all insurance claims that date to the Nazi era and has “encourage[ed] all insurance companies that wrote policies during the Nazi era to join the ICHEIC.

....

The German government agreed to supervise the activities of the foundation and to assure that the foundation publicizes its existence. . . It also agreed that all claims by or on behalf of Holocaust victims against German insurance companies would be processed by those companies and the German Insurance Association based on ICHEIC procedures and

payment for their policy; ICHEIC mere existence never precluded other remedies for claims. ICHEIC Minutes, March 2-3, 1999.

The government also argued, incorrectly, that these policies were entirely overseas transactions, ignoring that many policies expressly called for payment anywhere in the world the insured made their demand. In Dr. Weiss’s father’s policy, Generali promised to pay “either at the Generali office in Prague, or the place the insured requested the proceeds to be sent.” See *Buxbaum v. Assicurazioni Generali*, 33 N.Y.S.2d 496, 498 (N.Y. Sup. Ct. 1942).

additional procedures that may be agreed to among ICHEIC, the foundation, and the German Insurance Association.

*The United States, in turn, agreed to inform its courts that “it would be in [its] foreign policy interests *** for the Foundation to be the exclusive remedy and forum for resolving [Holocaust era]claims asserted against German companies.*

Brief for the United States as Amicus Curiae Supporting Petitioners, *American Insurance Association, et al., v. John Garamendi*, Case Nos. 02-722 and 02-733 in the United States Supreme Court, at 3-4; 2003 WL 721754, at *2-3 (Emphasis added).

The 2002-2003 DOJ directly contradicted the 2000 DOJ positions that the Agreement did not “make the Foundation an “exclusive remedy” as a matter of U.S. law, and that the insurers were “mistaken” to assert that the Foundation Agreement was in conflict with the California law, “if by this AIA means to suggest that the Agreement by its terms preempts the California statute.”

Therefore, in addition to the Court’s embrace of an unprecedented preemption rule based solely in executive “foreign policy,” the “foreign policy” presented to the Court had inexplicably and without disclosure changed with the change of administrations. This is the reason Justice Ginsburg was so right to condemn the standardless “foreign policy” preemption holding of the Court in *Garamendi*. And that is another reason (of many) this Court should reject the Petitioners’ positions.

G. Expansion of *Garamendi* Preemption Based on Additional Misrepresentations of U.S. Foreign Policy.

After the German Foundation Agreement was reached in 2000, the cases against German companies were dismissed “without prejudice,” meaning the plaintiffs could go back to court if they were dissatisfied with the way ICHEIC handled the claims. The class action and individual lawsuits against Generali and other insurers continued before Judge Michael Mukasey.

As Justice Ginsburg observed, Judge Mukasey had previously denied Generali’s motion to dismiss the lawsuits on the ground that ICHEIC was an unsatisfactory alternative remedy, citing ICHEIC’s multitude of problems, even calling ICHEIC “the company store” because it was paid for and controlled by the insurance companies. *In re Assicurazioni Generali, S.p.A Insurance Litig.*, 228 F.Supp.2d 348, 357 (S.D.N.Y. 2002). He also cited the lack of any U.S. “foreign policy” interest involving the Generali due to the absence of any executive agreement with Italy, Generali’s home country. *Id.*, at 358.

However, after the *Garamendi* decision in 2003, Judge Mukasey reversed himself and dismissed the Generali cases in 2004 *solely because Generali participated in ICHEIC*, under the same “federal policy” favoring non-adversarial resolution of survivors’ insurance claims and ICHEIC as the “exclusive forum” as stated in *Garamendi*.

In the *Generali* appeal in the Second Circuit, the record was clear, and Generali even admitted that between 1999-2001, the State and Justice Departments had rejected Generali’s request for a statement

of interest on the basis that the United States had no foreign policy interest relating to Generali – due to the lack of any executive agreement with Italy. After oral argument, the Court of Appeals, *sua sponte*, wrote a letter to Secretary of State Condoleezza Rice asking for the government’s position – in 2008.

Documents obtained via the Freedom of Information Act (FOIA) show that the State Department was determined in 2008 and 2009 to support Generali despite the lack of any agreement, and despite the Clinton Administration’s previous position that there was no foreign policy conflict, and despite misgivings about the validity of *Garamendi* in the first place, and further misgivings about extending *Garamendi* to the Generali case where there was not even a relevant executive agreement, and where the insurers were asking for preemption of common law contract claims.

The Solicitor General Office’s memorandum of September 25, 2008, recommended that DOJ tell the Second Circuit that there is a foreign policy conflict, but not to address whether that policy actually has the effect of preempting plaintiffs’ claims. The memo shows that DOJ at the time understood Justice Ginsburg’s dissent to be correct, and expressed concerns about the legal basis to further expand “executive preemption” based on “foreign policy.”

On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiffs’ common law claims. To begin with, the district court holds that the Executive Branch’s foreign policy can preempt state law claims even when that policy is not embodied in some formal action that carries the force of federal law.

As a general matter, “Executive Branch actions” that “express federal policy but lack the force of law” do not preempt state law. Barclay’s Bank PLC v. Franchise Tax Bd., 512 U.S. 298, 329-330 (1994)(dormant Commerce Clause). While Garamendi may reflect an exception to that general rule, that principle is still subject to some doubt. Moreover, Garamendi involved preemption of State laws that imposed peculiar burdens with respect to Holocaust claims, and in the Executive Agreements, the United States had expressly undertaken to work to eliminate such state burdens. In contrast, the district court here held preempted [sic] the claims of individuals to enforce their common law contract rights. Yet, the Executive Agreements expressly stated that the United States’ statements of interest would “not suggest that its foreign policy interests concerning the Foundation in themselves provide an independent basis for dismissal” of individual claims. 39 I.L.M. at 1304.

September 25, 2008 Memorandum of the Solicitor General’s Office, at 10-11. (Emphasis supplied). <https://www.scribd.com/document/482019799/Justice-Dept-Memorandum-for-the-Solicitor-General>.

Similarly, the Civil Division’s September 25, 2008 Memo, at pages 12-13, states:

Arguing for federal preemption in this case would require an extension of the holding in Garamendi to a setting in which there is no executive agreement

to support the assertedly preemptive foreign policy, but merely public statements of State Department officials. Furthermore, we would be required to argue that federal foreign policy preempts not only state laws specifically targeted at the problem of post-war reparations for insurance claims – a context in which the Supreme Court viewed the state’s interests as minimal, see 539 U.S. at 425-426 – but also common law claims seeking to enforce traditional tort duties. . . . [I]t would nevertheless mark a further step beyond Garamendi itself.

....

Even in cases in which the United States has filed a Statement of Interest pursuant to a Foundation Agreement, there is considerable tension between the position that foreign policy requires dismissal of an action and the express recognition in the Foundation Agreement that the agreement does not itself provide an independent basis for dismissal. . . .

September 25, 2008 Memorandum of the Civil Division, at 12-13 (Emphases supplied). <https://www.scribd.com/document/482019799/Justice-Dept-Memorandum-for-the-Solicitor-General>.

Nevertheless, when DOJ responded in October 2008, its brief misrepresented prior U.S. agreements and policy, stating: “it would be in the foreign policy interests of the United States that ICHEIC be

regarded as the exclusive forum for resolution of insurance claims against companies like Generali that participated in the ICHEIC process;” that “it is contrary to settled United States foreign policy for plaintiffs’ claims to be adjudicated in the courts of the United States;” and “[a]ccordingly, it would be in the foreign policy interests of the United States that such claims not be pursued through the courts.”⁸

After the November 2008 election, the Second Circuit asked the new administration for its position on whether survivors’ litigation against Generali conflicted with U.S. foreign policy. Records show the State Department Legal Adviser understood that the Court’s decision in the appeal would hinge on what DOJ said about whether the cases conflicted with U.S. foreign policy, and warned in a letter to DOJ, that the 2008 DOJ letter brief was *too weak* in its justification of the U.S. foreign policy interests to persuade the Court. He urged DOJ to “*more persuasively explain why the absence of an executive agreement with Italy does not affect the relative strength of U.S. foreign policy interests in this case.*” casting about for new reasons DOJ might assert to justify support for Generali, and even suggesting others that were fictional. August 19, 2009 letter from State Department Legal Adviser Harold Hongju Koh to Robert Kopp, Director Appellate Staff, U.S. Department of Justice. <https://www.scribd.com/docum>

⁸ Another bogus “foreign policy” argument by DOJ in 2008 was that “Poland is on the verge of approving new compensation legislation.” DOJ 2008 Brief, at 8-9. *Twelve years later*, “Poland. . . has not yet enacted comprehensive legislation on national property restitution or compensation covering Holocaust confiscations.” U.S. Department of State – The JUST Act Report, March 2020, at 6.

ent/482019799/Justice-Dept-Memorandum-for-the-Solicitor-General.

Unfortunately, the Obama Administration repeated the Bush Administration's argument, and wrote: "[i]t has been and continues to be the foreign policy of the United States that the International Commission on Holocaust Era Insurance Claims (ICHEIC) should be regarded as the *exclusive forum and remedy* for claims within its purview." The italics were added in 2009 to the DOJ language from 2008.

Based on these two DOJ submissions, on January 15, 2010, the Second Circuit Court of Appeals held that Holocaust survivors and heirs could not take *Generali* to court despite documented policies and clear defaults, solely on the ground that the Department of Justice represented that such lawsuits conflicted with United States foreign policy. *Weiss v. Assicurazioni Generali, S.p.A.*, 592 F.3d 113 (2d Cir. 2010).⁹

III. It Would Be Physically Impossible and Emotionally Traumatic To Require Hungarian Holocaust Survivors in the United States To Litigate Their Rights In Hungary.

A substantial number of HSF leaders and members are Hungarian Holocaust survivors and would be members of the class in the *Simon* case. They contend the Circuit Court correctly reversed the district court's ruling that would have forced Hungarian Holocaust

⁹ *Amicus* Dr. Thomas Weiss was the plaintiff in that case. His testimony to the House Financial Services Committee in February 1998 is Appendix 110a. DOJ produced the FOIA memos two months after the Second Circuit denied rehearing.

survivors, now in their late 80s and 90s, to litigate in Hungary.

A. Naomi Vilko.

Naomi Vilko is a psychiatrist who has worked with survivors in New York and New Jersey for over 40 years, and she is also the daughter of two Holocaust survivors. In 2018, she described the experiences of her father, William Vilko, and her mother, Olga Vilko, Hungarian Jews, who were subjected to the criminal behavior of Hungarian government officials and the Hungarian railroad on their way to Auschwitz-Birkenau and several other camps. In 2018, before her mother passed away at the age of 99, Dr. Vilko opined that her mother and other survivors from Hungary, who are also mostly in their 90s, would not be able to travel to Hungary for a trial, both because of the physical impossibility, and the emotional toll such a return to the scene of their torture would entail.¹⁰

B. David Mermelstein.

David Mermelstein was born in Kivjazz, Czechoslovakia in 1928, in the Carpathian Mountain region that was annexed by Hungary in 1939. After his town fell under Hungarian control, they took over half his family's house and his father's business. Hungarian gendarmes came frequently and confiscated valuable personal possessions, such as fine china, fancy linen table cloths, and chandeliers. In 1944, Mr. Mermelstein's entire family was forced to

¹⁰ Dr. Vilko's statement is posted on the website of the Holocaust Survivors Foundation USA: <http://www.hsf-usa.com/class-action-lawsuit-against-hungary-and-hungarian-railway/>; <http://www.hsf-usa.com/wp-content/uploads/2018/02/LTR-re-Hungary-Litigation-Jan-24-2018.pdf>.

leave their home and were taken to the Beregszász Ghetto and then to Auschwitz-Birkenau. He survived grueling work details and starvation there, and was then taken in an open coal train car in the freezing winter to Ebensee and Mathausen. Mr. Mermelstein miraculously survived, but his mother, father, brothers, sister, and grandparents were all murdered.

After the war, Mr. Mermelstein returned home to discover everything gone and no one alive. The local townspeople and the Soviet government did not welcome Jewish people. He managed to escape and spent nearly two “miserable” years in a displaced persons camp in Germany before being able to immigrate to the U.S. in 1947.

He married another survivor, Irene Markovic, in 1951, and they moved to Miami that year. Mr. Mermelstein helped organize a number of local survivor groups in South Florida, especially because in the early years, survivors only had each other. Only fellow survivors understood what they had gone through. The groups grew in size in the 1980s and 1990s, but are much smaller now because so many survivors have passed away. Mr. Mermelstein was a founding member of HSF and serves as its Vice President. His testimony before the U.S. Senate Judiciary Committee on September 17, 2019, is found at App. 1a.

At the age of 91, it would be extremely physically difficult for Mr. Mermelstein or any survivor to travel to Hungary. It would also be terrible for himself and fellow Holocaust survivors to be forced to depend the country whose citizens willingly collaborated in the murder of their families, the destruction of their way of life, and the theft of their valuable personal and religious property, to be the place where the survivors’

lawsuit against Hungary and the Hungarian Railroad are heard.

C. Renee Firestone.

Renee Firestone was born in Uzhorod, Czechoslovakia, the capital of the region. It was annexed by Hungary in 1938. In April of 1944, Renee's family was forced out of their house by Hungarian gendarmes working with the Nazi SS. She was imprisoned in Auschwitz/Birkenau for 13 months. Her entire family was murdered, except for her father Morris, who died of tuberculosis shortly after liberation, and her brother Frank, who had escaped the Hungarian forced labor camp and became a partisan (a freedom fighter). After liberation, Renee returned to her family's home in Uzhorod and found that everything was gone – other people were now living in her family villa, her home – and her father's business no longer existed.

After the war, Renee was fortunate to continue her education in Prague, where she met her husband Bernard (also a survivor). They moved to Los Angeles where she became a successful fashion designer. In the last several decades, Renee has documented her experiences in Hungary and in the camps in several books, interviews, and multiple documentary films, including the movie *The Last Days*, produced by Steven Spielberg. Among many organizational affiliations, Renee is a member of the HSF Executive Committee. Ms. Firestone has also testified in Congress about the unfairness of many of the so-called post-war "restitution" activities, most of which have left survivors without material restitution, and without even the dignity of a fair opportunity to make claims for looted assets such as unpaid insurance policies. App. 56a.

Ms. Firestone has also traveled to Hungary since the war, where Jewish community leaders felt unsafe because of its historical and current antisemitism. She believes litigation in Hungary today would be “unthinkable.”

D. Klara Firestone.

Klara Firestone was born in Prague, Czechoslovakia, immediately following the end of World War II, the daughter of Renee Firestone and Bernard Firestone, who was in Hungarian forced labor and then Mauthausen. She is the founder and president of Second Generation of Los Angeles. In September 2014, Klara Firestone testified before the U.S. House of Representatives Committee on Foreign Affairs on the issues of survivors’ needs, the needs of the second generation, and the unfairness of what has been known as the restitution process. App. 37a.

According to Ms. Firestone, especially at their advanced age, it would be re-traumatizing and completely unfair to require Hungarian survivors to press their claims against Hungary and the railroad in the courts of Hungary, and would be similarly traumatizing for the second generation to litigate in Hungary on behalf of their parents or for themselves.

IV. Survivors’ Ability to Personally Participate in Holocaust Restitution Proceedings is a Valuable Element of the Justice System.

The U.S. Survivor *Amici* also believe that litigation of this case in Washington, D.C. would provide the additional benefit of allowing the survivor community, whose rights are at stake and whose horrific experiences in the Holocaust are at the heart of the case, to

participate, witness the proceedings, and see likely media reports about the case, at a close distance.

In *Rosner v. United States*, 231 F.Supp.2d 1202 (S.D.Fla. 2002), Hungarian survivors brought an action under the Little Tucker Act against the United States Government for misappropriating the property that was looted by the Hungarians and the SS from Hungarian Jews, and placed on the “Hungarian Gold Train.” When WWII ended, the train was located in Austria and handed by the Hungarians to the U.S. Army. Recently declassified records showed the U.S. Government misappropriated and mishandled much of the property in violation of U.S. law.

The case settled for \$25.5 million in 2005 after nearly five years of litigation. Over \$22 million was earmarked for emergency medical care and basic social services for indigent Hungarian survivors in the U.S., Canada, Hungary, Israel, Australia, South America, and Europe. In addition, \$500,000 was allocated to collect and archive records about the Holocaust in Hungary and the Gold Train events, and to ensure the records would be made publicly available.

Throughout the *Rosner* case, HSF served as a national clearinghouse to provide information to Hungarian survivors throughout the United States and provide feedback to class counsel. The survivors’ direct participation and attendance at hearings enabled them to understand the difficulty and complexity of federal human rights litigation against a strong adversary like the U.S. government, and reach closure based on their first-hand observations of how all of the elements of the system worked together, or conflicted, but eventually got resolved in a hard-fought settlement.

Alex Moskovic, a Hungarian survivor, who was an *amicus* in the Circuit Court, and a member of the HSF executive committee, attended numerous hearings and participated in conferences with the attorneys and the Justice Department. At the final approval hearing, he stated:

I am proud of the effort the survivors have put into this case, and it has been an honor to observe this Court preside over what I know has been a difficult case.

It has been difficult for us too. All this restitution business has caused survivors a lot of pain because it required us to relive our past; something that no one should ever have to experience.

But we did press several cases because justice requires accountability to the people who were harmed and to history. That is why we support the settlement. We support it mostly because we believe the results, as it has been agreed to so far, will be honest to history and fair to the survivors.

Transcript of Final Approval Hearing, September 26, 2005, at 62; App. 100a. Sadly, Mr. Moskovic passed away in September 2019.

David Mermelstein, who was a named plaintiff in *Rosner*, spoke in favor of the settlement at the final approval hearing:

Good afternoon, Your Honor. We fought this case hard on behalf of all the Hungarian survivors and their families. We fought for honor and justice. We fought for accountability. We were

always informed about what was happening in the case, and had a lot of input with our lawyers.

Our lawyers were advocates for the living and for the memory of the dead. We saw the Justice Department fight hard, but in the end when it came time to do the right thing they were very honorable.

Id., at 65-66, App. 103a.

Finally, Hungarian survivor Jack Rubin, who was also a member of the Holocaust Survivors Foundation USA executive committee, participated actively from the outset of the case. At the final approval hearing, he spoke in favor of the settlement:

I was here in March, Your Honor. As you remember, I gave a very short bitter speech as a 15-year-old as I was collecting all the valuables when I was in the ghetto.

I have attended several of the hearings. Thank you for letting me speak again this morning.

This case has been remarkable in several ways. First, Mr. Rosner and our families had the opportunity to seek justice against the United States government in this court of law under the government's very own laws, and to receive a fair hearing in that process.

I have watched Your Honor preside over these hearings and although we didn't always agree with you, we know you have been just and fair and tried to apply the law the best way you can.

Second, the survivors have had the opportunity to participate directly in this litigation.

We spoke frequently with the lawyers as the case had its ups and downs. We sat in this courtroom and witnessed justice at work. When it came time to negotiate, we had real input and it was part of the settlement.

Third: After reaching a settlement we had the chance to speak directly to this Court about it, what it meant to us. And we had a chance to shake the hands of the government lawyers and thank the United States for recuing civilization in World War II, and providing many refugees such as ourselves with a home and a chance for a new life;

Finally, to thank the government for finally being accountable for the Gold Train.

Id., at 57-58, App. 96a. Sadly, Mr. Rubin passed away in July of 2016. A fighter to the end for the rights and interests of his fellow survivors.

CONCLUSION

For these reasons, *Amici* respectfully urge this Court to affirm the decisions below.

Respectfully submitted,

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October 29, 2020

APPENDIX

APPENDIX A

**STATEMENT OF DAVID MERMELSTEIN
UNITED STATES SENATE JUDICIARY
COMMITTEE HEARING ON HOLOCAUST ERA
INSURANCE CLAIMS SEPTEMBER 17, 2019**

My name is David Mermelstein. I am the President of the Holocaust Survivors of Miami-Dade, and Vice President of the Holocaust Survivors Foundation USA. I was born in Kivjazz Czechoslovakia in 1928. My father Martin Mermelstein was a self-employed businessman who owned a business selling beer, wine, liquor, and cigarettes. In 1944, we were all deported to the Beregsatz Ghetto and then to Auschwitz. My parents, my four brothers, my sister, and grandparents were all murdered in Auschwitz. I am the only member of my family to survive.

Unfortunately I do not have the time in this hearing to talk about everything we went through. Although I realize the purpose of this hearing is to discuss the problems of insurance policies that our parents and grandparents bought but the companies refused to honor, it is impossible to provide the context of this particular injustice without describing the terrible, terrible crimes that were perpetrated against the Jewish people, including of course my family, in the Holocaust. What we went through, I could talk about for hours, which is exactly what I do with school children and community groups all the time.

How I survived the Nazis, and how I survived the aftermath of World War II, the Russians, the DP Camps, and the rest, is described in my deposition in the Hungarian Gold Train case, which I am attaching to this statement so that the Senators on this Committee can understand more about my life, the

Holocaust, and the unprecedented crimes inflicted on us by the German Nazi regime.

As I explain in that deposition, I was very lucky to survive the Nazis, lucky to escape the Russians after the war, and lucky, after two years in a Displaced Persons (DP) Camp, to be allowed to immigrate in 1948 to the United States. I courted my wife Irene, another survivor, for a while in New York and after we got married, we went to Miami for our honeymoon and decided to stay. So, I was lucky again to build a business and raise a wonderful family in Miami. However, we can never forget what happened to our families in the Holocaust and we never will.

Now, let's talk about the insurance. I remember there was a plaque on our in house that said there was insurance, by Generali. My father was a careful businessman, so naturally he would have had insurance to protect his business and his family. Many survivors also remember those plaques, or an agent coming around every two weeks to collect premiums, but most of us were too young to know the name of the insurance company. Of course we have no documents for obvious reasons.

In 1998, we worked closely with our Florida Insurance Commissioner, Bill Nelson, for a State law to make the companies publish all the names and allow survivors to go to court if they wouldn't settle. **That** is when the companies came up with the idea of the ICHEIC commission – because of pressure from the states. Still, everyone told us ICHEIC was voluntary and not binding unless you agreed to a settlement.

So, with all those promises, I applied to ICHEIC. They said they could not find my father's name. They sent a check for \$1000 as a "humanitarian payment."

ICHEIC sent out 34,000 of those \$1000 checks. Survivors deeply resent the idea of a “humanitarian payment” instead of the funds we know our parents set aside in case of a disaster. The whole thing was an insult to survivors, and it still is.

Yet the Courts have said that because of ICHEIC, and because of Bush and Obama Administration policies, Holocaust survivors cannot go to an American court to collect our family policies. This is a disgrace and only you can help us have our rights and dignity restored.

Survivors are in shock that the U.S. government took away our rights to go to American courts to make our claims. Remember, these are contracts – not charity. How would those State Department and Justice Department people, and those Judges, feel, if they lost everything, and then their own government said they couldn’t even go to court like every other American citizen to collect on an insurance policy their father paid for? They wouldn’t stand for it, and we won’t either.

We all endured the ultimate hell. We lost everything – our rights, our property, our loved ones. How is it possible that today in the year 2019 we are second class citizens and can’t even go to an American court like everyone else? How would you feel if you lost everything? How would you feel if your rights were stripped away? How would you feel if your own government said you couldn’t even have the same rights as every other American?

Even worse, the government lied when it went to court against us. I am the one who asked for the Justice Department’s records under the Freedom of Information Act. They admitted the government lied

about what Generali was promised. When a Congressman and our lawyer Sam Dubbin used those memos in a Congressional hearing, the Justice Department told me to give the records back. They still wanted to hide the truth. Needless to say, I refused.

One of my closest friends in Miami is Herbie Karliner, a survivor of Kristallnacht and the S.S. St. Louis. After the United States forced that ship with several hundred German Jews to return to Europe in 1939, Herbie's mother, father, and sister were sent to Auschwitz and murdered there. He and his brother survived in hiding. He has papers proving his father had a large life insurance policy sold to him by Allianz. But his claim was denied by ICHEIC and Allianz. They said Allianz already paid Herbie's father. Years later, Herbie got papers from the German Embassy where Allianz said his father cashed in his policy on November 9, 1938. That was not possible, because November 9, 1938 was Kristallnacht, when his father's store was burned down, and his father was taken by truck to Buchenwald. Allianz's and ICHEIC's excuse is an obvious fraud. But Herbie, who is not only a survivor but a U.S. veteran who served in Korea, cannot to a U.S. Court to sue Allianz. This is just wrong.

Sadly, you might hear from some Jewish groups that they are against Congress passing a law. But they are NOT, I repeat, NOT, Holocaust survivor groups and do not represent survivors in any way. Survivors are appalled at the arrogance of these organizations, such as the American Jewish Committee, the Claims Conference, the Anti Defamation League, B'nai B'rith, and the World Jewish Congress. They have no right to speak for us, or to act for us, and they never did. They love to speak "ABOUT US, but it is always WITHOUT

US.” They should mind their own business. Please read the letters the survivor leaders sent these groups, which is part of my written submission.

I have more bad news. Half of all Holocaust survivors, including in the United States, live in poverty and cannot afford the basic necessities of life – food, rent, utilities, medicines, dental care, hearing aids, eyeglasses, transportation to the doctor, and long term care. The State Department, and non-survivor groups, all try to justify stripping away our rights in order to convince Germany to provide funds for survivors in need. This is a false choice, and the policy has been a complete failure.

First of all, what is the connection between insurance policies owed by private companies and Germany’s moral obligation to provide for survivors’ care? There is no connection at all.

Second, we have it in writing from the German Ambassador that the German government would **never** threaten to withhold funds for survivors’ needs because of a law restoring survivors’ insurance rights. That is in our papers.

Third, the organizations who are supposed to be negotiating for these funds have failed to deliver anything close to full funding for survivors’ needs. This was proven in two Congressional hearings in 2014, which were convened at the request of the Holocaust Survivors Foundation USA. This was also found in Senate and House Resolutions in 2016 calling on today’s German Germany to fully fund survivors’ needs. Yet, the insurance companies are sitting on over \$25 billion in profits they pocketed from policies they sold to our families before the Holocaust.

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Survivors believe the companies should pay every policy traceable to living heirs in today's dollars, and should disgorge the rest of their Holocaust profits from policies owned by victims whose entire families were destroyed, for the benefit of survivors in need today.

Without action by Congress, the insurance companies will be the heirs of the victims of the Holocaust. This is unacceptable. There should be no legal peace for the companies until the Holocaust survivors have moral peace. We are very far away from that today, Mr. Chairman.

I am 90 years old, about to turn 91. For the past 30 years, I have visited hundreds of classrooms and community groups in Florida speaking to students and adults about my experiences in the Holocaust. I do this not because I enjoy telling the stories because they are mostly very sad. I do this because I believe that all people have an obligation to become educated about the Holocaust, to remember, and to make a personal commitment that they will do everything they can to never let such atrocities happen again – not to the Jewish people, not to anyone.

APPENDIX B

**Statement of Jack Rubin
United States House of Representatives
Committee on Foreign Affairs Joint
Subcommittee Hearing Subcommittee on
Europe, Eurasia, and Emerging Threats
Subcommittee on the Middle East and
North Africa**

**The Struggles of Recovering Assets for
Holocaust Survivors**

September 18, 2014

My name is Jack Rubin. I am a survivor of several Nazi concentration and death camps, the only member of my beloved family to survive the Holocaust. Somehow I survived and was fortunate to make it to this great country and raise a beautiful family, with three (3) children and four (4) grandchildren.

I have served on the advisory committee of the Jewish Family Services in West Palm Beach for many years, and am also a member of the executive committee of the Holocaust Survivors Foundation USA, which we formed 14 years ago to fight for the rights of tens of thousands of survivors still living in the United States, especially those living in poverty. Our leaders are elected by survivors from all over the United States. I am speaking here in my individual capacity.

I begin by thanking the leadership of this Committee for giving us Holocaust survivors and the family members of Holocaust survivors the opportunity to speak here about what we have experienced and continue to experience. We thank Chairman Royce and Ranking Member Engel, Chairman Rohrabacher and Ranking Member Keating, and Chairwoman Ros-

Lehtinen and Ranking Member Deutch. We are very proud of our South Florida representatives working with the other important leaders of this Congress, and would like to specially acknowledge the many, many years of dynamic and critical support that Ileana Ros-Lehtinen and Ted Deutch have given to the Holocaust survivors in the United States, Europe, Israel, and everywhere else survivors live.

As you know from our struggles dating back to the late 1990s, we survivors have tried everything we know to lift our brothers and sisters out of this grinding poverty and little has worked.

Instead, we have been blocked everywhere we have turned, in court cases right up the Supreme Court, in Congress, and even seeking proper funding directly from Germany. The small and inconsistent gains in funding for survivors over the years from Germany, channeled through the Claims Conference, are delivered in uneven and we believe inadequate ways, and we still see the poverty and misery at tragically high levels still today.

Some 55,000 Holocaust survivors in the United States today live near or below the official federal poverty level. This is tragic and unacceptable. We believe that a serious assessment by this Committee of the actual cost of needed in-home care and basic emergency services such as medicines, dental care, hearing aids, food, rent, utilities, transportation, and other vital services will show a multi-billion dollar deficit.

The Holocaust survivors in this country strongly believe even at this very late date, we must return to the origins of Chancellor Adenauer's promise in the 1950's when he said that modern Germany must take

care of the all of the needs of survivors due to the savage actions of the predecessor government, the Nazi German regime, with the death camps, the labor camps, medical experiments, torture, and other crimes which have left this tragic legacy till this very hour. Because of the these horrible deprivations, survivors' mental and physical health care needs are more extensive, more complex, and more dire than other elderly people, and require serious, comprehensive responses.

Unfortunately, the existing system has fallen tragically short of what survivors need and deserve. The current funding and care delivery system is difficult for survivors to access, and also severely underfunded.

Holocaust survivors are looking to this Committee to help secure the funding for the care all survivors need, primarily from the German government and businesses such as Allianz and Generali who profited from the Holocaust. Survivors are not seeking additional funds from the United States government or American taxpayers, or from Jewish philanthropy. The United States did not cause survivors' extensive problems we experience today, and neither did the Jewish community. Looking to these sources is wrong in principle and wrong because it will never yield the amount of funds actually needed to provide for the needs of survivors today.

Here are some examples collected from South Florida and other communities throughout the U.S.:

- Emergency funds are capped at \$2,500 per year per survivor. That is a cap, not a guarantee. Most survivors get less every year because of limited funds that have to be divided among

many survivors with emergencies. The result is that many, many survivors' emergency needs go unmet.

- Hearing aids usually cost about \$5,000, and are not covered by Medicare. With the \$2,500 cap and lower actual amounts available, survivors often cannot get even one hearing aid, much less two in the same year. How can a hearing impaired survivor in his or her late 80s be expected to manage with no or only one hearing aid?
- Most survivors have extensive dental needs because during the Holocaust, we had no opportunity to care for our teeth, suffered extreme malnutrition, as well as beatings and other horrible deprivations. Unfortunately, dental services are paid for from the same emergency funds that are limited to \$2,500 per year. And the dental work that many survivors need costs thousands and thousands of dollars. Some dentists give pro Bono help in some cities, but this is very limited. I see and hear story after story where survivors cannot get the gum surgery, or extensive dental work they need because there is no money. This is a very, very big problem. The lack of proper dental care harms survivors' dignity, and also puts them at risk for bad nutrition and cardiac problems.
- Many poor survivors don't have a car, cannot access public transportation, or cannot drive themselves to medical appointments. The lack of transportation to go to the doctor is a real problem and there is not enough money for this. Survivors often miss their doctor appointments for lack of transportation.

- The cap on home care funds has been reduced in some areas by 50%. In some cases survivors with documented need of 24 hour care had funding cut from \$2,500 to \$1,250 per month.
- There is the elderly survivor, Mrs. K, who is very sick and is in the hospital for blood transfusions, but was refused when she asked for her AARP insurance paid which she couldn't afford – all of \$625 for a quarter
- Or, Mrs. I, who needed a refrigerator and after a six week wait, her application was denied. This was in September and she still does not have a working refrigerator for her food and medicine.
- There was the elderly survivor woman who, during one of the hottest days of this past summer, requested money for an air conditioner that cost \$500. She was told they only had enough money to give her half of the cost. Unfortunately she didn't have the rest and had to endure the unbearable summer heat without air conditioning.
- There is the survivor who was desperate for assistance to pay for a stair lift since her husband is home bound and was told they were too rich for assistance, even though their mortgage payments use up most of their income.
- Survivors are begging for home care and being refused. In one community I was told the maximum is 15 hours per week, despite the severity of the survivors' illness. These are people who are not eligible for Medicaid. If they go to an assisted living facility, they use every penny available to pay their overhead, but you have to

know that aids in those facilities cost extra. The Claims Conference programs refuse any assistance to survivors for these so-called “extra” services in assisted living facilities or nursing homes.

- These many problems are illustrated by the case of a survivor from Stovnietze, Poland, who spent World War II in the Lodz and Kielce ghettos, and Auschwitz. He survived because he was a mechanic and also learned to be a bricklayer. He suffered so many injuries in the camps including terrible foot injuries from standing barefoot in the snow. Everyone but his sister perished in the camps. This survivor eventually settled in Richmond, Virginia. He worked all his life and had saved some money, but never married and had no children. But like many survivors, he was a hoarder. As he aged it got so bad he was pinned down in his home. When neighbors didn't see his car move for three days, they called the police, who had to hoist this elderly survivor out the upstairs window. He was sent to the hospital close to death. Showing signs of recovery, he got better in a nursing home until his medical coverage came to an end. He couldn't move home because it was unlivable, so he went to assisted living, at \$5,000 a month, which increased to \$6,000 as he faltered. Soon he needed aides in the facility, which cost an additional \$6,000 per month – with no assistance from the Claims Conference or other programs. These costs were far beyond his reach financially. He had to be moved to another facility that was less expensive, where he eventually died in March 2013. However, without the help of a group of two very dedicated

friends and his former employer in the small Richmond community he would never have received the attention or care he needed.

- Widows and widowers who live alone cannot get home care from Medicare if they don't spend a certain number of nights in the hospital, and after many operations are told they should have help at home even if there were only in the hospital overnight. Yet the rationing of home care funds puts these survivors in danger.
- Some survivors are now applying for assistance for the first time. This is because they are desperate for help, but their needs were not factored into the agency's budget and they have to wait for help which may never come. Others do not even apply because they are aware of the funding shortages.
- Survivors are re-traumatized every time they have to retell their wartime experiences and for many, the application process for assistance is emotionally brutal.
- Though there are fewer survivors every year, the agencies caseloads are increasing because more are becoming poor, they are getting more frail, and their needs are increasing due to declining health.
- It is unconscionable that survivors, who went hungry for years during the Holocaust, should go hungry in the United States, but they are.
- If a survivor moves to an assisted living facility or a nursing facility, the Claims Conference programs provide no assistance if they need help with a personal aide or with personal

hygiene. If a survivor lives independently, he or she can get meals delivered or other services, but these stop if they move to a facility. In these facilities, a resident must pay extra for assistance with meds or to take a bath, but none of that is covered by the Claims Conference.

- Social workers and survivors involved in the advisory committees have heard this question far too often: “Do I take my medication or do I buy food?” There are limited funds that must cover a broad range of needs. “Should the agency take care of every need of a few survivors, or take care of some needs of many survivors?” Under the current framework, these questions are inevitable. Rationing is inevitable. Why does it have to be this way?
- There are children of survivors who are putting themselves in financial jeopardy to help care for their parents. We are grateful that the Committee recognized this problem and invited Ms. Bar-Cohen to relate her personal experience in caring for her father. These difficulties are widespread.

Doing the Math to Properly Analyze Recent German Home Care Announcement

Madame Chairwoman, and Mr. Ranking Member, you are well aware from our many years of work that in-home care is vital for survivors as they cannot be institutionalized easily whether it be a nursing home or mental health facility, which conjures up for most survivors the most bitter memories of the way the Nazis treated us. There could be nothing worse than having to be institutionalized after all we experienced.

You have heard our pleas for over a decade, seeking a dedicated, permanent source of funding for long-term care whose access survivors could control themselves. As you are well aware, these plans have been repeatedly blocked by the institutions that preferred the status quo. Think of the thousands who have suffered since then who could have been helped if the past efforts you supported had not been derailed! I raise this not to assess blame, but to remind you and the Committee that survivors need and deserve comprehensive, accurate, and **survivor-centered solutions – TODAY.**

Now everyone is talking about home care, with grand announcements that Germany would spend \$800 million over the next four years (2014-2017) for survivors' home care through the Claims Conference. We are asking the Committee to please take a very close look at this announcement and use a sharp pencil and paper to really understand what it will mean to survivors for tangible help they desperately need.

According to the announcements 56,000 survivors per year are served via the Claims Conference with these German funds. This 56,000 number does not include untold numbers of other survivors who are not currently served, because we know most agencies do not conduct or cannot afford outreach because funds for services are already limited. Yet these Holocaust survivors are also entitled to help and they must be an integral part of this calculation, too.

But if the Committee and the Congress do the simple math, it will show how terribly inadequate these supposedly large dollar figures are when it comes to the reality of what the survivors really need.

\$200 million per year divided by the 56,000 survivors that the Claims Conference and Germany say are now being served, amounts to about \$3,560 for each Holocaust survivor each year.

The average survivor in his or her 80s needs at least 15 hours per week of home care. At \$15 per hour, which would be the low end in Chicago and South Florida, \$3,560 only provides 16 weeks a year of home care. What is a survivor supposed to do the other 36 weeks?

If a survivor needs 24 hour a day care, the new German fund would provide only 9 days of care every year.

In New York City, where home care costs at least \$20 per hour, the funds would provide even less home care for Holocaust survivors.

This is obviously not sufficient. Survivors cannot make it on partial solutions, press releases, and political rhetoric.

A recent report of the New York City social services organization Self Help shows how inadequate the recently announced funding levels really are. It says that in 2013, in the New York City metropolitan area alone, 26,572 survivors, or 41% of the New York survivor population, required some help with daily tasks. When that number is compared with the 56,000 survivors worldwide that are currently "served" via home care funds through the Claims Conference, the deficiencies are obvious. New York accounts for roughly half of the U.S. survivor population, which is between 20 and 25% of the world survivor population. If New York's survivor population, with about 12% of the world's total, has enough survivors needing home care to comprise (for analytical purposes) 47% of the

total number of survivors getting help with home care through the Claims Conference today, the “math” shows there are huge amounts of unmet needs now, and will be gaping needs in the years to come.

When viewed in historical context, the recent German home care announcement is even more chilling. This grand new announcement might meet 25% of survivors’ current home care needs. However, it is the culmination of several years of increases since 2005 in which the totals have doubled with each new announcement, usually every two years. Since the latest, high-water mark will only meet 25% of U.S. survivors’ home care needs, it shows how much unnecessary suffering survivors had to endure in recent years as funding has been inching up gradually through negotiations with Germany without regard for the **actual** human needs being neglected.

Another question this Committee should ask is: What are the Claims Conference’s plans for the new German home care funds? Have the allocations for each city in the United States been determined? We think that the United States House of Representatives and the Senate, and certainly the Holocaust survivors and our families, are entitled to know exactly how the new German home care funds will be allocated – where, when, and how much? The same is true for all other funds for all the other needs survivors continue to need so badly.

Doing this math, taking the local pay scales of any local venue, X\$/hour for home health care workers X number of days a month which are clinically determined to be needed, gives you a number which makes a mockery of the actions and proposals currently on the table. The unique health and emotional conditions and illnesses of survivors require professional treatments.

We think a serious, intensive, and critical inquiry will show the actual need is several billion dollars for home care alone, when you consider the aggregate, world wide need, and the remaining years this care will be needed, and a like amount for emergency services also. Where will the funding come from for these desperately needed professional services when Germany's recent, highly publicized increases still yield only 25% of the funds needed into the foreseeable future?

Survivors need mental health care in much larger proportion than do any other population directly because of what was done to them – to us – under the Nazi German regime for years. Many competent health care professionals prescribe measures to help and there is little money to help leaving survivors alone to contend with the sleeplessness, nightmares and horrors being relived over and over. Only recently, the Claims Conference announced the results of recent negotiations with the German Government resulting in a one time payment for Child Survivors for the first time amounting to \$3,280 total. Once again, the negotiations and public relations surrounding the announcement leave the impression of a very important result but in fact the math shows a huge false impression. What are survivors and their families to do to get help once again with such negotiations results with Germany not paying the actual funding to care for their horrid needs directly resulting from what the Nazi Germans did to them?

I very much doubt that Chancellor Adenauer, who promised in the 1950s that Germany would provide for the victims of the Holocaust “to their last breath,” would be satisfied by the state of affairs today.

Survivors need and deserve a realistic German rational funding that will address all important unmet

needs, ideally worldwide. It should no longer be acceptable to cause continuing misery to survivors based on piecemeal negotiations every few years and a patchwork of programs.

I would add here that the problems of survivors living in poverty and suffering without the care they need is a worldwide problem — including in Israel where over 40% of the world's Holocaust survivors live. The issue is of such concern in Israel that, even as the people of Israel braced for war with Hamas this past July, the *Jerusalem Post* published a statement I wrote addressing the depth of the problems facing Holocaust survivors in the U.S., Israel, and worldwide. In that article, I wrote:

Survivors and second and third generation leaders have long opposed the current cynical framework pitting the heirs of East German properties against indigent survivors. This shell game, enabled by the silence bought by Claims Conference grants, has allowed the Claims Conference to protect Germany while maintaining monopoly control over Holocaust-related assets and survivors' welfare. But the fact is, Germany caused the massive medical and emotional problems survivors are confronting today, and Germany should pay for all of the survivors' needs, without the bargaining and compromising that has become the Claims Conference's specialty. Survivors and heirs should have the right to recover their lost assets, including German properties, insurance claims, and artworks, and Germany should pay for the needs of indigent survivors.

<http://www.jpost.com/Opinion/Op-Ed-Contributors/Memo-to-the-Claims-Conference-We-Holocaust-survivors-are-not-dead-yet-362041>

In connection with this statement and my live testimony, I request that the Committee accept some letters and other materials concerning this and the other matters I have addressed here.

Survivors Are Not Asking for Help from U.S. Taxpayers

Members of this Committee and Subcommittees, we want to also be clear that Holocaust survivors are not asking for more help from the U.S. taxpayers. Survivors already benefit from many programs for the elderly, and should continue to do so. We hope these can be made better for all elderly in the U.S. However, U.S. taxpayers are already burdened enough, and soon 10 million American baby boomers will be turning 65 every year for the foreseeable future. Shaving off thin slices of these precious funds which themselves have been sequestered and cut along with regularly targeted funds added would make it tragic for survivors to be inserted in that long line of those seeking those ever smaller funds.

Holocaust survivors endured ghettos, starvation, disease, concentration camps, killing factories, and death marches. We came to the United States and became proud and productive American citizens. Many survivors served this country in combat in Korea and Vietnam. I myself am a U.S. military veteran. Survivors are fiercely independent and never wanted to rely on their fellow Americans for a penny of assistance. These same survivors now have to ask for help because they can no longer care for themselves.

But the United States did not cause the problems survivors face today – Germany did.

As a survivor I am sick as are my colleagues that these taxpayer funds of HHS, and others are being contemplated for use for us and our brothers and sisters when we insist Germany's full responsibility to provide the actual costs of all the services remains a moral and a practical imperative.

In this regard, I feel it is necessary to comment on the recent initiative announced by the White House about helping Holocaust survivors.

The White House announced an "initiative" to help Holocaust survivors in need with a plan to appoint one desk person at HHS to coordinate with social service agencies, begin a program to recruit VISTA volunteers to help survivors, and begin to organize fundraising in the Jewish Federations to augment funding for survivors' needs.

As it currently stands, the White House's announcement is deeply flawed. Survivors deserve the most thorough, professional, and comprehensive care available, not half-measures. And the Jewish community should not be looked to for fundraising to fill these gaps – the Jewish people were the victims, not the perpetrators. The Jewish communities should not be called upon today to provide the financial assistance that is Germany's responsibility, and be asked to short-change other community priorities such as Jewish education, youth programs of all kinds, providing assistance for other Jews in need locally and throughout the world, including other Jewish elderly, and most recently, Israel's humanitarian needs during and after the war with Hamas.

It isn't like the Jewish Federations have not been aware of the shortages in funding for survivors over the past several years. They too have been hit hard by the economy, and changing philanthropic trends and lack of confidence in institutions as well. Further, many communities have tried to hold special fundraising efforts, which are well-intended but never calculated to nor have they succeeded in actually raising the funds to provide survivors the full measure of assistance needed.

The survivors' needs are vast and immediate. Why should we Holocaust survivors always be subjected to these kinds of compromises and flawed solutions? Well-meaning but short-sighted suggestions that survivors' needs can be addressed through volunteer programs and extra fundraising in Jewish communities will not suffice.

We raised all of these concerns with the Vice President's staff, and these are only some of the reasons we believe the White House's announcement should be viewed as perhaps a starting point, but not the end point for what is needed to provide the complete and professional levels of care that survivors need and deserve, and not to sidetrack a the urgent business to immediately get this right for survivors, at long last. This is in every sense of the word, a matter of life and death. Where is the urgency?

If there is more Federal Government support or more charitable contributions to help some of the survivors in need as we all know about, it would be welcome. But this is not the solution to the vast problems survivors face today. This approach has been tried for decades and it has not worked. When we are talking about needing hundreds of millions of dollars per year over and above what is currently being spent

to properly care for survivors, raising a few million dollars in the Jewish community will not come close to solving the problem, and neither will \$5 million or \$10 million from the U.S. government.

If only all these well-meaning friends would simply do the math to understand how survivors real, medically mandated health care could never be met under those solutions thus far put in place. The Government of Germany is the only source of realistic levels of funding to make a difference in the lives of survivors living in poverty. The good-sounding negotiations results simply will never do that.

This past May, the Administration's Special Envoy for Holocaust Issues, and her colleagues, travelled to South Florida to meet with the survivor community, the adult children of survivors many of whom are caretakers, and the Jewish Family and Children's Services professionals who have the prime responsibility to administer what little funds exist for survivors. These meetings took place in Miami, Fort Lauderdale, Boca Raton, and West Palm Beach. I am proud that in each community the survivors and family members were united in our report: there is simply not enough funding available to meet the needs that we know about much less the problems faced by so many destitute survivors too embarrassed to seek help.

While we were encouraged by the caring attitude that the Administration's people brought, we are very concerned that their agenda is far too limited, i.e. focused solely on making federal programs work better for survivors. Well, that is a laudable and long overdue goal, and we offered what support we could. However, it would be tragic of the Administration lost sight of the big picture and the urgency of the needs of survivors today which can only be addressed by

substantial increases in funding from Germany and other culpable Holocaust countries and profiteers. We implored the White House representatives to urge the President and Vice President to take a leadership position and bring our concerns to Chancellor Merkel personally.

We know social service agencies and local leaders throughout the United States charged with the responsibility to provide care for survivors have to manage with insufficient resources. But their hands seem to be tied when it comes to the most significant obstacles facing survivors. Why don't they speak up and support the survivors seeking to hold Germany responsible for providing the complete current amounts of funds survivors desperately need. Why do retired German WWII veterans and even SS officers receive ample pensions and complete health care coverage, when Holocaust survivors are forced to choose between paying for food or medicine, and cannot pay for dental care, home care, utilities, home care, and other basic needs? This isn't right.

Maybe, after this hearing and the Committee's work, the White House will immediately build on the acknowledgement that the needs are great, and use its unique authority to deliver the comprehensive financial support that survivors need and deserve.

However, even without the White House, we believe in this Committee and in our elected members of Congress, led by you Congresswoman Ros-Lehtinen and Congressman Deutch, and the 100-plus other members of this House who have previously supported the Holocaust survivors. We ask that you initiate an effort with them to raise your collective voices with Germany, as Senators Nelson and Boxer have done in the Senate.

Please, Madame Chairwoman and Mr. Ranking Member and Members of this Committee, help us by contacting Chancellor Merkel and your counterparts in the German Parliament, the Bundestag, to get this message understood once and for all. Otherwise, we will die never seeing meaningful help provided to the tens of thousands of brothers and sisters who need help but continue to suffer.

We are losing more and more survivors every day and they need our help now. We need to this Committee to figure out how much they need for housing, dental care, home health care and other survivors and then use your eminence as members of this great United States Senate to help us secure the needed funding, today, without any more delays. The German government and the United States government continues to protect the Allianz insurance company and to hide behind the Claims Conference in providing insufficient levels of care for tens of thousands of survivors in need. We need the Vice President, the entire Administration, this Committee and entire Congress to pressure Germany, and all culpable business entities, to fulfill their moral obligations to Holocaust survivors, today.

What Happened After the 1997 Senate Resolution Calling on Germany to Provide Adequate Income Support and Full Health Care for Holocaust Survivors?

In 1997, the United States Senate unanimously passed a resolution co-sponsored by Senators Moynihan, Graham, Hatch, Dodd, and Biden, calling on Germany to provide adequate material and social service support so that *all Holocaust survivors* could live in dignity. The resolution noted that retired SS officers in Germany and elsewhere receive far more generous health care

benefits from Germany than Holocaust survivors. It called for, among other goals, that “the German Government should fulfill its responsibilities to victims of the Holocaust and immediately set up a comprehensive medical fund to cover the medical expenses of all Holocaust survivors worldwide.” S.Con. Res. 39, July 15, 1997.

Unfortunately, neither the Jewish community leadership, the Executive Branch, nor Congress followed through on persuading Germany to live up to these aspirations. Today, 17 years later, there is no more excuse for delay.

The grandstanding, fractured, and irrational, biannual announcements of Claims Conference-German secret negotiations have got to stop as the means of caring for survivors once and for all. It should be replaced by the serious solution sought by the survivors who have pleaded for this for nearly 15 years of agony and endless suffering and inability to lift their brothers and sisters in need into a reasonably comfortable and dignified quality of life, and having watched as so many survivors died in agony these past 15 years while those in power ignored or failed to grasp the seriousness of our plight. The above suggested process is the only way once and for all to set the process right and kill poverty among our ranks before it is too late.

Data on Survivors Living in Poverty

When the group of survivor leaders who eventually started the Holocaust Survivors Foundation USA started this effort back in 1998, 1999, 2000, there were at least 87,500 U.S. survivors living in or near poverty, which was half of the 175,000 living survivors in the U.S. at the time. Today, there are some 110,000 living survivors, and still, half – 55,000 – live below the

poverty line or are considered poor. To us survivors, it is unbearable to think about the tens of thousands of survivors who already died in misery in this great country without the care they needed. It is unconscionable that thousands of survivors, who went hungry for years during the Holocaust, should have died hungry or alone here in these great United States. The current framework is not acceptable, and never was. But now that this Committee is investigating the status of survivors in the United States, we are praying that this Committee's work will not allow the catastrophes of the past decade to be repeated.

Keep in mind that Holocaust survivors also suffer from much higher levels of poverty than other elderly because of the loss of parents, grandparents, the loss of property and other assets, and the deprivation of educational opportunities. Even many survivors who did OK economically have outlived their resources, and are now unable to afford the care they need.

Unfortunately, there is no comprehensive census data that shows the number of survivors in the U.S., the number that live in poverty, and the kind of care they are receiving via government and privately-delivered services. However, there are several local studies and national surveys that support the basic finding that half of all survivors live below or near the poverty level, and that the funding for survivors' needs is terribly inadequate everywhere. Here are a few of these summarized.

National Data. As I noted, today, some 55,000 Holocaust survivors in the U.S. – half of the survivor population here – live below or near the poverty line and cannot afford sufficient food, shelter, medicine, health care, home care, dental care, hearing aids, eyeglasses, and other services necessary for a dignified

old age. This number is derived from data from leading demographers compiled by the Jewish Federation system and filed with the Federal Court in 2004. The number of U.S. survivors living in or near poverty at the time was 87,500. (See Sheskin, Estimates of the Number of Nazi Victims and Their Economic Status, January 2004; 2000-01 National Jewish Population Survey.) 55,000 is also the number cited by the Claims Conference when describing the population of U.S. survivors who are poor today.

Los Angeles. In December 2008, the Jewish Federation of Los Angeles conducted a survey which concluded that there are 10,000-12,000 Holocaust survivors living in the Los Angeles metropolitan area, most of whom are over the age of 85, 75% of whom are female, and 49% of whom are “low income or poor.” See Los Angeles Community Study of Vulnerable Jewish Seniors and Holocaust Survivors, December 2008.

The Los Angeles study found, “[c]onsistent with other national studies, Holocaust survivors in Los Angeles are less affluent than other Jews, with 49% of households either low-income or poor. Using the federal poverty guidelines, 27% of survivors are living at or below 100% of the guidelines.”

New York. A few years ago, the UJA-Federation of New York City reported that “[t]here are 73,000 aging Holocaust survivors in NY, half of whom are living at or below the poverty level.” See <http://www.facebook.com/ujafedny>.

As I said before, a recent report in 2013 by Self Help found that in 2013, in the New York City metropolitan area alone, **26,572** survivors, or 41% of the New York survivor population, required some help with daily tasks.

San Francisco. The *Jewish News Weekly of Northern California* reported in 2008 that of 4,000 Holocaust survivors living in the Bay Area, 1,000 of them “are in trouble,” and that “the Jewish community is not raising enough money to care for the poorest and sickest in a proper and humane way.” See Anita Friedman, “Holocaust Remembrance is About Honoring the Living, Too,” *Jewish News Weekly of Northern California*, May 2, 2008. These concerns about the large number of survivors in need in the Bay Area were again reported four years later. See Deborah Garel, “As We Memorialize Shoah Victims, Don’t Forget the Living,” *Jweekly.com*, April 12, 2012.

Washington, D.C. The *Washington (D.C.) Jewish Week* reported in November 2012 that while “Claims Conference money has never been enough to fund the JSSA’s (Jewish Social Services Agency’s) support for Holocaust survivors,” that in 2012 the agency was estimating a \$500,000 shortfall because of the increased demand for services. See “Fiscal Cliff for Survivors,” *The Washington Jewish Week*, November 28, 2012.

South Florida. In Miami, a 2003 survey (the most recent one to ask the question) found that 39% of survivors live below the official poverty level. No one believes the situation has improved since then. But the community isn’t even asking the question now – either to avoid embarrassment, or perhaps because they realize the results won’t make a difference with today’s funding system.

In preparation for the 2009 Prague Conference on Holocaust Assets, the South Florida social service organizations met with the Holocaust survivor leadership and Congresswoman Ileana Ros-Lehtinen to discuss the conditions facing survivors in the care of

the communities there. In Miami, the director reported that the survivors under the care of the Jewish Community Services organization are mostly in their late 80s and 90s, and require substantially greater care on the whole than they did even a few years ago, but the current system only provides a portion of the hours of home care needed.

Broward County and Palm Beach Counties reported larger but somewhat younger survivor populations, with slightly lower levels of poverty levels and lower levels of hours of care and emergency services needed on average. So, Broward and Palm Beach Counties' survivors were at the time of that meeting getting about one quarter to one third of the home care they needed, about 4-6 hours per week (like Miami 10 years ago). Further, their emergency funds from the Claims Conference are not only rationed every month, but run out long before the end of the year. Because their situations mirror what Miami looked like a decade ago, we can assume the needs will continue to grow among survivors there in the coming years.

I am including a current write-up from the Alpert Jewish Family & Children's Service organization in West Palm Beach as an exhibit to my testimony.

Israel and elsewhere. There are also thousands of impoverished Holocaust survivors living in Israel, Europe, Canada, Australia, and South America who are not receiving the services they need for a dignified quality of life. According to the Claims Conference in 2010, the number of Holocaust survivors living in or near poverty in Israel was 74,000, and the number in the former Soviet Union was 90,000. When the 55,000 poor U.S. survivors are included in this ghastly count, it shows **219,000 Holocaust survivors living in or near poverty worldwide.** As has been widely

reported to the shock and dismay of many, even survivors in Israel do not receive proper and needed care, due to funding shortages from Claims Conference and the Israeli government, it doesn't. *See, e.g.* Liel Leibovitz, "Israel's Starving Survivors," *Tablet*, April 8, 2013; Daniel Ziri, "Budget Runs Out for Holocaust Survivors' Expenses," *The Jerusalem Post*, August 11, 2012.

Insurance Companies' Responsibility

Congresswoman Ros-Lehtinen and Congressman Deutch, we also appreciate your introducing HR 890 in 2011 and pushing as hard as you did to have it pass through this Committee and go further. That bill would have restored Holocaust survivors' rights to sue Allianz, Generali, AXA, Munich Re, Swiss Re, Zurich, Basler, RAS, Victoria, and other global insurers who dishonored insurance policies they sold to our parents and grandparents. The failure of your bill to advance to even a floor vote in the House (and of S. 466 to advance to a vote in the Senate Judiciary Committee) remains a bitter disappointment to Holocaust survivors and our families. I would like my testimony before the 2008 Senate Foreign Affairs Committee, and the testimony of fellow HSF executive committee member Renee Firestone in the House and Senate in 2011 and 2012, along with my other HSF colleagues who have testified on the insurance issue and other issues of vital concern to survivors, to be deemed an official part of this hearing record. Here are the citations:

<http://www.foreign.senate.gov/imo/media/doc/RubinJTestimony080506p1.pdf>

<http://archives.republicans.foreignaffairs.house.gov/112/fir111611.pdf>

<http://www.judiciary.senate.gov/pdf/12-6-20FirestoneTestimony.pdf>

<http://democrats.foreignaffairs.house.gov/110/rec032807.htm>

<http://archives.republicans.foreignaffairs.house.gov/112/71263.pdf>

<http://judiciary.house.gov/hearings/pdf/Dubbin100922.pdf>

<http://archives.financialservices.house.gov/hearing110/arbeiter020708.pdf>

<http://archives.republicans.foreignaffairs.house.gov/110/sch032807.htm>

<http://archives.republicans.foreignaffairs.house.gov/110/rec032807.htm>

<http://www.gpo.gov/fdsys/pkg/CHRG-110hhr38141/pdf/CHRG-110hhr38141.pdf>

<http://archives.republicans.foreignaffairs.house.gov/110/mos100307.htm>

<http://archives.republicans.foreignaffairs.house.gov/110/rub100307.htm>

The reason is that my colleagues and I have attempted to bring the concerns of the survivor community before this Congress over the past decade on several occasions, and our positions have been thoroughly documented and supported. But we have been overwhelmed by the moneyed interests of the insurance companies, the misrepresentations of the Bush and Obama Administrations, and the treachery and dishonesty of certain non-survivor Jewish groups led by the Claims Conference, ADL, AJC, B'nai B'rith, Agudas Israel, the World Jewish Congress, and Stuart Eizenstat.

But insurers collectively owe Holocaust survivors and our families well over \$20 billion in today's

dollars, and they have denied us our families' historic and financial legacies. Thousands of survivors have died as second class citizens in this country without the ability to reclaim their families' financial and historic legacies. It is criminal that the insurers remain immune, with the assistance of those I just named.

I raise this here for several reasons. First, even if survivors' legal rights were restored and all traceable beneficiaries and heirs are paid, there would still be billions of dollars in likely heirless proceeds these companies could and should contribute to a fund to assist survivors today. As I said in 2008, what about the policies that went up in flames in Auschwitz-Birkenau, and the other death camps? Why should Generali and Allianz be the heirs of the Jewish families who were annihilated?

I raise this for another reason. As you surely recall, to defeat our efforts going back to 2007 in Congress to restore survivors' legal rights, the insurers, the State Department, and even some Jewish groups made the argument that restoring survivors' legal rights would result in less funding from Germany for the needs of indigent survivors. This was and is an outrageous argument. One thing has nothing to do with the other. Insurance companies should pay their debts and survivors should be able to sue them if they breach their contracts. That has nothing to do with *Germany's* long overdue moral obligation to provide adequate funding for the needs of survivors, a duty it has ignored and only recently began to address due to pressure from the survivors and our allies here in Congress.

But if you go back to the actual hearing record in the Senate back to 2007 and 2008, you will see that the Claims Conference witness cited this argument while was bragging about having secured \$70 million from

Germany for “additional home care funding” – for the entire world! We pointed out that \$70 million for two years, or \$35 million per year, for the 50,000 survivors then being served, would generate a total of \$700 per survivor for home care funding – about 4 weeks of home care given the average cost of \$15 and average need of 15 hours per week.

Germany doubled these home care funds again in 2010 and 2013, culminating in the home care fund discussed above that will address only 25% of the survivors’ needs. If the funds from Germany have doubled three times and now will only meet one-quarter of the needs, this Committee can easily see that a far more direct and forceful response is desperately needed. This is what survivors are hoping will result from today’s hearing and your next steps.

Of course, we hope and expect that Congress will take up a bill like HR 890 early next year and pass it so survivors can recover our family insurance policies. However, in addition, we believe that the insurers such as Allianz and Generali and others who profited from the Holocaust should also contribute to the kind of fund we are urging here to provide for all survivors’ needs, immediately, and without further haggling. They have the money – they stole it. They can pay it out today to relieve survivors’ suffering, some of which they caused.

Survivors’ Care Remains Germany’s Responsibility

Nothing has changed since Chancellor Adenauer’s remarkable assertions of German responsibility in the 1950’s! Instead Germany, under the present newly re-elected government has actively successfully pushed their own responsibilities to the US government and

the American Jewish community instead. How bizarre is that? We are outraged and we beg this committee, especially you, Madame Chairwoman and Ranking Member Deutch, who have sat so ably on the Foreign Affairs Committee for all these years, to press the Secretary of State and the President, who have developed close ties to Chancellor Merkel and visited the camps with her and with Elie Wiesel, to change all this now, and get back to providing sufficient funds directly to meet survivors' actual physical and mental needs.

The cost of a proper, comprehensive, and permanent program would be minimal compared to Germany's and the insurers' resources – but would provide a vital lifeline to survivors who need and deserve it.

While you may think a turn-around is impossible to refocus on Germany's responsibility. We believe because of the very personal ties which exist uniquely at this time in the relationships with Chancellor Merkel, and with you, Madame Chairman, and the Secretary of State, a concerted effort to renew and refresh German's role is promising and should be tried on a concerted high level it should work. I am sure Elie Wiesel would join such an effort just as he did at the Prague conference on this subject and his visits with the President and Merkel at Bergen Belsen Concentration Camp as well as other such meetings.

Let me remind the Committee of Elie Wiesel's words to the 2009 Prague Conference:

However it is with pained sincerity that I must declare my conviction that living survivors of poor health or financial means, deserve first priority. They suffered enough. ANd enough people benefitted FROM their suffering. Why not do everything possible and

draw from all available funds to help them live their last years with a sense of security, in dignity and serenity. All other parties can and must wait. Do not tell me that it ought to be the natural task of local Jewish communities; let's not discharge our responsibilities by placing them on their shoulders. WE have the funds. Let's use them for those survivors in our midst who are on the threshold of despair.

If only this could be the serious focus by all high level persons, led by you, Chairwoman Ros-Lehtinen and Ranking Member Deutch, it would finally cut through the talk and false efforts once and for all then to provide actual meaningful care not gimmicks which won't work once again leaving survivors continuing to suffer until they die.

Thank you again to the entire leadership of this Committee and Subcommittees to hear us, to bring these issues to light, and for your efforts past and future. They are historic and extremely important.

APPENDIX C**STATEMENT OF KLARA FIRESTONE****UNITED STATES HOUSE OF
REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS****The Struggles of Recovering Assets for
Holocaust Survivors
September 18, 2014**

My name is Klara Firestone. I was born in Prague, Czechoslovakia immediately following the end of World War II, and I am the daughter of two Holocaust survivors. I am the founder and president (for my second term) of Second Generation of Los Angeles, a founding member of Generations of the Shoah International (GSI), and sit on the Board of the Los Angeles Museum of the Holocaust, the first museum and monument to the Holocaust in the United States. Since founding Second Generation in 1978, I have been steeped in Holocaust affairs and have worked hand-in-glove with the members of the survivor community in Los Angeles and our surrounding counties. I come here today to speak on behalf of myself, my family, and the hundreds of Survivors and Second Generation who I have counseled and ministered to over the past 37years, and who have not had a voice to advocate for their rights. As the leader of Second Generation of Los Angeles, I have facilitated hundreds of support groups for children of Holocaust survivors, and in more recent years, after becoming a psychotherapist, I facilitated therapy groups for Second Generation. I have also been instrumental in helping survivor families navigate what have often been very complex and difficult relationships between parents and children given the

extreme trauma that served as the backdrop for our developmental years, and most of our lives.

There is a long trail of problems that tens of thousands of survivors and family members have confronted, too often with incredibly frustrating and painful outcomes. The status quo is obviously not acceptable. If half of all survivors worldwide – including in the United States – are living today in or near poverty, unable to afford even the basics for a dignified old age, the approach of the past 50 years is obviously wrong. The temptation is great to dwell on the past, but we know you called this hearing to see what can be done TODAY to make a change for the better. What can be done today for survivors and their family members who have suffered terribly and continue to suffer? The answer is very plain: Germany must assume the responsibility to provide for all medically necessary and basic income needs of all Survivors.

I would add my voice to the others who have discussed many of the medical and emotional issues that survivors and the Second Generation must deal with on a daily basis. The problems are real, and they require serious professional attention, with properly trained health care and psychological care givers who understand the unique problems that survivors and their children must deal with. Proper care requires a sea change in the funding available, and it is only just and right that this responsibility be assumed by the German government, and other entities that collaborated and profited from the Holocaust. Later in this statement, I address the extremely important issue of the plight and suffering of so many of our Second Generation members, who are the forgotten victims of the Nazi's atrocities and also deserve immediate and comprehensive support from Germany.

If this Committee does one thing as a result of this hearing, we ask that you undertake a concerted, bipartisan, and relentless effort to convince Chancellor Merkel and the German Bundestadt to make good on Chancellor Adenauer's pledge in 1952 to take care of Holocaust survivors "to their last breath."

As my fellow panelist, Holocaust Survivor, Jack Rubin, stated in a recent Op-ed in the Jerusalem Post: "[T]he fact is, Germany caused the massive medical and emotional problems survivors are confronting today, and Germany should pay for all of the survivors' needs, without the bargaining and compromising that has become the Claims Conference's specialty. Survivors and heirs should have the right to recover their lost assets, including German properties, insurance claims, and artworks, and Germany should pay for the needs of indigent survivors."

My testimony follows in the footsteps of my mother, Renee Firestone, who appeared before the full House Committee on Foreign Affairs on November 16, 2011, and before the Senate's Judiciary Committee on June 20, 2012. In the interest of conserving time, I have included her full written testimony to the House Committee as an exhibit to my written testimony and I reference it here, at this juncture. I wish, however, to point up a few salient points from her testimony.

At the age of 20, my mother was imprisoned for 13 months in the infamous death camp known as Auschwitz/Birkenau during the last years of World War II. Her mother, my grandmother, was never even processed into the camp, but was gassed immediately on arrival to Auschwitz. Six months after arrival at the camp, her 16 year old sister, after whom I am named, was first experimented upon before being shot by the Nazis to avoid her re-entering the general

population of the camp and possibly exposing what the Nazis were doing. Her father, Morris, died of tuberculosis shortly after liberation. Her brother Frank, who had been a partisan . . . a resistance fighter . . . was the only other member of her immediate family to survive. In addition, we lost almost all of our huge extended family.

Following liberation in 1945, she was reunited with her brother and soon-to-be husband, my father Bernard, who had been in a Hungarian forced labor camp and then interned at Mauthausen concentration camp.

When the Holocaust ended, the fragments of Europe's Jewish communities emerged broken and tattered, wanting nothing more than to find who of their families survived and begin rebuilding their lives. They were too busy fighting their "demons" to care about fighting bureaucracy in order to claim what was due them. Many believed, as my mother also did then, that this was "blood money" and wanted nothing to do with it. They asked the question, "How can you compensate me for the loss of my parents, brothers, sisters, aunts, uncles, cousins, etc. in dollars? What value should I assign that? So once again, their claims and needs went unmet. In the years immediately after the war, these very young survivors traveled to whichever country would allow them access and safe haven, thankful to have the chance at new lives. A handful made it to phenomenal wealth, but the majority did not, and today the educated estimates are that approximately half of all survivors in the United States are living at or below the poverty line. Yet when they have tried in the past to gain some measure of justice, they have been met with the appalling intransigence of the Claims Conference leadership and had the doors slammed in their faces.

Can someone please tell me why, after suffering the humiliations and brutality of the Nazis, the survivors must now go begging for what is rightfully due them, suffering additional indignities and being re-traumatized, only this time by the ones who are ostensibly there to aid them! If you could hear the comments and cries of the survivors at this betrayal, it would break your hearts, just as it broke mine.

As the most active and visible leaders in our survivor community, my mother and I have been approached hundreds of times by survivors and their children beseeching us to intervene on their behalf to recover restitution which is rightfully theirs. Time and time again we have attempted to do just that, and we, too, have been unsuccessful.

Even advocating for my own family has proved to no avail. My beloved father passed away in 2001. Prior to his death, he had received a letter from the Claims Conference confirming that they had assigned him a claim number for a particular fund and he would soon be receiving the monies. After contacting them numerous times over the years, we are still waiting for those funds. They now claim that they are unable to find his claim in the system. You cannot imagine the pain this causes the loved ones of a Holocaust survivor, not to mention re-traumatizing the survivors themselves, and this is the kind of problem I hear about over and over again.

With so many obstacles to obtaining what belonged to them, the survivors sought a different route to recover some part of their family legacies. They attempted to file claims with the insurance companies that had insured their parents' lives and properties through the auspices of ICHEIC, the International Committee on

Holocaust Era Insurance Claims. Once again they hit a wall, thwarted by the ineffectiveness of ICHEIC.

My mother spoke to me numerous times about her certainty that her father had insurance to cover his business, their home, and his life. Her comment was almost always the same, “My father was sort of the patriarch of the family. Everyone, including his brothers and sisters would come to him for advice on all matters. Why would he advise his relatives to get insurance and then not purchase it for himself and his family?” This makes no logical sense. By a stroke of magical luck, my mother’s first cousin found some documents when he went home after the war, including the insurance policy of his parents. He was the very first survivor to recover from ICHEIC because of this document, although others were not so lucky. And when the children of his deceased brothers finally discovered that they could claim as well, they tried but were told that the claim had already been paid. So much for “adequate and sufficient notice to claimants.”

As my mother stated in her testimony on November 16, 2011,

My father was a very responsible man, with a business and real property in order to provide our family with an upper middle class standard of living in pre-war Czechoslovakia (annexed by Hungary in 1938). I am certain he had insurance. But when I filed my claim, after all the fanfare, the Commission (ICHEIC) informed me that his name was not on any of the lists. This is difficult for me to accept, but since it is well-known that the lists produced by Generali and the other insurance companies were incomplete, I wonder why the U.S. government has neither demanded a full accounting, nor allowed the states to require it.

Here are some facts that this Committee and Congress should know about when they come to evaluate the insurance companies' and anyone else's claim that Holocaust survivors, and the children and grandchildren of Holocaust victims, should be satisfied with ICHEIC, rather than have our rights enforced.

ICHEIC was chartered under Swiss law and headquartered in London to avoid American public record laws and court subpoenas. It was funded by the insurance companies themselves, its meetings were conducted in secret, and minutes were not even published of the secret meetings.

Almost all survivors were frustrated and insulted by their ICHEIC experiences. This was conveyed to Congress in a series of hearings between 2000 and 2003. The survivors regaled experiences such as multi year waits for responses, denials without any explanation, demands for information that no claimant could be expected to know (such as the birthdates or death certificates of relatives who perished in the Holocaust), and denials of claims even where policies were proven to have existed (Generali's "Negative Evidence Rule").

*In its first five years, **ICHEIC spent more money on administrative expenses than it paid in claims.** Chairman Lawrence Eagleburger told a Congressional Committee that ICHEIC's internal processes were "none of its [Congress's] business."*

In 2002, Congressman Henry Waxman wrote: "Holocaust survivors have been waiting decades to reclaim Holocaust-era insurance policies. Unfortunately, the . . . majority of the companies that have agreed to the ICHEIC process have not lived up to their obligation to disclose policyholder lists. The ICHEIC

member companies also appear to have wrongfully rejected, undervalued or left unanswered the claims of many survivors.”

*In 2003, Congress even passed a law – the Foreign Affairs Authorization Act – that required the State Department to collect information on ICHEIC companies’ claims, practices, and results. However, **ICHEIC refused to comply with this requirement** as the State Department reported in its annual reports each year.*

When ICHEIC ended in 2007, it had paid fewer than 14,000 of the 800,000 life/annuity/endowment policies estimated to be owned by European Jews in 1938. The total paid on policies was \$250 million, less than three percent (3%) of the \$18 billion in outstanding values at the time, according to the estimate of economist Zabludoff, using what he regards as very conservative numbers. Today the unpaid amount of Holocaust era insurance policies exceeds \$20 billion.

ICHEIC also issued 34,000 checks for \$1000 each which it termed “humanitarian” in nature, but which survivors considered insulting rejections. Yet ICHEIC and its supporters today take credit for having “paid 48,000 claims,” an obvious attempt to inflate its results and give the appearance of success to a process that badly failed.

You can also imagine our shock when, after ICHEIC ended, its Chief Executive Officer, Mara Rudman, became a paid lobbyist for the American Insurance Association – the umbrella U.S. group lobbying against the original version of HR 890 that was introduced by the late Congressman Tom Lantos in 2007. Mr. Lantos, the only Holocaust survivor to ever serve in Congress, was a dear friend of mine. His widow, Annette Lantos,

as well as his daughter Katrina, have remained committed advocates for the rights of Holocaust survivors.

*As a Californian, I am also proud to say that our Insurance Commissioners, **especially former Commissioner, and now Congressman, John Garamendi**, were among the very few who stood toe to toe with the insurance companies and even the Jewish groups on ICHEIC who were so ready to cave into the insurance companies and short-change the survivors. Mr. Garamendi fought passionately for our interests.*

Unfortunately, despite Mr. Garamendi's tireless efforts to make ICHEIC work to benefit claimants, the insurance companies won big by paying so few policies, by paying such small settlements, and by convincing the Supreme Court that the states did not have the right to allow us Holocaust survivors to hold the insurers accountable for their actions. This loss was devastating, and shocked survivors throughout the State and the country.

Not only are we distraught over the way the courts have disrespected Holocaust survivors, but the records that the Holocaust Survivors Foundation USA has found under the Freedom of Information Act show that the State and Justice Departments acted terribly in their court papers and Congressional testimony. We cannot understand how our own government became the adversary of Holocaust survivors in the 21st Century.

Despite the claim that the United States and Europe have been "successful in Holocaust restitution," that is far from the truth. Specific property restitution for individuals has been largely unfulfilled. Only a fraction of the properties actually looted during the Holocaust were "recovered" or restituted in any general

sense, and of those funds, only a small portion recovered and deemed “heirless” or for “humanitarian purposes” has trickled down to meet the pressing social service needs of the remaining Holocaust survivors.

Tragically, tens of thousands of survivors, including many thousands in the US, are facing dire problems. They cannot meet basic home and health care needs, or pay for medicines, dentures, eyeglasses, hearing aids, or walkers, or receive transportation to the doctor. This may shock most leaders and public officials, but it has been documented with increasing frequency in the Jewish and mainstream media.

In the United States, half of all survivors – more than 50,000 – either live below the poverty line (25%) or have incomes so low they are considered “poor” given the cost of living in their communities. In my hometown of Los Angeles, 39% of all Holocaust survivors live below the poverty line. This is a moral and human tragedy that should never have been accepted, but it was, and it continues today. Yet we survivors, and our children, are dealing with these tragedies day in and day out, and the governmental and philanthropic establishments have been sadly protective of status quo organizations and corporations, rather than protective of survivors’ rights, interests, and needs.

How did this state of affairs come to pass? The role of the Conference on Jewish Material Claims Against Germany, Inc. (“Claims Conference”) in the restitution failures is a common thread that cannot be ignored. One of the reasons victims have done so badly in the property and insurance negotiations is that the organizations primarily doing the negotiating (the Claims Conference, the World Jewish Congress, the World Jewish Restitution Organization—WJRO) are less interested in individual claims being honored than in

“global settlements” which result in funds they can control. Even Stuart Eizenstat, no champion of survivors’ rights, recognized this in his book Imperfect Justice.

As reported in the media and testified in Congressional committees, the Claims Conference has drawn the ire of Holocaust survivors throughout the world for its lack of survivor representation in policy making, for policies that cause grave harm to thousands of impoverished survivors, for its lack of transparency in the handling of restituted assets, and worst of all, for its use of restitution funds for pet projects including grants to board members and cronies of organization officials, and other serious concerns.

The Claims Conference is a creation of the early 1950’s. It reflects a political decision made by leaders of the Jewish community and the German government, in the aftermath of the Holocaust, to have a mechanism to channel German reparations to Holocaust survivors. For over 40 years, there were no official survivor organizations on the Claims Conference board of directors. In the 1990’s two “survivor groups” were added to the board, but today only 2 of the 24 voting board members are survivor organizations. So, the Claims Conference’s board members and officers were neither elected by survivors, nor does it morally represent the Nazi victims in whose names the organization obtains its funds.

After German reunification in the early 90s, Germany passed a law making the Claims Conference the legal heir (“successor organization”) to East German properties not claimed by direct heirs within the outrageously short time limit set by the Germans. However, the Conference did not publish information about the names of the Jewish owners of these properties, and then claimed them as their own! To make matters worse, the courts have supported the Claims Confer-

ence's claim to ownership of such properties – even against the legitimate heirs of Holocaust victims who had no idea about the two year deadline – including many who understandably had no idea about family assets before the devastation of the Holocaust.

*Moreover, the Claims Conference has never fully accounted for nor disclosed information about properties it obtained after German reunification that were owned by Jews before World War II. Nor has there ever been an audit of the organization's asset base by an independent **outside** authority that is accountable to the public or the government.*

The shell game taking place was that the Claims Conference ousted thousands of German property heirs of their rights, and then turned around and used the properties for various “research, documentation, and education” projects which were only authorized for the Claims Conference after it amended its by-laws in 1994 – not coincidentally after becoming the “owner” of the “heirless” Jewish German properties.

Yet, without a mandate to use all of the funds at its disposal for the needs of survivors, it has spent far in excess of \$250 million in the last 15 years on projects unrelated to survivors and their welfare. Many of these “research, documentation, and education grants are made to organizations that sit on the Claims Conference Board of Directors. Survivors question the legitimacy of these grants, and have for over a decade, yet we hear silence from most public officials and private community leaders.

Let me repeat – despite tens of thousands of impoverished Holocaust survivors suffering from inadequate nutrition, housing, medical care, home care, and other vital services, the Claims Conference has seen fit to

squander \$250 million for non-survivor “research, education and documentation “ projects, including many insider grants – a quarter of a billion dollars worth of guaranteed Holocaust survivor suffering intentionally imposed by the Claims Conference. How can Congress and other leaders be silent in the face of such cruelty?

There has never been a full, public accounting of the actual value of the assets, including real estate, art, and other properties in the Claims Conference’s inventory of assets. This lack of information is not only inconsistent with all modern notions of necessary transparency of organizations dealing with the public trust, but it makes a mockery of the constant refrain of the past decade – that it “does not have enough funds” to meet the current needs of survivors around the world.

*Among the many terrible, painful, and disgraceful indignities we have been made to suffer occurred in 2002 when Israel Singer, then-President of the Claims Conference (and simultaneously Secretary General of the World Jewish Congress) wrote an article in a prominent Jewish journal giving elaborate details about all of the education and building projects that the Claims Conference was going to create **“with Holocaust restitution funds after the survivors are gone.”** This column outraged survivors throughout the country, as Holocaust Survivors Foundation USA President David Schaecter wrote in response:*

How can plans for a “Jewish People’s Fund” go forward while survivors languish on waiting lists for the health care they deserve, especially after all they have endured? How dare these institutions presume to spend “restituted” funds for their favored “philanthropic” projects into the next century, using

money claimed from the most terrorized victims of the past century? Who will take responsibility for ensuring that the individuals around whom much of our modern Jewish existence is centered - Holocaust victims - are not abandoned a second time?

Despite an outpouring of survivor anger, and limited media coverage of this startling admission by Rabbi Singer that what the survivors had feared all along was really being planned, very little changed. Pressure from some communities has caused the Claims Conference to increase allocations here, and there, as if they were applying grease to a squeaky wheel. But how can survivors' rights be toyed with so shamelessly?

You might recognize Mr. Singer's name. He was dismissed in early 2007 from his position as Secretary General of the World Jewish Congress for a variety of financial improprieties, including taking over a million dollars from one of the Claims Conference organizations (the Jewish Agency) and placing it in a secret Swiss Bank account. Yet for a long period, he retained his position as President of the Claims Conference, while the Chairman, Julius Berman (who remains Chairman today), saw "no reason to take action" and remove him because Rabbi Singer allegedly "has never been involved in the financial decisions of the Claims Conference." Ultimately, public pressure caused the Claims Conference to dismiss Rabbi Singer.

*However, for purposes of HR 890, it is important for this Committee to understand that during the entire ICHEIC period, when it opened in 1998 until it closed in March 2007, Israel Singer was the "leading" voice of the "Jewish" side. As noted, this was a body where the insurance companies were fully represented, **but not claimants**. ICHEIC documents show that Rabbi*

Singer himself represented three different “Jewish groups” on ICHEIC – the Claims Conference, the World Jewish Congress, and the World Jewish Restitution Organization (WJRO). So, when these groups stand before Congress to oppose my constitutional right as an American citizen to go to court against these insurers, based on ICHEIC, they are really defending outcomes engineered or approved by an insular group of non-elected and non-representative big-shots with no legal or moral right to speak or act for us, the victims, or our families.

The Claims Conference has continued to act as if it owns these survivor funds, and the sincere outcry of decent people has been overwhelmed by the institutional power of the Claims Conference’s funding practices. These practices include silencing opposition by funding a myriad of non-survivor programs around the world, and by creating the fear in communities that it might reduce the minimal funding it provides to Jewish family service organizations for survivors’ needs.

Had they been able to pursue a recovery on these insurance policies, perhaps we would not have had the need to be here today and the survivors would have had the financial resources to live out their golden years in peaceful and dignified security.

In more recent years, the Survivors trusted that the U.S. government believed the survivors had made great contributions to their adopted homeland and were valuable enough to accord them the same rights as every other citizen of this great country. And here, too, they were grossly disappointed . . . by our own State Department, Executive Branch of our government, and by Congress in not restoring the survivors’

right to have their “day in court” against the insurance companies.

Finally, I wish to touch on an issue which has yet to be discussed, but vitally important, and which has no other platform to be heard. And that is the plight and suffering of many of our Second Generation members. Although we are not always certain of the mechanism and how it functions, there is an awareness now of something called “transmitted trauma,” the concept that the trauma our parents went through has been passed down to some of us, the results of which manifest as if they themselves had experienced the trauma directly. They exhibit a sort of vicarious PTSD, Post-Traumatic Stress Disorder, with all the attendant symptomology . . . “flashbacks” of events that they did not experience, but were most likely gained from stories fed to them “with mother’s milk” at an impressionable age, irrational fears such as people coming in the middle of the night to take them away, hallucinations that Nazi soldiers are coming down the aisles in a movie theater, startle reflex, etc. I can’t begin to tell you the number of desperate calls I have received from survivor parents troubled over their child’s mental health. Some of these children have been so damaged by the time they reached their teenage years that they have been totally disabled and dysfunctional for the rest of their lives. Additionally, for some of them who have only been marginally affected by their parents’ experiences, the stresses of now having to be caregivers to their parents while experiencing financial hardships has taken an enormous emotional toll on us. The survivors come with unique “baggage” that only serves to exacerbate the already difficult and stressful task of caring for an aging parent.

We have watched and suffered alongside our parents in their struggle for justice. The thought that our “inheritance” will go into the coffers of the Claims Conference and its affiliates just heightens our frustration and pain. On June 22, 2014, the JTA published an article entitled *Considering future, Claims Conference weighs shutting down vs. Holocaust Education*. In that article, the Claims Conference stated, “Given the Claims Conference’s successes at convincing Germany to increase its funding for survivors, the panel concluded that “to close down without attempting to leverage its position and significant experience in the service of Holocaust education and remembrance would be to miss a major opportunity. “<http://www.jewishpress.com/news/breaking-news/considering-future-claims-conference-weighs-shutting-down-vs-holocaust-education/2014/06/22/>.” The survivor community’s response was incredulous. First, with half of all survivors living in or near the poverty line and lacking the funds they need for even basic necessities of life, the statement that the Claims Conference has been “successful” in obtaining funding for survivors defies reality.

Further, it is offensive to survivors and their family members to perpetrate the myth that the Claims Conference is indispensable for Holocaust education and remembrance. Who do they think has been providing it all these years since the end of the Holocaust? The answer is: The Holocaust Survivors and their families. Who has spearheaded and funded all the Holocaust museums and memorials and monuments in this country and abroad? The survivors! And who began the process of educating the masses on the atrocities and lessons gleaned from the Holocaust? The Survivors! My mother said to me, “If they want to pay for Holocaust education, they can start by paying

me for the 35 years I have been speaking to the world about my experiences.”

And, in the unlikely event that any funds should remain after the last of the Survivors have left this world, those funds are the rightful inheritance of the children and grandchildren of the Survivors, and only they can and should decide how that is disposed of.

We children of survivors feel the inadequacy of our words whenever we attempt to convey the suffering of our parents and families to others, especially to the members of this Honorable Committee, our own representatives, all of which suffering was for no good reason. Except now, we have the platform to express the harsh fact that Germany has shirked its responsibilities to our loved ones who are without adequate resources to be cared for properly and to allow for a healing of the physical and mental wounds obtained at the hands the Nazi German Regime. Why should others who are not the perpetrators be pushed to provide inadequate resources thus allowing the tragic suffering to continue to this day without relief?

That is why we are so grateful to you, the members of this Committee, for the opportunity to plead our cause and to urge you, in the strongest terms, to use your power and press our own government, starting with the President, the Secretary of State and the Attorney General, and all of you, to demand that Germany provide the ADEQUATE funds necessary until all survivors have gone, as was promised by Chancellor Adenauer right after the War's end. Our efforts for decades in this regard were without appropriate answers. Nothing! Instead silence. followed by crumbs when the fenders got around to it.

It is “one minute to Midnight” and if something is not done quickly and sufficiently, my fear is that thousands of the remaining survivors will die tragically, suffering their unmet medical and psychological needs.

Simply put, Germany must resume its moral responsibility to care for ALL the medical and mental health needs of the survivors and their families, with no more back turning or sloughing off these huge responsibilities onto the shoulders of others.

We call upon this honorable Committee and its members to press Chancellor Merkel and the German government to **fully** fund the needs of our aging Survivors, without offset or delay.

Chairman Ros-Lehtinen, thank you for allowing me to testify, and I request that I can submit the attached exhibits in the Hearing Record. I also wish to thank Chairman Royce for allowing Mr. Rohrabacher, Chairman of the Europe Subcommittee, and Ms. Ros-Lehtinen and Mr. Deutch, Chairman and Ranking Member of the Middle East and North Africa Subcommittee, to hold this hearing. I thank Mr. Rohrabacher for agreeing to co-sponsor this hearing. And, a most special thank you goes to Congresswoman Ros-Lehtinen and Congressman Ted Deutch, who have been the most steadfast supporters of the Survivor community and champions of our cause against tremendous odds, for many, many years.

APPENDIX D

**STATEMENT OF RENEE FIRESTONE
UNITED STATES SENATE COMMITTEE ON
THE JUDICIARY HOLOCAUST ERA CLAIMS
IN THE 21st CENTURY**

June 20, 2012

My name is Renee Firestone. I was born in Uzhorod, Czechoslovakia. At the tender age of 20, I was imprisoned for 13 months in the infamous death camp known as Auschwitz/Birkenau during the last years of World War II. My entire family was murdered, except for my father Morris, who died of tuberculosis shortly after liberation, and my brother Frank, who was a partisan.

Following liberation in 1945, I was reunited with my brother and my soon-to-be husband Bernard. I settled in Prague, Czechoslovakia, where I was able to complete my education in the Prague School of Commercial Arts. In 1948, I emigrated to the United States with Bernard and my infant daughter, Klara. I settled in Los Angeles, where I pursued my love of fashion, and was fortunate to work hard and enjoy a fulfilling career as a fashion designer.

Of course, the devastating losses I experienced are with me every single day of my life. Because of what we experienced, I have devoted thousands and thousands of hours of my personal time to educating adults and students of all ages and all walks of life, throughout the U.S. and Europe, about my experiences as a Holocaust survivor. I have spoken at workshops and conferences, and have been interviewed in the media countless times regarding the Holocaust and its contemporary implications.

Because of the trauma I experienced, in the 1990s when everyone started talking about restitution of looted assets, I was naturally anxious to locate any remnant possible that would allow me to have a record of what my parents had been able to create and build before the onslaught of the Nazis. Unfortunately, the promises fell criminally short of what I and other survivors hoped for, and deserved.

The Search for Family Insurance Policies

My father was a very responsible man, with a business and real property in order to provide our family with an upper middle class standard of living in pre-war Czechoslovakia (annexed by Hungary in 1938). I am certain he had insurance because my first cousin Fred Jackson (aka Ference Jakubowitz, the son of my father's sister) was the very first person to have a claim approved **and paid** by ICHEIC under his parents' policy. Since my father was the one who advised the entire family, why would his sister's family have had a policy but not my father? However, when I filed my claim, after all the fanfare, the Commission (ICHEIC) informed me that his name was not on any of the lists. This is difficult for me to accept, but since it is well-known that the lists produced by Generali and the other insurance companies were incomplete, I wonder why the U.S. government has neither demanded a full accounting, nor allowed the states to require it.

My experience is similar to that of my late friend Si Frumkin, a survivor and giant in the history of human rights. Si was speaking for all survivors when he exposed the hypocrisy and disrespect that Congress, arrogant Jewish groups, and the Executive Branch of our government have shown in allowing the insurers

to inherit the funds that should have been paid to victims' families decades ago. He wrote:

I am angry. Angry with the SOBs in Germany. With our own SOBs in Washington. With the SOBs running the Jewish organizations that presume to speak and negotiate for me and others like me. With the criminals who run European insurance companies that stole hundreds of millions of dollars from people who died prematurely in gas chambers, and then hired stooges to make sure it's not given back.

I am a law-abiding American citizen. I pay my taxes and my traffic tickets. I vote. I have served on a jury. I fly my flag on national holidays.

In return, I expect my government to fulfill its constitutional obligations to me. One of them is my right to a trial by a jury of my peers. This has been denied me because, apparently, my government prefers to defend and uphold the rights of giant German corporations.

* * *

So far, Generali has been able to keep the money it stole. It, too, has the cooperation of the U.S. government and its judiciary in acknowledging ICHEIC—created, financed, and controlled by the insurance SOBs—as the only legitimate body to rule, decide, and control Holocaust-era insurance claims.

Still, I want to see those lists. I am sure that my father's name appears on one of them. I am also sure that tens of thousands of other

Jews whose parents or grandparents perished will find the names of their relatives.

Hitler took away my father's name and gave him a number. The insurance companies took it away again by pretending that he never existed. I want them to acknowledge that he lived, that he died, and that the way he died matters to his son and to the grandchildren he never knew.

Si Frumkin, "Why Don't Those SOB's Give Me My Money," *Reform Judaism Magazine*, Spring 2008, <http://reformjudaismmag.org/Articles/index.cfm?id=1315>.

We survivors have been stymied with an unremitting series of distortions, rationalizations, and outright lies and misstatements by the opponents of S. 466 and its House counterpart, HR 890. Regrettably, these have been disseminated by institutions survivors once respected, including the American government and so-called Jewish "defense" organizations.

The most blatant falsehood repeated by our adversaries is that this legislation would undermine promises the U.S. government made to insurance companies that if they participated in ICHEIC they would never be subjected to litigation in U.S. courts. This is not true, and survivors know it, and we deeply resent the "big lie" campaign of the State Department, the Justice Department, the insurance companies, and the non-survivor groups like the Anti Defamation League, the American Jewish Committee, B'nai B'rith, the Claims Conference, and the World Jewish Congress, Stuart Eizenstat (in his conflicting roles as a Claims Conference official and State Department special advisor) and others who have profited and benefited from ICHEIC.

But what these groups are not, and what Eizenstat is not, are representatives of, nor advocates for Holocaust survivors. They are the defenders of a status quo that has stripped Holocaust survivors of our rights, of our dignity, and of our family legacies. They have presided over a restitution enterprise that has allowed insurance companies to retain 97% of the money they owe to Jewish families, conservatively estimated at over \$20 billion, and that has allowed half of all Holocaust survivors in this country to live in or near poverty, without the resources for the health and dignity we deserve. These groups and individuals have no standing to interfere with or oppose what Holocaust survivors want for ourselves, and they certainly should not be allowed to propagate lies in the service of this corrupt status quo.

This statement will address some of the falsehoods and misconceptions being disseminated by the insurance companies and their supporters in the Administration and among a small number of *non-Holocaust survivor* Jewish organizations. It encompasses the consensus view of the Executive Committee of the Holocaust Survivors Foundation USA (HSF), on which I serve. I have also attached certain exhibits which I wish to have included in the Hearing Record. More information can be found at the HSF website, www.hsf-usa.org.

ICHEIC History

The International Commission for Holocaust Era Insurance Claims (ICHEIC) was the creation of the insurance industry, not state regulators as the legislation opponents contend. The companies instigated ICHEIC because of state laws passed after several insurance regulators held hearings that yielded damning evidence that the insurers had denied Holocaust

victims' insurance claims with outrageous demands such as requiring death certificates or original policies. These statutes required the companies to disclose their customer names, and to give survivors and heirs a 10-year period of time to bring cases in state courts without regard to statutes of limitations.

According to Federal Judge Michael Mukasey: "ICHEIC is entirely a creature of the six founding insurance companies that formed the Commission, it is in a sense the company store The concern that defendants could use their financial leverage to influence the ICHEIC process is not merely theoretical ICHEIC's decision-making processes are and can be controlled by the defendants in this case."

When ICHEIC began in 1998, it was set up to exclude survivors and heirs, i.e. actual claimants and their chosen representatives, from the decision making process. The insurers had full membership, but we, the victims whose families were cheated, had no seat at the table. This remained the case throughout ICHEIC's nine tumultuous years of existence.

There were three "Jewish" entities on ICHEIC — the Claims Conference, the World Jewish Restitution Organization, and the State of Israel. The American Jewish Committee was an "observer." However, these are not survivor groups and they have no moral or legal authority to negotiate for those of us whose families purchased insurance.

It is true that several state insurance regulators joined ICHEIC. They supported a process to help resolve claims on a voluntary basis — *if the claimant was satisfied with what was offered*. Many individuals did accept ICHIEC offers despite the lower-than-economic values that were agreed to by the

Commission. That was the people's choices and I would not criticize any survivor, especially one who was elderly and in need of the funds, for making that decision.

But the insurance regulators and others on ICHEIC always understood that participating claimants retained their customary rights under State law if they were not satisfied with the process. Among these was Florida Insurance Commissioner – now U.S. Senator – Bill Nelson, who spelled out his condition that state laws remained in place, and California Insurance Commissioner John Garamendi, who fought the insurers all the way to the U.S. Supreme Court to uphold the California laws protecting survivors' rights.

Available ICHEIC materials confirm that everyone understood that a company would **not**, solely by virtue of participation on ICHEIC, be immune from lawsuits. The ICHEIC minutes indicate that phrases like “exclusive remedy” and “safe haven” meant that if a company *paid* a claimant through ICHEIC, it should not be vulnerable to a possible *double payment* if the claimant who accepted an offer later brought an action in court. However, the proposal that the claimant would sign a declaration that he or she was entering into an exclusive remedy at the beginning of the claims process was rejected:

Mr. Levin [the New York State Superintendent of Insurance] said that it had never been intended that, once a claimant had entered the process, he would have to forego any other available remedy Mr. Levin does not believe that the companies have bad intent, but he feels their view is a distortion of what was intended by the individuals who were involved in the creation of the MOU. Mr.

Pomeroy, as the chairman of the task force that worked on the MOU, concurred with this view.

Minutes of the Meeting of International Commission on Holocaust Era Insurance Claims Thistle Mount Royal Hotel, March 2-3, 1999, at 9-10 (emphasis supplied).

Unfortunately, due to the court decisions that relied on the government's misleading submissions, the original premise that ICHEIC was voluntary has been perverted and we have now been stripped of our legal rights. Today, Senator Nelson, one of the original ICHEIC insurance commissioner-members, is a prime sponsor of S. 466, and Congressman Garamendi has co-sponsored and testified twice to support the House counterpart, HR 890.

ICHEIC Was Not A Fair Forum For Holocaust Survivors and Heirs

Given ICHEIC's history, its defenders' current plea that the process deserves so much deference that it be allowed to supplant Holocaust survivors' constitutional rights is outrageous. Not only were there a number of Congressional hearings between 2000 and 2003 describing the failures of the ICHEIC process, but it operated in secret and consistently refused to comply with Congressional mandates to disclose information about its claims processes, and paid less than 3% of the amount owed to Holocaust victims. Yet today people claiming good faith say this deeply flawed process should be regarded as a substitute for all Holocaust survivors' legal rights. For shame.

ICHEIC Operated In Secret, Avoided Congressional Reporting Requirements, and Destroyed and Sealed Records When It Closed.

ICHEIC was chartered under Swiss law and headquartered in London to avoid American public record laws and court subpoenas. It was funded by the insurance companies, its meetings were conducted in secret, and minutes were not even published.

The overwhelming majority of survivors were frustrated and insulted by their ICHEIC experiences. This was conveyed to Congress in a series of hearings between 2000 and 2003. The survivors related their frustration and anger over ICHEIC's multi-year waits for responses, denials without any explanation, demands for information that no claimant could be expected to know (such as the birthdates or death certificates of relatives who perished in the Holocaust), and denials of claims even where policies were proven to have existed (Generali's "Negative Evidence Rule").

In its first five years, ICHEIC spent more money on administrative expenses than it paid in claims. Chairman Lawrence Eagleburger told a Congressional Committee that ICHEIC's internal processes were "none of its [Congress's] business."

ICHEIC's publication of names was late and incomplete. The German insurers like Allianz waited *five years* before publishing names, and even then they did not identify the specific company that sold a particular policy. Generali also took five years to publish what amounted to a fraction of its policy holder names. It also refused to publish names from over 80 subsidiaries and affiliates. Germany's list of published names came from a database with only 25% of the relevant policies from Germany, and only 20%

of all Eastern European Jewish policy holder names were published.

In 2004, after the claims deadline had passed, the Washington State Insurance Commissioner wrote: “By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability.”

Relaxed Standards of Proof

Among the most often repeated yet never substantiated arguments made by our adversaries in the State Department and the ADL, AJC, B’nai B’rith, World Jewish Congress, and the Claims Conference is that ICHEIC applied “relaxed standards of proof,” i.e. standards that were more favorable than the courts would apply. This is simply not accurate. There is no evidence that ICHEIC companies made offers of payment in the absence of documentary proof of a policy.

For example, Generali was allowed – **without proof** – to deny claims on policies it admittedly sold by saying the policies were paid or lapsed before 1936. This was called the “negative evidence” rule. ICHEIC placed the burden *on survivors* to disprove Generali’s argument – which needless to say was impossible without the documentation the companies should have. Of course, the companies have always had control of all their records and reinsurance records.

According to the New York Legal Assistance Group: “ICHEIC’s decision to allow the use of negative evidence belies the claim . . . that the organization’s principal purpose was to find claimants and pay them.” Yisroel Schulman, “Holocaust Era Claims:

Mission Not Accomplished,” *The New York Jewish Week*, May 4, 2007.

And, after ICHEIC closed in 2007, former New York State Insurance Superintendent Albert Lewis, who served as an ICHEIC appellate arbitrator, disclosed that he and other arbitrators were pressured by the ICHEIC hierarchy to rule *against* survivors even when they had credible claims, if the *survivors* could not produce documentary proof of a policy. This “phantom rule” was contrary to what ICHEIC rules stated. Stewart Ain, “Phantom Rule May Have Limited Holocaust Era Awards to Claimants, *The New York Jewish Week*, June 29, 2007.

Given these facts, the legislation opponents have changed their story, and now equate “relaxed standards” by stating that companies offered payments on policies where the claimant “did not even know the name of the issuing company.” This is not the same as “relaxed standards of proof,” and it was not ICHEIC’s or the insurers’ idea. The insurers were already obligated by several state laws to publish the names and enable survivors and heirs to obtain this information to ascertain whether they might have a claim before ICHEIC was created. And in the end, ICHEIC served to allow the insurers to disclose far less than the states required, reducing the number of claims and allowing the companies to retain more of their Holocaust profits. This was one of the great tragedies caused by the Supreme Court’s decision in the *Garamendi* case. It is the tragedy Congress can and must overrule by enacting S. 466.

In 2003, Congress even passed a law – the Foreign Affairs Authorization Act -that required the State Department to collect information on ICHEIC companies’ claims, practices, and results. However, ICHEIC

simply refused to comply with this Congressional mandate every single year, without any consequence.

When ICHEIC closed in 2007, over the objection of the California Insurance Commissioner, ICHEIC CEO Mara Rudman ordered that unspecified documents be destroyed, and that claim files be sealed for 50 years.

ICHEIC Paid Only 3% of the Outstanding Amounts Owed By Insurers to Holocaust Victims

When ICHEIC ended in 2007, it had paid fewer than 14,000 of the 800,000 life/annuity/endowment policies estimated to be owned by European Jews in 1938. The total paid on policies was \$250 million, less than three percent (3%) of the \$18 billion in outstanding values at the time, according to the estimate of economist Zabludoff, using a conservative multiplier of the 30-year U.S. bond yield. Today the unpaid amount of Holocaust era insurance policies exceeds \$20 billion.

ICHEIC also issued 34,000 checks for \$1000 each which it termed “humanitarian” in nature, but which survivors considered insulting rejections. Yet ICHEIC and its supporters today take credit for having “paid 48,000 claims,” an obvious attempt to inflate its results and give the appearance of success to a process that badly failed.

You can also imagine our shock when, immediately after ICHEIC ended, its Chief Executive Officer, Mara Rudman, became a paid lobbyist for the American Insurance Association – the umbrella U.S. group lobbying against the original version of S. 466 that was introduced by the late Congressman Tom Lantos in 2007. Mr. Lantos, the only Holocaust survivor to ever serve in Congress, was a dear friend of mine. His widow, Annette Lantos, as well as his daughters Katrina and Annette, have remained committed

advocates for the rights of Holocaust survivors. Mrs. Lantos's statement is one of the exhibits to this submission.

The United States Never Promised Insurers Immunity From Litigation.

We continue to be horrified that the State Department and others maintain that allowing survivors to sue insurance companies in court would violate promises of immunity previously by our government, or "disturb solemn commitments made by the U.S. government in bilateral agreements."

The U.S. government never promised insurance companies immunity from litigation for participating in ICHEIC. The U.S.-German executive agreement itself provides: "The United States does not suggest that its policy interests concerning the Foundation in themselves provide an independent legal basis for dismissal."

The Clinton Administration filed court papers immediately after the U.S.-German executive agreement which reiterated that the Agreement "does not preclude individuals from filing suit on their insurance policies in court" and does not "mandate that individual policyholders or beneficiaries bring their claims in ICHEIC."

In the aftermath of the agreements, the Clinton Department of Justice assured concerned members of Congress in 1999 and 2000 that "the [position of] the United States . . . does not suggest that private claimants who wish to pursue suits against German companies are foreclosed from doing so."

Even Mr. Eizenstat himself, before he joined the Claims Conference, wrote "Insurance policies were not

honored ... why should their victims not have the same right to sue for justice as victims of other and lesser catastrophes?" He also conceded in his 2003 book that the U.S. government never promised the insurers immunity in exchange for joining ICHEIC, noting that while German companies "insisted on a definitive commitment by the United States to support some legal ground for the dismissal of future suits," President Clinton refused: "The Germans and their lawyers knew full well from months of explanations that we would not take a formal legal position barring U.S. citizens from their own courts."

In a *New York Jewish Week* article in June 2011, Claims Conference Chairman Julius Berman admitted that the U.S. government never promised the insurers immunity based on ICHEIC. Berman said: "there was no commitment that they would have [legal] peace if they participated [in ICHEIC], but there was a representation that we – the Jews – would not make a deal for ICHEIC and then go to Congress and suggest that we could still arrange for lawsuits against them." Needless to say, neither Mr. Berman nor the Claims Conference nor any such organization has the authority to make such a promise on our behalf, nor to presume to bind Holocaust survivors and our families.

The fact that the insurers now have immunity is a result of misrepresentations the Department of Justice made to the courts, as we have seen in the records produced under the Freedom of Information Act and reported by the *Miami Herald* and the *Center for Public Integrity*. Despite the government lawyers' awareness that dismissal of survivors' lawsuits was inconsistent with the government's actual commitments, to quote the senior career deputy in the

Solicitor General's office, the Department "hid the ball" from the court despite the dire consequences for survivors.

Holocaust Survivors Must Not Be Relegated To Second Class Citizenship Or Have Our Rights Limited To So-Called Voluntary Processes

In October 2007, the House Foreign Affairs Committee under Chairman Tom Lantos unanimously passed legislation similar to S. 466 to help survivors recover their policies. In response, the insurers, the State Department, the Claims Conference, and Eizenstat argued a law was unnecessary because the New York State Holocaust Claims Processing Office (HCPO) would "continue to" pay claims under ICHEIC's "liberal" rules. Although survivors rejected this "voluntary" ICHEIC model, the House Financial Services Committee acquiesced to the insurers' position and gutted Chairman Lantos's bill. However, according to its published reports, in over 4 years the New York State Holocaust Claims Processing Office has succeeded in helping recover a grand total of 6 policies, worth only \$70,000. That's \$70 thousand out of the \$20 billion remaining unpaid.

HCPO's miniscule success rate is no surprise. It lacks subpoena power, exercises no compulsory authority over the insurers, and accepts all of ICHEIC's previous compromises and practices that yielded such poor results. This is how the *New York Jewish Week* described the HCPO in a recent article (December 2011): "Just one month after the U.S. State Department and several major Jewish organizations told a congressional committee that New York State's Holocaust Claims Processing Office (HCPO) could be relied upon to handle all Holocaust-era insurance claims, New York State has admitted the system

doesn't always work." This article is one of my exhibits.

ICHEIC, despite the good intentions of some, was deficient in many respects. However, even if it were more "successful," S. 466 would still be necessary. Whether the number of unpaid policies is 100,000, 10,000, or only one, there is no moral justification to strip Holocaust survivors of our legal rights — none. We deserve and demand the same rights as other Americans.

It Is Immoral To Argue Survivors Should Be Denied Equal Rights To Induce Germany To Provide Assistance For Indigent Survivors.

Perhaps the most appalling argument against us is that passage of insurance legislation will harm negotiations over "outstanding Holocaust issues" because it would call into question the U.S. government's ability to keep its commitments. Of course, the United States never promised the insurers that they would be immune from civil litigation in U.S. courts as outlined above.

The shameful misrepresentations the Executive branch, insurers' lobbyists, and non-survivor Jewish groups have made about past U.S. government agreements and policy are nothing short of contemptible. They are an insult to Holocaust survivors and the memories of our murdered loved ones. Compounding the shamefulness of these tactics, we also know that Congress is being told that if it enacts HR 890 and S. 466, the German government will reduce assistance for indigent Holocaust survivors. This is also false as a matter of fact – the German Ambassador himself has denied any such linkage many times, even in writing.

However, it is unacceptable as a matter of principle to say Holocaust survivors should have to give up our legal rights to enforce private contracts breached by Generali, Allianz, AXA, et al., to induce Germany to provide funding for the needs of impoverished survivors!

Germany perpetrated the worst crime in human history and for that country or anyone serving as its mouthpiece to suggest that it will intentionally inflict any kind of suffering on impoverished Holocaust survivors in their final years is beyond the pale. Have they forgotten that after World War II, German Chancellor Adenauer promised that Germany would provide a dignified level of care and support for all Holocaust survivors throughout their lives?

The data clearly show that Germany has failed to live up to this ideal. In the United States, half of all survivors – more than 50,000 – either live below the poverty line (25%) or have incomes so low they are considered “poor” given the cost of living in their communities. In my hometown of Los Angeles, 39% of all Holocaust survivors live below the poverty line. Tens of thousands of survivors in this country cannot meet basic home and health care needs, or pay for medicines, dentures, eyeglasses, hearing aids, or walkers, or receive transportation to the doctor.

We survivors, and our children, are dealing with these tragedies day in and day out, and the governmental and philanthropic establishments have been sadly protective of status quo organizations and corporations, rather than protective of survivors’ rights, interests, and needs.

Under the scheme Germany and the Claims Conference have engineered for the past 15 years, half of all

survivors in this country have been allowed to slip into or near poverty, while the insurers alone have absconded with some \$20 billion. The industry's self-serving position, inexplicably endorsed by the State Department, would excuse the destruction of Holocaust survivors' legal rights to enforce private contracts, and it should be obvious to all that these contracts have nothing to do with Germany's failed obligation to assist survivors in need.¹

The fact that Germany has in recent years, under intense pressure from the Holocaust Survivors Foundation USA, begun to provide higher but not nearly sufficient levels of home care funding for survivors – more than a sixty years after Chancellor Adenauer's promise – does not justify allowing Allianz, Generali, AXA, and other global insurers to avoid their legal debts.

This condescension must stop once and for all. Neither the State Department, the ADL, AJC, Claims Conference, B'nai B'rith, World Jewish Congress, nor even Mr. Eizenstat has the right to patronize us by pontificating about what is and isn't right for Holocaust survivors. These insurance policies were sold to our families and we have every right to decide for ourselves how to enforce our contractual rights. We survived in spite of the abandonment of European Jews by the State Department and the so-called Jewish "defense" organizations supporting the insurance companies. Many survivors even served in the U.S. military after moving here and in the Korean and Vietnam Wars. It is long past time for Congress finally

¹ For more on this issue, please see my statement to the House Foreign Affairs Committee, November 16, 2011, pages 5-10, <http://foreignaffairs.house.gov/112/fir111611.pdf>.

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to pass legislation to restore our basic rights as American citizens, and for President Obama to sign the measure into law. Mister Chairman, thank you for allowing me to testify, and to include the attached exhibits in the Hearing Record.

APPENDIX E

**STATEMENT OF DAVID SCHAECTER
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
Righting the Enduring Wrongs of the
Holocaust: Insurance Accountability and
Rail Justice**

November 16, 2011

Madame Chairman, and Members of the Committee, my name is David Schaecter. I am the President of the Holocaust Survivors Foundation USA, a national coalition of survivor leaders and survivor groups. Thank you for providing Holocaust survivors the opportunity to address this Congress. It is a great honor.

Today I am addressing you not only on behalf of the Foundation, but for Herbert Karliner, a dear friend and fellow survivor who was scheduled to testify. He had a harsh fall and suffered several injuries a few days ago. We believe he will be OK, but at the age of 85, he could not take any chances to undergo the travel and pressure of speaking before Congress. So, it falls on me as a close friend of Herbie, and as President of the Foundation, to read his spoken testimony to this Committee. I will conclude with some personal remarks.

Herbie Karliner Story

Herbie Karliner now lives in Miami, Beach, Florida. But he remembers Kristallnacht as if it were yesterday. He was a small child that day when he awoke to the news that his father's store and most other Jewish-owned businesses were set on fire. Within hours, the

Gestapo arrived and took his father, Joseph Karliner, to Buchenwald. Though his father returned, his family was fated to sail on the SS St. Louis that was turned away from the shores of Miami Beach in 1939. After the St. Louis returned Europe, Herbie's father, mother, and two sisters were doomed to death at the hands of the Nazis. Only Herbie and his brother Walter survived.

Before he died, Joseph Karliner had told his sons about a life insurance policy that he bought from Allianz "in case something happened." When Herb and Walter approached Allianz after WWII, the company said his policy had been paid out to an "unknown person." When Herb Karliner applied to ICHEIC in 2000, Allianz said the policy had been paid to the beneficiary. This closed the case under ICHEIC rules.

Years later, Mr. Karliner managed to obtain the "repurchase" document. The date was Nov. 9, 1938 – Kristallnacht. If either Allianz or ICHEIC had given him the document as they were required to do under ICHEIC rules, Herb could have informed them that his father surely did not stop at the Allianz office on his way to Buchenwald to cash in his life insurance policy that day.

Herbie moved to the United States in 1949, and served in the U.S. Army in the Korean War. How ironic – the country that rejected his whole family in 1939 at such a great cost asked him to serve in 1951, and he was honored to do so. Yet, as his statement for the record makes clear, we cannot comprehend how the American courts, and the President and Congress, have decided that Herbie Karliner, and all of us survivors, unlike all other Americans, cannot sue Allianz in court to recover what they owe for his father's policies. We are second class citizens under the American legal

system. How can any member of Congress stand by and accept this historical and moral injustice?

David Schaecter Comments

I would like to add a few words of my own to Herb Karliner's powerful story. For over 45 years, I have been active in the Jewish community, from the Jewish Federation, to AIPAC, and all the other groups you can imagine. I led dozens of missions to Israel and the death camps of Europe. I was one of seven local leaders who came together to privately fund and build a magnificent Holocaust Memorial on Miami Beach, which is visited by tens of thousands of school children and adult tourists alike. Like hundreds of other survivors in South Florida, including Herbie, and thousands around the United States, like Renee Firestone, I have also spent countless hours speaking to students in grade schools and colleges and community events to ensure that no one forgets what befell our people in the Holocaust.

No one can ever repay us for the murder and destruction of the Holocaust. However, the Nazis and their collaborators also perpetrated a massive theft of the European Jewish people's property and assets. They even used some of the looted assets forcefully taken from our people to finance the war effort, and transport us to the hells of Auschwitz-Birkenau. Yet, companies that profited from the Holocaust such as Allianz, Generali, and the others have never been held accountable. We have been robbed of our family histories and legacies, and the world needs to know these companies are inflated and tainted by Holocaust profits. As economist Sidney Zabludoff has stated to Congress, these unpaid Holocaust insurance debts exceed \$20 billion in 2011 dollars.

Today we face the challenge of all of us survivors getting older. Many are poor and frail. Even though the post-war German government promised to care for all Holocaust survivors, the programs have never been adequate to provide for our destitute and aging brothers and sisters. It pains me to say that half of the survivors in the United States live below or near the poverty line, and cannot afford the home care, dental care, medicines, eyeglasses, wheelchairs, and even food they need. Survivors are in crisis, not only in South Florida, but in Los Angeles, New York, Chicago, Boston, Las Vegas, and throughout the United States, as well as in Israel, Europe, Canada, Australia, and South America.

It is an outrage that the insurance companies have failed to pay over \$20 billion they owe to Holocaust victims, while so many survivors are living in misery, dying before their time. Instead of paying the victims and families what they owe, these companies are spending millions upon millions of dollars on Washington lobbyists, on sports events, and on Sunday talk shows, to sanitize their reputations.

Allianz is a perfect example. It has not denied its close relationship to the Nazi regime. In 1933, Allianz chairman Kurt Schmitt, an early Nazi party member, became Hitler's Minister of Economics. Allianz provided the Reich with insurance coverage for Auschwitz and other death camps. At the same time, it was selling policies to European Jews and handing over Jewish customers' files to the Nazis. After World War II, SS officers and other party members who used to work for Allianz went right back to their same jobs. Then in the 65 years after the war, Allianz failed to honor over \$2 billion in policies it had sold to Jewish customers.

ICHEIC was a grand slam for Allianz – it paid less than \$30 million to claimants compared to the \$2 billion it owed.

Amazingly, though, soon after ICHEIC closed in 2007, Allianz offered to pay \$300 million for naming rights to the new New York Giants and Jets in the Meadowlands. Thanks to a grass roots outcry from the community, the deal was cancelled.

However, unlike the good people of New York and New Jersey, others have been very willing to take Allianz's money, including CNBC, National Public Radio, American Public Media, the American Jewish Committee, and – believe it or not – Garrison Keillor and A Prairie Home Companion. Are these institutions really so blind to decency that they would accept this blood money so Allianz can sanitize its history?

Maybe this hearing will send a message. Maybe now, when our fellow Americans hear Allianz's ad on the Marketplace Morning Report on National Public Radio, or A Prairie Home Companion on Saturdays, they too will demand an end to this shameful behavior.

However, Congress can no longer plead ignorance. This history is well-documented. Today, Herbie Karliner and Renee Firestone have added their powerful stories and documents to the evidence from past hearings. Almost 5 years ago, Tom Lantos, the great human rights champion and the only survivor ever to serve in Congress, unanimously passed this bill through this same Committee. Yet, the bill was hijacked with a long list of evasions. Now, year after year, the response – from Congress and from Presidents Bush and Obama – has been to change the subject. We are told our rights must bow to Foreign Relations, or to Executive Policy and Power. We are

told that State Department bureaucrats or Jewish organizations know better than survivors what is best for us. We have even heard complete lies such as the argument that our government promised immunity for insurance companies, a lie exposed by Justice Department records under the Freedom of Information Act.

The latest diversion may be the most insulting of all. We are now told that if Congress restores our legal rights, then Germany will cut funding to assist indigent Holocaust survivors. Can you imagine such an argument being made to deny Hurricane Katrina or California wildfire victims their full insurance rights? Why should Holocaust survivors be singled out for such an insulting argument? Why should Holocaust survivors should have to give up our legal rights to recover private insurance policies against Generali and Allianz, so that Germany will provide funding for the needs of impoverished Holocaust survivors? One thing has nothing to do with the other. Insurance companies should pay their debts and we should be able to sue them if they breach their contracts. This has nothing to do with Germany's long overdue moral obligation to provide adequate funding for the needs of survivors, a duty it has ignored and only recently began to address due to pressure from the survivor community and our allies here in Congress.

Time is running out. This is a deadly serious matter. Thousands of Holocaust survivors have died in these past several years, waiting for this Congress to restore our rights. Five years ago, Herbie could have probably bounced back from this fall in time to come here and plead his case by himself, but not now. Five years ago, Mrs. Firestone might have been able to fly here without needing her daughter to accompany her. Thankfully, she and Herbie have the courage to persevere

81a

and make sure their voices are heard. We urge this Committee and Congress to do the right thing, and to pass HR 890 without further delay.

I ask that the attached exhibits be included with my statement for the hearing record.

APPENDIX F

**STATEMENT OF HERBERT KARLINER
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE
ON FOREIGN AFFAIRS**

**Righting the Enduring Wrongs of the
Holocaust: Insurance Accountability and
Rail Justice**

November 16, 2011

My name is Herbert Karliner. I was a child in 1939 when my family, and hundreds of other Jews on the SS St. Louis trying to escape Hitler were turned away by this great country. When we returned to Europe, my mother, my father, and my two sister and hundreds of others were killed. Needless to say, this tragedy has affected my entire life.

Last month, I participated in a Georgetown University symposium held to honor the memory of the St. Louis victims, and to examine in depth the perfidy of American officials who allowed hundreds of Jews to be rejected by the greatest democracy in world history and sent back to Hitler's maniacal Europe as a symbol of the world's indifference toward Jewish lives. During that seminar, I believed it was imperative, as I do now on the anniversary of Kristallnacht, to speak about today's terrible hypocrisy in official Washington and in some Jewish organizational circles toward the rights and interests of Holocaust survivors. Despite all of the talk about honoring the memory of the Holocaust, we survivors are second class citizens under American law, and thousands of impoverished survivors here and the world over have been allowed to suffer in pain and loneliness in the midst of such abundance, and

within earshot of speech after speech and ceremony after ceremony intoning “Never Again.”

During those tumultuous days, my father Joseph Karliner told my brother and me about an Allianz life insurance policy that he bought to provide for us if something happened, and even gave us the number. When we approached Allianz after the war, they said his policy had been paid out to an “unknown person.”

When the International Commission for Holocaust Era Insurance Claims (ICHEIC) was created in 1998, my brother and I applied. Like many survivors and family members, we wanted to believe the process was worth trying. However, like most survivors and family members, we were bitterly disappointed by a process that seemed rigged against us. Allianz admitted it sold insurance to my father, but it refused to pay saying the funds had been “paid out to the policy holder.” We doubted this was true, but neither Allianz nor ICHEIC provided us with any documents, so there was no way for us to challenge this decision under ICHEIC rules.

I recently obtained papers from the German consulate showing that the “repurchase” document was supposedly signed by my father on November 9, 1938 – Kristallnacht. If Allianz or ICHEIC gave me this document at the time I applied, I would have pointed out that on that day, my father’s store was burned down and he was taken from our home to Buchenwald. Though I was a small child, this is something you never forget.

I seriously doubt that my father stopped by the Allianz office on his way to Buchenwald to cash in his life insurance policy. But since I am not allowed to go to the American courts to recover my property, Allianz

will have “inherited” the proceeds of my father’s insurance policy – worth more than \$180,000 today.

There was another ridiculous ICHEIC practice that caused great harm to claimants. The ICHEIC web site posted the names of several men and women whom I knew to be my relatives, because I was familiar with their names and their hometowns, and I inquired about their policies as well. Allianz admitted that several of the named individuals had indeed purchased Allianz policies, but it refused to give me any information *unless I could provide their dates of birth*. This was impossible, because I was a 9 years old when WWII began, and I had no conceivable way of knowing the birthdates of adult relatives who died in the Holocaust. But Allianz was fully within its rights under ICHEIC rules to simply deny us this information about insured relatives for whom my brother and I were the likely heirs.

So, even when companies followed ICHEIC’s “rules,” the system was stacked against the survivors, their family members, the legal heirs.

It is tragic that even in the year 2011, these deceptions have been accepted and perpetuated by our very own government. Shockingly, the United States government has taken the position that we survivors cannot go to court to sue Allianz and Generali and other insurance companies who cheated us and our families. Yet in recent years our Government has fought against Holocaust survivors in the name of foreign policy and executive power, even misrepresenting past agreements, and giving the insurance companies like Allianz and Generali victories worth billions of dollars (over \$20 billion in 2011 dollars).

After I survived the war in hiding in France, I moved to the United States in 1949. I served in the U.S. Army in the Korean War. Although this great country turned me and my family away in 1939, and caused incredible life-long grief, in 1951 Uncle Sam “wanted me” and I was honored to serve. However, it is truly outrageous that today, *because I am a Holocaust survivor*, I am singled out among all American citizens in that I cannot take Allianz to court to demand the truth about my family legacy, and I cannot recover the value of my father’s policy.

It is equally appalling that non-survivor Jewish groups like the American Jewish Committee, the Claims Conference, the Anti Defamation League, B’nai B’rith, and the World Jewish Congress are also supporting the insurance companies against us. ADL and AJC have even taken their money too. We are outraged by any Jewish groups arrogantly interfering with our rights, especially those who failed to help us in our extreme time of need. By what tortured logic or moral principle do such organizations – who are not authorized by survivors, do not represent survivors, have never even spoken with survivors, and certainly are not accountable to survivors – presume to interfere with our individual constitutional rights as American citizens? Their arrogance is criminal, and the results have been devastating.

As we commemorate the 73rd anniversary of Kristallnacht, the observance was again riddled with tragic irony. Half of the survivors in this country live near or below the poverty level, and tens of thousands died in misery, many before their time, without adequate health care, dental care, nutrition, shelter, eyeglasses, medicines, and home care. As a volunteer for the Jewish Community Services in Miami, I can

certify that far too many survivors are not getting the help they need to live in dignity. Meanwhile, these non-survivor groups and our own government have been protecting the global insurers hoarding billions they owe survivors.

Our colleagues have suffered incalculable tragedies and unspeakable crimes, most losing all or most of their loved ones. To have no understanding or willingness to help in regard to Nazi stolen assets like paid up insurance contracts which are not given back is intolerable. Instead of holding Allianz and other companies truly accountable, if you look down the street in this City, no one seems to care. To the contrary, the companies are spending millions lobbying Congress to keep survivors from getting what is owed to us.

Let me remind the Committee just who Allianz was, and what it is today. It has never denied its intimate relationship to the Nazi regime. In 1933, Allianz chairman Kurt Schmitt, who was an early Nazi party member, became Hitler's Minister of Economics. Allianz provided the Reich with insurance coverage for Auschwitz and other death camps. During this same period of time, Allianz and its affiliates were selling policies to European Jews and handing over Jewish customers' files to the Nazis. Allianz escaped serious prosecution after the war, and its former employees who served in the SS or the Nazi party went right back to their old jobs. Between the end of the war and today, according to economist Sidney Zabludoff, Allianz failed to honor over \$2 billion in policies it had sold to Jewish customers.

When Allianz tried to cynically sweep this past under the carpet and pay \$300 million to name the new pro football stadium in the Meadowlands in 2008, thanks to some outstanding reporting the public

learned about Allianz and demanded the deal be scratched. Unfortunately, others have not been so principled. Today, National Public Radio, CNBC, and American Public Media are taking Allianz's money, shamelessly using their respected positions to launder the company's past.

You will also be shocked to learn that Garrison Keillor, and A Prairie Home Companion, are also taking Allianz's sponsorship money! And, they refuse to even respond to letters of inquiry from Holocaust survivors and our supporters. When one listener inquired through the program web site, the response was even more startling – with the official response insisting they are not responsible for such program sponsorship and do not take any responsibilities for broadcasts sponsored by Allianz.

We pray that this hearing, convened by the Honorable Ileana Ros-Lehtinen, a great champion of Holocaust survivors' rights, will bring change at long last. We pray that Congress will make a commitment to ensuring that we survivors obtain the truth about our families' legacies, including a full accounting from all corporate profiteers, passing HR 890 and its Senate counterpart S. 466. . And, maybe at long last, all survivors will be afforded the dignity they deserve in their last years. This will happen only if Congress acts now to restore our rights and insist that the Holocaust profiteers disgorge everything they stole. This is what remembrance – and justice – demand.

I would like to add a word about the French Railroad bill. We support all survivors' rights to full compensation for Holocaust era wrongs, no matter how many years have passed, no matter how powerful the culprit is today. This certainly includes the French Rail legislation. However, for the record, I would like the com-

mittee to know that when the St. Louis was returned to Europe, we were taken to France. My parents and sisters were deported by the French Railroad to their deaths in the camps. Due to my young age, I managed to survive in hiding in France until the end of World War II. However, I believe that I and others should be entitled to pursue justice against the French Railroad and others who participated in similar atrocities, and all who profited from the Holocaust like the insurance companies.

Thank you and please allow me to include several exhibits into the record with my statement.

APPENDIX G**Testimony of Alex Moskovic
House of Representatives
Committee on Foreign Affairs
Subcommittee on Europe
October 3, 2007**

Good Afternoon. My name is Alex Moskovic. At the age of 14, I was the only one of 41 family members to survive the Auschwitz-Birkenau and Buchenwald extermination and concentration camps. I came to this country in 1947 and after my retirement, I moved to Florida and volunteered to work on the Advisory Committee of the Ruth Rales Jewish Family Services in Boca Raton FL. The growing problems facing survivors as they age, the lack of resources to assist them, and the overall frustration faced by all survivors, including me, who attempted to recover their family assets such as insurance policies, led me to become active with local survivor groups and the national Holocaust Survivors Foundation USA.

I am here to speak, as a Holocaust survivor, about the failure of what is often called the quest for “a measure of justice” for survivors. All agree that no amount of money can ever compensate us for the crimes of the Holocaust. But the processes employed over the last decade have mostly failed. We have been denied access to the truth about our families and their lives. In allowing unauthorized negotiators to enter compromises over Swiss bank thefts, insurance thefts, and property restitution, the notion that “perfect justice is impossible” has served as a cover for secrecy, and for allowing governments and global financial institutions to benefit from the theft of tens of billions of dollars in the Holocaust. We are asking Congress to help. You

are our last chance for a dignified outcome that respects survivors' rights and interests.

I only have time for a few specific remarks here, but I ask that you read my entire submission and the attachments which I request be allowed in the record. Some of these materials are dated, with estimates that pre-date more sophisticated, current data on the number and poverty levels of survivors in the United States.

My father had a business in our hometown of Sobrance, Czechoslovakia. This was an area where Generali, a Jewish company at the time, was a major force in the insurance market. The International Commission for Holocaust Era Insurance Claims, the ICHEIC, was formed in 1998. I applied and gave all the information I had, which wasn't much for a boy who survived at age 14 with no living relatives. Several months later, my name and the names of several family members appeared on the ICHEIC website, indicating that policies had been sold to us before WWII. Yet I never received any specific response from ICHEIC. ICHEIC denied my claims without providing any information whatsoever. I had no choice but to accept their decision. The fact that 97% of the Jewish families' insurance money wasn't repaid does not surprise me because most survivors who entered ICHEIC believe it was a fiasco. We need Congress to pass HR 1746 to correct this injustice.

Survivors are angry and hurt that so many billions remain held by the corporate plunderers of the Holocaust. Not only is this concealment wrong morally, it is unacceptable when you consider the amount of poverty and need among survivors today. This might surprise you if you read statements by Claims Conference President Israel Singer, that \$20 billion

was recovered for Holocaust survivors in the last decade. If this is true, we are all wondering what happened to that money. I will give you one example because of time, but it is similar to thousands of similar cases all over the U.S. and the world.

Mr. and Mrs. L. (86 and 79 years old), Survivors of Poland, now live in a small condo at Century Village in Boca Raton FL. Mr. L. is a stroke victim now suffering from dementia and cannot be left alone. Mrs. L. was Mr. L.'s caretaker, however a while ago Mrs. L. had an emergency and was hospitalized and received coronary by-pass surgery, valve replacement and repair of a hole in the heart. Her recovery had complications and she needed to be in extensive rehab. Though a relative helped with Mr. L. at first, she could not afford to miss more work. The Social Services provided some stop-gap assistance, but due to their experiences as survivors, and the problems of age, the separation was traumatic for both Mr. L. and Mrs. L. and it was clear they needed to be together. But the JFS lacked the funds to allow Mr. L. to join his wife in the rehab center. Survivors can only receive approximately 8 hours from the Claims Conference and the community for home care or situations such as this.

I see these kinds of tragic problems all the time. It is happening more often as the survivor population is aging and it becomes almost impossible for them to take care of one another. On the Advisory Committee, we are forced to turn down requests for medications and devices such as dentures all the time because there is not enough funds. Today, Mr. and Mrs. L. and many thousands of survivors, are simply not able to receive assistance they require for a decent level of health care and human dignity.

At the Ruth Rales JFS, the clients in the past few years have doubled because of aging and but the allocation of funds have remained the same. How can we live with such a deplorable situation?

So we don't know where the \$20 billion has gone, but we know not enough is being used to care for survivors in need. The major source of money for these programs is the funds recovered from German properties, claimed and managed by the Claims Conference. But the Conference has never published an accounting of what it did with all these properties, so no one really knows how much it has available to spend. Ernst and Young recently wrote that the group's disclosures were not proper. We are all waiting for the full story.

In addition, the Conference spends 20% of its annual discretionary budget for projects unrelated to survivors needs, like education and research. Over half of these grants go to board members or the Claims Conference, or their affiliates, raising moral if not legal questions. This is questionable morally, if not legally. We survivors believe that money recovered that belonged to our families should either go to the actual heirs, or to benefit living survivors who are in need today.

We are the ones who lost everything, our beloved parents, brothers, and sisters, as well as everything we owned. Why should others decide what happens to our families property like ICHEIC did? Who is the Claims Conference or anyone else to tell us that the memories of our murdered loved ones should be honored with various programs while living survivors are suffering and money is being hoarded and hidden? Survivors do not understand why public officials and other organizations that have supported the status quo do not give us the respect of allowing us to make

93a

these decisions for ourselves, and why they tolerate this kind of injustice.

I would like to add that there is no reason the German Government itself should be on the sidelines in this discussion. Germany remains responsible for the catastrophe that befell us, and should not be allowed to sit by as an observer while any Holocaust survivor today lacks the care, food, and shelter they need. Shouldn't survivors receive at least as much as retired SS officers?

The years left are but few to be required to be concerned with the survivors needs in the world. Time is running out, the hour glass is emptying, and if not Here, Where? And if not Now. . . When?

Thank You.

94a

APPENDIX H

September 26 Hearing Transcript
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-1859-CV-PAS

IRVING and ANA ROSNER, *et al.*

v.

U.S.A.

MIAMI, FLORIDA
September 26, 2005
VOLUME I
PAGE 1 TO 167

FAIRNESS HEARING
BEFORE THE HON. PATRICIA A. SEITZ, 3.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription
(CAT).

APPEARANCES: (Continued)

COUNSEL FOR DEFENDANTS:

DANIEL MERON, ESQ.

* * *

[47] speak that we can hear and then we'll take our
break?

MR. DUBBIN: Several of the survivors of our class
members had spoken in March did want to speak. But
maybe this is a good time for a break anyway. I know
it has been a long time. But I will leave that to the
Court.

THE COURT: we'll take a ten-minute break and
then we'll come back here.

In the meantime, hopefully we'll have copies of what Miss Schwarz's father has provided and you all can read it through.

(Court recessed at 11:57 a.m.)

(Court reconvened at 12:12 p.m.)

THE COURT: I would like to proceed in the following fashion. I usually break for lunch at 1. And I would like to be able to move forward using the 50 minutes that we have, and then we'll break for lunch. Hopefully everyone else's stomach is not rumbling too much.

Is there any other objector that wants to speak?

MR. DUBBIN: There are four class members who would like to speak in support of the settlement.

THE COURT: okay.

MR. DUBBIN: Mr. Rubin, Mr. Moskovi, Mr. Rosner, and Mr. Mermelstein who I think is still outside.

THE COURT: And just so the United States and class counsel are aware, once I hear from the four plaintiff's class representatives, I would like to have your input in dealing with Professor Neuborne.

(off-the-record discussion.)

MR. RUBIN: Good afternoon, Your Honor. I think it is afternoon. Yes.

[48] My name is Jack Rubin. I was here in March, Your Honor. As you remember, I gave a very short bitter speech as a 15-years-old as I was collecting all the valuables when I was in the ghetto.

I have attended several of the hearings. Thank you for letting me speak again this morning.

This case has been remarkable in several ways. First, Mr. Rosner and our families had the opportunity to seek justice against the United States government in this court of law under the government's very own laws, and to receive a fair hearing in that process.

I have watched Your Honor preside over these hearings and although we didn't always agree with you, we know you have been just and fair and tried to apply the law the best way you can.

Second, the survivors have had the opportunity to participate directly in this litigation. We spoke frequently with the lawyers as the case had its ups and downs. We sat in this courtroom and witnessed justice at work. when it came time to negotiate, we had real input and it was part of the settlement.

We spoke with the Department of Justice, we spoke with other survivors, we spoke lengthily with the Claims Conference and with the social service agencies.

The settlement is one that the survivors feel they had a part in creating. All of the settlements are important specifying the dollars, the services, requiring strict reporting and auditing, using a fair distribution formula and receiving an apology. This was all important to us. And the fact that we had the chance to shape the settlement ourselves along with the survivors from around the world was important and unique.

[49] Third: After reaching a settlement we had the chance to speak directly to this Court about it, what it meant to us. And we had a chance to shake the hands of the government lawyers and thank the united states for rescuing civilization in world war II, and providing

many refugees such as ourselves with a home and a chance for a new life; and

Finally, to thank the government for finally being accountable for the Gold Train.

My last point, Your Honor, is to emphasize how important the distribution formula is to the survivors. Allocating the funds by population was crucial to survivors accepting the settlement. Fair is fair. And there are Hungarian survivors who need help all over the world; far too many, unfortunately. They all have a right to benefit from the settlement. I know this because I speak with survivors all the time; not only in Florida, but in Israel, Hungary, and Canada.

The fairness of the allocation formula which was known to everyone and published in advance was important to everyone. A different formula would never be accepted by the majority of the survivors, Your Honor.

I should add that the claims Conference controls hundreds of millions of dollars. That is a whole different subject. But if Mr. Sanbar, and Mr. Taylor, the President of the Claims Conference, would believe that a particular group of survivors need additional help, he certainly has the power as Chairman of the Claims Conference to make that happen. That issue should not interfere with this settlement.

So we urge you to approve this agreement the way it was presented in March, Your Honor, without any further delay. And we thank you again for all your kindness and your quest for [50] justice.

And may I add, Your Honor, I would personally — it would personally give me relief and closure after being involved with this case for the last four years.

Thank you very much, Your Honor.

THE COURT: Mr. Rubin, can you help me on one point?

MR. RUBIN: Yes, ma'am.

THE COURT: You say that Mr. Taylor couldn't make changes? How would he do that?

MR. RUBIN: I would not make any changes. I think it is a fair distribution as is.

THE COURT: Maybe I misunderstood. You said that if Mr. Sanbar and Mr. Taylor felt that it was unfair, that they could make the changes.

MR. RUBIN: What I mean by it — I will reread this paragraph if you don't mind, Your Honor.

"I should add that the claims Conference controls hundreds of millions of dollars. That is a whole different subject. But, if Mr. Sanbar really believes that a particular group of survivors need additional help, he certainly has the power as Chairman of the Claims Conference to make that happen."

What I mean by it is, if the Hungarian survivors need more help, we should dig into the money that they have and help. But this Gold Train settlement should come to an end.

THE COURT: Okay.

MR. RUBIN: Thank you very much.

THE COURT: Is Mr. Sanbar involved in the Claims Conference?

MR. RUBIN: Yes. He is the Chairman of the Claims Conference.

[51] THE COURT: I missed that.

MR. RUBIN: And he has the power to do a lot of good things. And millions of dollars is laying in the claims Conference's hands which belongs to the Holocaust survivors. Your Honor, in another five to ten years, there will be no Holocaust survivors.

THE COURT: I am aware of that.

MR. RUBIN: And they are in need today, not tomorrow. I am terribly sorry that the Claims Conference does not realize this situation, and they make a big thing about this settlement that our lawyers worked for it for four years, and they are not satisfied with the distribution. And if the Hungarian survivors in Hungary need more money, Mr. Sanbar has the power to see to it they get more money.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Rubin.

MR. MOSKOVIC: Your Honor, good afternoon. My name is Alex Moskovic. I spoke in this courtroom last March when this settlement was up for its first approval.

I am proud of the effort the survivors have put into this case, and it has been an honor to observe this Court preside over what I know has been a difficult case.

It has been difficult for us too. All this restitution business has caused survivors a lot of pain because it required us to relive our past; something that no one should ever have to experience.

But we did press several cases because justice requires accountability to the people who were harmed and to [52] history. That is why we support the settlement. we support it mostly because we believe the

results, as it has been agreed to so far, will be honest to history and fair to the survivors.

First let me talk about the assistance plan for the people. we strongly support the current allocation plan based on where survivors live. The current plan is correct because it recognizes each survivor in need and has a chance to get help from the settlement. Isn't that what restitution is all about, giving people back what was taken from us?

We believe that if you start cutting amounts due to certain countries, you will deprive survivors there who are in need of very important assistance and deny them their rights.

We know, as our letter said, that there is more than enough need here, in Israel, Hungary, Canada, and elsewhere, so that these funds will provide real help for those who really need it everywhere.

Thankfully most of us here today are not in such need. But the reason we agreed to the settlement is because the formula is fair. It is fair because it recognizes the dignity of every survivor who is in need.

We who do not need help are agreeing that those without life's necessities should get help. They do not want charity, and this is not charity. It is justice, Your Honor. And these two concepts are very different.

When you receive funds from a settlement of your property claims, it is not charity. This was our property and now it is being returned as a symbolic way that the overwhelming number of the survivors agreed with. Please don't change it.

Another brief word about the history. As I said in March, I will not have closure here until the government issues a [53] statement of apology or acknowl-

edgment. It is a very important part of the settlement. I hope the government takes the responsibility in a way that acknowledges injury felt by the victims.

Officers who stole Hungarian Jewish valuable possessions, then the United States gave the remnants to the international organization to sell in auctions. Other than the officers who stole, we realize the United States itself would not have profited from these sales. But the injury to the survivors is just as great. Maybe some felt it justified that the property was sold to help refugees. But the survivors I know feel differently. They believe the property should have been returned.

Even the organizations, including Jewish organizations who approved these auctions, don't have the right to work out deals with the government over how to dispose of the victims' property. Thousands of us would have welcomed our personal items returned to us for sentimental reasons. The property and the rights were ours, not anyone else's.

So we support the settlement because we were involved. We were consulted. We had a voice. We agreed to the social services, we agreed to the population-based distribution formula, we insisted on accounting of expenditures from the settlement fund, the right to audit program administration, and the strict limit on administrative expenses.

We approved the archive and will, we hope, be satisfied when the government makes its acknowledgment if you approve the settlement.

And those who are not directly involved had the right to object or opt out of the settlement. A very small number chose to opt out.

[54] For all these reasons, Your Honor, we hope you give it final approval.

I have been involved in this case since its inception. It has been a very complicated and difficult case. To tell you the truth, I had doubts of its final approval. But I'm here today.

I also would like to thank Mr. Fred Fielding for his assistance.

Again, we, the Hungarian survivors, desperately need closure on this issue after 60 years.

Again, Your Honor, we thank you for your relenting work and allowing us to speak today.

THE COURT: Thank you very much, Mr. Moskovic.

MR. DUBBIN: Mr. Rosner said his sentiments were expressed by others and that he didn't necessarily want to speak. But David Mermelstein wants to.

THE COURT: okay, Mr. Rosner. You will go down in history, Mr. Rosner. This will always be the Rosner case.

MR. MERMELSTEIN: Good afternoon, Your Honor. My name is David Mermelstein. It is a pleasure to be here again. It has been many years already, and I hope this is the last time.

We fought this case hard on behalf of all the Hungarian survivors and their families. we fought for honor and justice. we fought for accountability. we were always informed about what was happening in the case, and had a lot of input with our lawyers.

Our lawyers were advocates for the living and for the memory of the dead. we saw the Justice Department fight hard, but in the end when it came time to do the right thing they were very honorable.

[55] we agreed to have the Jewish Family Services benefit instead of a payment for every survivor because it would have taken too long to fight for a larger-enough payment for every survivor. Many would have died before we won, if we won. so this was the best outcome for everyone.

Our agreement to divide equally by population was made in good faith and without controversy. It was fair to everyone. No one objected.

The Israeli and Hungarian groups were involved. So were their lawyers and the Claims conference. A well-respected Hungarian Professor was asked to prepare the population study so no one could complain. That agreement should be honored because it is fair and we all agreed it was fair. It is fair because we know that there is a great deal of need in the united states. Survivors are getting very old. All survivors had a terrible experience in the camps and ghettos. The physical and emotional injuries are very real.

Old age is hard enough for people who are poor, which includes many survivors. Medical and emergency costs are very expensive. Medicare does not cover all the needs of survivors and many do not even have Medicare coverage, and we do not have socialized medicine in the united states.

Receiving assistance from this settlement provides Hungarian survivors the dignity. It is not charity, but restitution. Please don't confuse the two.

Those of us who don't need help want our fellows in need to have the dignity of receiving their own money back to help them with their current health care. This is why we agreed to the settlement and why we agreed to the formula.

Frankly, we are very upset about the argument that [56] Americans will receive too much. This does not buy very much emergency assistance such as medicine, glasses, food, rent, dental. No, we don't have heat in the winter, but we do have air conditioning in the summer that some people cannot afford the air conditioning and they are suffering through the heat that we have here.

THE COURT: That is a very good point. Our paradise of the wintertime is the hell of the summertime. And it is five months long.

MR. MOSKOVIC: And emergency home care. This is what we cannot give people today in the Jewish Family Services.

When we see a survivor who is too poor, to help him or her it breaks our hearts. We hope this Court does not dignify this argument because it is truly insulting to us and to our loved ones that died in the Holocaust.

We were abandoned in the 1940's, and our people want to see this case as a just conclusion to the Gold Train history. We must respect the victims first and foremost.

I find it very sad that there are those that say that Americans are not as needy as other survivors. How dare they? After what our people have lived through and lost, those comments are just plain disrespectful to those of us that lived through hell. It is disrespectful to those that died.

These may be strong words, Your Honor, but, believe me, I could say a lot more, but I won't, however, in respect to the Court.

A couple of comments, Your Honor, I would like to make in answer the gentleman that was worried about

the distribution, the money going there. I explained it to him that once the Claims [57] conference gives the money to the Jewish Family Services, and they are in most of the cities, except New York, there will be no service charge. Not a penny will be spent on anything whatsoever. And every county has an advisory committee. We have that now, and we are going to follow this the same.

THE COURT: You are talking about Mr. Lichtman's concerns?

MR. MOSKOVIC: Yes. I explained that to him and he was very happy to hear that.

THE COURT: Thank you for doing that.

MR. MOSKOVIC: Number two, Your Honor, the needy. Now, tradition in the Jewish history goes back: If a Jew stretches out his hand, you don't ask how needy you are — going back to when we were poor back home — but we always put something in that hand.

And the poor in Miami, I could give you three examples. I can give you the name. I can give you the initials. Later on I could. Mr. and Mrs. R, the wife has been sick for seven or eight years. She is practically on the death bed now. Just came home from the hospital. He called me up the other day crying, "what am I going to do?" He was getting more hours before. *Now* they cut it down to six hours a day.

Mrs. S, her husband's leg was amputated. she has trouble with her legs, with her heart. "He is home now. what am I going to do?"

Mrs. K, lives alone. can't walk a block. *Now*, when somebody says a survivor in the United states is not as needy, I would like to know how they could justify that.

And, Your Honor, if you heard a little anger in my voice, I feel bad and I'm hurt when I hear these comments.

[58] Thank you very much.

THE COURT: You are welcome.

MR. MOSKOVIC: And let me just make one more comment. As far as getting this money, if we divided to the survivors in Dade County, one person would get \$236 a year.

Thank you again.

THE COURT: Your math and my math is about the same.

MR. DUBBIN: Mr. Rosner is going to speak.

THE COURT: Thank you, Mr. Rosner. It is only fitting, given the fact that you are the lead plaintiff, that you do speak. You don't have to speak long, but it helps

MR. ROSNER: Your Honor, everyone has long speeches and I wouldn't want to stretch the time too long. But I want to congratulate Your Honor for your patience and everything you have done for us.

I also want to say that the times and times we spent on this, subject, hours and hours, and then people come in from the outside complaining they didn't do enough, they didn't get enough, they just can't accept it. They feel that everything was done whatever was possible. And we are very happy with your hard work for us, and we thank you so much for doing it.

THE COURT: I thank you, Mr. Rosner. But I owe it to all of the parties on both sides of this courtroom, because the case was settled, and it would not have been settled if there had not been a commitment by both sides to seek to understand where the other side

was coming from and try and address and come up with a fair impartial resolution. So it is my thanks to you all because you made my job much easier.

MR. ROSNER: My question is, where were they for the last 50 years? Why didn't they bring up the subject before?

[59] THE COURT: They have a right to speak, and that is one of the benefits of living in this country is that we do listen to everyone. We can't make everyone happy. My job is to make a decision, but before I can make a decision I have to make sure that I heard from everyone so that hopefully with that, and a little Divine inspiration, I come out to a right decision.

MR. ROSNER: And I agree with that. And that is why I congratulate you for your patience. Thank you very much.

THE COURT: Keep me in your prayers.

MR. DUBBIN: That covers the class members who wanted to speak, Your Honor.

THE COURT: Okay.

I would like to hear from the government and from class counsel. we are a little out of order because ordinarily we should have gone through the notice program first and put that on the record, and I can do that very quickly, and then we can come to the whole issue of the exclusions and then the objections. So we sort of jumped down and started with D on our agenda. But that is really the heart of why we are here today.

But if we can, is there anything that you or the government would like to put on the record in addition to all of the papers that have been filed that have answered my questions about the notice so that I make the findings on that?

109a

MR. DUBBIN: Nothing to add on the notice from class counsel.

THE COURT: Anything from the government?

MR. MERON: I'm sorry. On the question of notice?

THE COURT: Yes, on the question of notice.

MR. MERON: No, Your Honor.

THE COURT: The Court does find, having reviewed the

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110a

APPENDIX I

Statement of Dr. Tom Weiss

United States House of Representatives
Committee On Banking And
Financial Services

February 12, 1998

Mr. Chairman and Member of the Committee:

My name is Dr. Thomas Weiss. I am a practicing ophthalmologist in Miama Beach, Florida. I am currently Chairman of the Division of Ophthalmology at the Miami Heart Institute.

I want to thank Chairman Leach and Committee members and especially Congressman Foley from my home State of Florida for having this hearing today to learn about the Holocaust era insurance issues. So much has been kept under wraps for so many years. I know I speak for thousands of survivors and family members of Holocaust victims in thanking the United States Congress for commencing this inquiry. I also hope that by sharing my family's experiences here today others like me and my parents will ask the necessary questions about their possible stolen insurance policies before all of the memories are too old to reconstruct their families' histories.

I also want to especially thank Commissioner Deborah Senn of the State of Washington for taking the lead on this issue and Commissioner Quackenbush of California, Nelson of Florida, and Levin of New York for adding their prestige to these inquiries.

I was born in Prague in 1949. My father was 54 years old. He survived Auschwitz at the age of 50,

although his first wife and three children perished there.. My mother was 42 years old, she had no children prior to her internment. Her first husband died in the camps. I found myself in Miami Beach at the age of 6 months old through the courtesy of HIAS, which was a relief organization, based in New York, that aided survivors of the Holocaust who had entry permits to immigrate to America.

Growing up in Miami Beach was wonderful. I fished, I scuba dived, we did all the things that Miami and Florida is famous for. It was only as I started getting older that I realized there was a huge dark deep secret that my community, including my parents, were suffering with, and were unable to talk about. They were ashamed and depressed and I couldn't understand why. It became clear that a huge tragedy had occurred, and that I, and others of my generation, were heirs to an unspeakable horror. The details that have now become more public, as in the movie by Spielberg, Schindler's List, only speak to the surface of the fear, of the atrocities, and of the rape of an entire nation.

My father was born in a place called Nodsevlus (now Vinograd) in 1895, which was at that time, part of the Austrian-Hungarian Empire, the Hapsburg Empire. He was born to a landed gentry family that had large holdings in real estate and cattle, vineyards, and agriculture. When my father finished his schooling, including German schooling, he set up a commodities business in 1933-35 that had offices in Prague, Budapest, and in Nodsevlus that sold sunflower oil and cakes, walnuts, and grains, through the ports of Bremen, Hamburg, Danzig, and on the Adriatic.

At that time there was an agent in town by the name of Mr. Joseph Schreiber who constantly pestered my father to buy insurance. Mr. Schreiber's business was

located at a desk in the Duna Bank. The Duna Bank had, on its marquee, the royal lion of the company, Assicurazioni Generali.. Mr. Schreiber successfully convinced my father to purchase property, casualty, fire policies and an annuity. Before the Second World War, my father was in the privileged position of being extremely wealthy himself and of marrying a younger woman who had an unusually large amount of money - her dowry. He had much more money than he needed at that time, and wanted to find a secure place for some of his family's wealth. Remember, there was no such thing as FDIC insurance for banks at the time. In 1937, Mr. Schreiber induced him to buy an insurance policy with Generali, which was considered a pillar of financial stability at the time. The policy was a Czech crown policy that was linked to the American dollar. My father estimated that at the time the value of the policy dollar-wise was in excess of \$50,000. Keep in mind that one crown was able to buy many kilos of bread, and there were 50 crowns to the dollar. We're talking about an unusual sum of money.

I know this Committee has heard many of the tragic stories of our peoples internment, murder, and financial victimization. My parents' experience was not atypical.

The town had been taken over by the Hungarian/German Army. The Army has a very precise, almost checklist procedure. Their procedure was to take the wealthy in town and convince them, by method of beating on their testicles, that they need to reveal the location of their assets and how the Jewish residents were going to transfer this to the Hungarian/Nazi authorities.

My mother remembers being taken back to her house about two days after she was in the Ghetto,

because her husband, who was a dentist, had not properly revealed, after a long series of beatings, where the gold from his dental practice was. So my mother revealed it because she wanted to stop the beatings her husband was receiving. In May of 1944, my parents and all the Jewish residents of Nodsevlus and environs were sent to Auschwitz by train.

My father was taken to various work sites. Auschwitz was ringed by 17 sub-workgroups, including IG Farben and Krupp and they worked as slave laborers in different locations there. The corporations paid the Reich for their work. My mother was transferred Oct. 28, 1944, along with her two sisters and other Czech women to a work camp Gross-Rosen, in a town called Zittau situated in S. Germany. She made speedometer parts for the firm of Messerschmidt, a subdivision of the Henkel corporation.

My parents were liberated in approximately Spring of '45. My father had typhus in Dachau and was liberated by Patton's army. He was nurtured back to health by the medical corps. When he and other people went back to their town, the Jewish houses were completely filled up with Russian populations that had been ushered into the area. The Russian populations that had been moved into the area to create on-the-ground facts. The Russians then had "a vote" and the populations voted to secede from Czechoslovakia. To become part of the Ukraine, which occurred.

Of course, many people had no papers because the Russian populations had disposed of all the personal articles that were left by the survivors and had burned them. For those new residents, there was no reason to keep paper and photographs of strangers .

As I mentioned before, my father was never very communicative about his war experiences. Talking about these kinds of things brought back too much pain which caused him to cry uncontrollably and it was only after many years that I was able to understand the story as I've outlined it here. In fact he never mentioned this insurance policy to me until 1984. At that time, he marveled at how the insurance company beat him. Since Mr. Schreiber also sold policies to many other people in this region, and using the name of Mr. Joseph Schreiber, I wrote the different companies throughout the area, starting in 1984 to see if we could trace down the policies and the results and claims thereof.

Generali wrote back and said that Czechoslovakia had nationalized Generali's assets and so they weren't even going to look for my father's policy. Further they stated that no actual insurance policies existed because they were destroyed during the War or by the Communists.

Most people in my father's position were met with desultory rejections in trying to claim insurance proceeds, beginning with the fact that they had no piece of paper, and including many other excuses which you will I'm sure hear about today.

I urge you to be skeptical of the insurers' smooth presentations. Their practice to date is to make technical but misleading pronouncements and recede trench by trench only after someone else establishes a fact they cannot deny. In 1984 they told my father that there was no policy and no way to find a policy, and even if there was a policy they had no legal or moral responsibility. In October of 1996 Generali publicly denied the existence of certain pre war insurance records because "documents and details relating to

specific policies were normally kept in the Prague Branch office". But in March of 1997, after press reports of an archive in Italy, they admitted that in fact there was an archive in Trieste which contained "a number of documents relating to the insurance business it carried out in Central-Easter European countries."

You will also note that in these early press releases rejecting responsibility because of the communist nationalization, Generali never mentioned that it had received a substantial sum of money from the Czech-Italian settlement treaty. Now they admit the treaty but asset a narrow interpretation which would require Holocaust victims to look to the Czech government for payment of these funds. Funds, remember, which the company itself received but never paid out.

That same March 1997 press release said that Generali would agree to a procedure for an examination of its records in Trieste "which would enable an agreed, acceptable body to identify Jewish policy holders in Central and Eastern Europe." Later in 1997, Generali published its "Open Letter to the Families of Holocaust Victims" in major urban newspapers and in several Jewish publications in the United States. In that letter Generali invited families of Holocaust victims to send their names to obtain an archival search of the archive in Trieste (an archvie they did not admit existed six months earlier). I submitted such a request in June of 1997, which Generali acknowledged in writing. But I have received nothing else since then from Generali.

What is even more disturbing is that Generali is conducting its records search by itself, with no independent verification whatsoever. This despite their earlier commitment to an agreed, acceptable body to

identify Jewish policy holders. I understand that to this day they have also refused voluntarily to allow the state insurance commissioners to conduct an independent audit of their records.

In summary, it is important to realize that there was a huge transfer of wealth from populations in Europe to these insurance companies. And I think, Congressmen, that you realize, and you have stepped forward, because you know in your gut, that the Swiss bank accounts pale by comparison to the net asset value of these companies. What needs to happen here, and what can you do?

The total universe of companies and policies needs to be identified. The projected payout from that period needs to be quantified. Archivists, actuaries, insurance regulators, lawyers and researchers need to be brought into the physical locations of these insurance companies to supervise the work that needs to be done. The insurance companies themselves cannot be relied upon to accurately complete this job. Their slick and cynical disclosure history I just reviewed prove that the authority of this Congress, State regulators, and the American judicial system should be brought to bear to correct this financial crime against humanity.

In my individual case, this is a matter of preventing the insurance company from being unjustly enriched at the expense of my family. For hundreds of thousands of Holocaust survivors whose lives after the war should have been eased somewhat by the return of the Jewish people's assets, this is a matter of ensuring a measure of human dignity for people whose suffering cannot be measured.

In conclusion, you are fighting the good fight. This is nothing less than the remaining vestiges of World

117a

War II. The same way that World War II was the last good fight that we all agreed on, of good versus pure evil, I would say to you, do not let these insurance companies laugh at you by holding on to the trillions of dollars that they have illegally, unjustly and immorally enriched themselves with. You have the ability to do what's right.

Thank you.