

H.R. 2693, THE HOLOCAUST VICTIMS INSURANCE RELIEF ACT OF 2001

HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY,
FINANCIAL MANAGEMENT AND
INTERGOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 2693

TO PROVIDE FOR THE ESTABLISHMENT OF THE HOLOCAUST INSURANCE REGISTRY BY THE ARCHIVIST OF THE UNITED STATES AND TO REQUIRE CERTAIN DISCLOSURES BY INSURERS TO THE SECRETARY OF COMMERCE

SEPTEMBER 24, 2002

Serial No. 107-161

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpo.gov/congress/house>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

84-701 PDF

WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON GOVERNMENT REFORM

DAN BURTON, Indiana, *Chairman*

BENJAMIN A. GILMAN, New York	HENRY A. WAXMAN, California
CONSTANCE A. MORELLA, Maryland	TOM LANTOS, California
CHRISTOPHER SHAYS, Connecticut	MAJOR R. OWENS, New York
ILEANA ROS-LEHTINEN, Florida	EDOLPHUS TOWNS, New York
JOHN M. McHUGH, New York	PAUL E. KANJORSKI, Pennsylvania
STEPHEN HORN, California	PATSY T. MINK, Hawaii
JOHN L. MICA, Florida	CAROLYN B. MALONEY, New York
THOMAS M. DAVIS, Virginia	ELEANOR HOLMES NORTON, Washington, DC
MARK E. SOUDER, Indiana	ELIJAH E. CUMMINGS, Maryland
STEVEN C. LATOURETTE, Ohio	DENNIS J. KUCINICH, Ohio
BOB BARR, Georgia	ROD R. BLAGOJEVICH, Illinois
DAN MILLER, Florida	DANNY K. DAVIS, Illinois
DOUG OSE, California	JOHN F. TIERNEY, Massachusetts
RON LEWIS, Kentucky	JIM TURNER, Texas
JO ANN DAVIS, Virginia	THOMAS H. ALLEN, Maine
TODD RUSSELL PLATTS, Pennsylvania	JANICE D. SCHAKOWSKY, Illinois
DAVE WELDON, Florida	WM. LACY CLAY, Missouri
CHRIS CANNON, Utah	DIANE E. WATSON, California
ADAM H. PUTNAM, Florida	STEPHEN F. LYNCH, Massachusetts
C.L. "BUTCH" OTTER, Idaho	
EDWARD L. SCHROCK, Virginia	BERNARD SANDERS, Vermont (Independent)
JOHN J. DUNCAN, JR., Tennessee	
JOHN SULLIVAN, Oklahoma	

KEVIN BINGER, *Staff Director*

DANIEL R. MOLL, *Deputy Staff Director*

JAMES C. WILSON, *Chief Counsel*

ROBERT A. BRIGGS, *Chief Clerk*

PHIL SCHILIRO, *Minority Staff Director*

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL MANAGEMENT AND
INTERGOVERNMENTAL RELATIONS

STEPHEN HORN, California, *Chairman*

RON LEWIS, Kentucky	JANICE D. SCHAKOWSKY, Illinois
DOUG OSE, California	MAJOR R. OWENS, New York
ADAM H. PUTNAM, Florida	PAUL E. KANJORSKI, Pennsylvania
JOHN SULLIVAN, Oklahoma	CAROLYN B. MALONEY, New York

EX OFFICIO

DAN BURTON, Indiana

HENRY A. WAXMAN, California

BONNIE HEALD, *Staff Director*

HENRY WRAY, *Senior Counsel*

CHRIS BARKLEY, *Clerk*

MICHELLE ASH, *Minority Counsel*

CONTENTS

	Page
Hearing held on September 24, 2002	1
Text of H.R. 2693	4
Statement of:	
Bell, Randolph Marshall, special envoy for Holocaust Issues, Department of State	21
Kurtz, Michael, Assistant Archivist for Records Services, National Ar- chives and Records Administration; and Greg Bradsher, Director of the Holocaust-Era Assets Records Project, National Archives and Records Administration	28
Tick, Leslie, senior staff counsel, California Department of Insurance	36
Waldman, David, vice president and chief operations counsel, MONY Life Insurance Co.	49
Letters, statements, etc., submitted for the record by:	
Bell, Randolph Marshall, special envoy for Holocaust Issues, Department of State, prepared statement of	23
Bradsher, Greg, Director of the Holocaust-Era Assets Records Project, National Archives and Records Administration, prepared statement of ..	33
Horn, Hon. Stephen, a Representative in Congress from the State of California, prepared statement of	3
Kurtz, Michael, Assistant Archivist for Records Services, National Ar- chives and Records Administration, prepared statement of	30
Tick, Leslie, senior staff counsel, California Department of Insurance, prepared statement of	38
Waldman, David, vice president and chief operations counsel, MONY Life Insurance Co., prepared statement of	51
Waxman, Hon. Henry A., a Representative in Congress from the State of California, prepared statement of	14

**H.R. 2693, THE HOLOCAUST VICTIMS
INSURANCE RELIEF ACT OF 2001**

TUESDAY, SEPTEMBER 24, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FINANCIAL
MANAGEMENT AND INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn and Schakowsky.

Also present: Representative Waxman.

Staff present: Bonnie Heald, staff director; Henry Wray, senior counsel; Dan Daly, counsel; Chris Barkley, clerk; Michelle Ash, minority counsel; David McMillen, minority professional staff member; Jean Gosa, minority assistant clerk; Jonathan Samuels, legislative director for Ms. Schakowsky; and Zahava Goldman, legislative assistant for Mr. Waxman.

Mr. HORN. We might as well swear in the witnesses, and I think most of you know to stand up, raise your right hands and if you have staff behind you, please get them to take the oath.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all five witnesses have taken the oath.

This is an investigative committee and we thank you for coming. And automatically when we call on you, we will automatically put that in the hearing. Today's hearing deals with a subject that involves the most basic considerations of humanity and morality. The bill we are considering attempts to bring some measure of justice to many victims of the Holocaust and their heirs.

H.R. 2693, the "Holocaust Victims Insurance Relief Act of 2001," was introduced by the distinguished ranking member of our full committee, Mr. Waxman. Both the ranking member of this subcommittee, Ms. Schakowsky, and I are among the bill's many co-sponsors. The ultimate purpose of this bill is to enable Holocaust victims and survivors and their heirs to recover on insurance policies that were issued during the Nazi era. The insurance policies and other evidence needed to establish entitlement to payment were typically stolen from these claimants by the Nazis or were otherwise destroyed. Thus, in many cases, insurance companies have the only records in existence that could support their claims against the policies.

H.R. 2693 requires insurance companies doing business in the United States to provide the Commerce Department with identifying information on all individuals to whom they issued policies during the Nazi regime. This information would then be made available to potential claimants through a registry maintained by the National Archives and Records Administration.

This bill is modeled on legislation that has been enacted in several States. For a number of years, attempts have been made to pry Holocaust-era insurance information from the insurance companies through international negotiations. However, those efforts have been painfully slow. That lack of progress is one reason for pursuing legislative remedies at the State and Federal levels of government. Last week, there was a major breakthrough in the international efforts.

During today's hearing, we will explore the impact of that development on the bill before us. I do not know the answer to that question. What I do know is that we must get to an appropriate solution quickly. Holocaust victims are literally dying while their insurance claims remain unsatisfied.

I welcome all of you today and the wisdom you can bring to this. I look forward to discussing with you how we can best resolve this terrible injustice once and for all.

[The prepared statement of Hon. Stephen Horn and the text of H.R. 2693 follow:]

DAN BURTON, INDIANA
CHAIRMAN

BENJAMIN A. GILMAN, NEW YORK
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROSS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS, VIRGINIA
MARK E. SOUDER, INDIANA
JOE SCARBOROUGH, FLORIDA
STEVEN C. LYNCH, OHIO
BOB BARR, GEORGIA
DAN MILLER, FLORIDA
DOUG DISE, CALIFORNIA
RANDY LEBES, KENTUCKY
JO ANN DAVIS, VIRGINIA
TODD RUSSELL PLATT, PENNSYLVANIA
DAVE WELDON, FLORIDA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
C.L. "BUTCH" OTTER, IDAHO
EDWARD L. SCHROCK, VIRGINIA

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

FACSIMILE (202) 225-3974
MAJORITY (202) 225-6074
MINORITY (202) 225-6061
TTY (202) 225-4852

www.house.gov/reform

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR F. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. JOHNSON, PENNSYLVANIA
PATEY T. BINK, HAWAII
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
ROD R. BLASQUEZ, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, IOWA
JANICE D. SCHAKOWSKY, ILLINOIS
Wm. LACY CLAY, MISSOURI

BERNARD SANDERS, VERMONT,
INDEPENDENT

**Opening Statement
Chairman Stephen Horn,
Subcommittee on Government Efficiency, Financial Management
and Intergovernmental Relations
September 24, 2002**

Today's hearing deals with a subject that involves the most basic considerations of humanity and morality. The bill we are considering attempts to bring some measure of justice to many victims of the Holocaust and their heirs.

H.R. 2693, the "Holocaust Victims Insurance Relief Act of 2001," was introduced by the distinguished ranking member of our full committee, Mr. Waxman. Both the ranking member of this subcommittee, Ms. Schakowsky, and I are among the bill's many co-sponsors.

The ultimate purpose of this bill is to enable Holocaust victims and survivors, and their heirs to recover on insurance policies that were issued during the Nazi Era. The insurance policies themselves and other evidence needed to establish entitlement to payment were typically stolen from the claimants by the Nazis or were otherwise destroyed. Thus, in many cases, insurance companies have the only records still in existence that could support their claims against the policies.

H.R. 2693 requires that insurance companies doing business in the United States must provide the Commerce Department with identifying information on all individuals to whom they issued policies during the Nazi regime. This information will then be made available to potential insurance claimants through a registry maintained by the National Archives and Records Administration. The bill is modeled on legislation that has been enacted in several states.

For a number of years, attempts have been made to pry Holocaust-era insurance information from the insurance companies through international negotiations. However, these efforts have been painfully slow. The lack of progress on the international front is one reason for pursuing legislative remedies at the state and federal levels of government.

Last week, there was a major breakthrough in the international efforts. During today's hearing, we will explore what impact that development has on the bill before us. I do not know the answer to that question. What I do know is that we must get to an appropriate solution quickly. Holocaust victims are literally dying while their insurance claims remain unsatisfied.

I welcome all of our witnesses today. I look forward to discussing with you how we can best resolve this terrible injustice once and for all.

107TH CONGRESS
1ST SESSION

H. R. 2693

To provide for the establishment of the Holocaust Insurance Registry by the Archivist of the United States and to require certain disclosures by insurers to the Secretary of Commerce.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2001

Mr. WAXMAN (for himself, Mr. ENGEL, Ms. SCHAKOWSKY, Mr. HORN, Mr. FOLEY, Mr. HASTINGS of Florida, and Ms. SLAUGHTER) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the establishment of the Holocaust Insurance Registry by the Archivist of the United States and to require certain disclosures by insurers to the Secretary of Commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Victims In-
5 surance Relief Act of 2001”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The Holocaust, including the murder of
4 6,000,000 European Jews, the systematic destruc-
5 tion of families and communities, and the wholesale
6 theft of their assets, was one of the most tragic
7 crimes in modern history.

8 (2) When Holocaust survivors or heirs of Holo-
9 caust victims presented claims to insurance compa-
10 nies after World War II, many were rejected because
11 the claimants did not have death certificates or
12 physical possession of policy documents that had
13 been confiscated by the Nazis.

14 (3) In many instances, insurance company
15 records are the only proof of the existence of insur-
16 ance policies belonging to Holocaust victims.

17 (4) Holocaust survivors and their descendants
18 have been fighting for decades to persuade insurance
19 companies to settle unpaid insurance claims.

20 (5) In 1998, the International Commission on
21 Holocaust Era Insurance Claims (in this section re-
22 ferred to as the “ICHEIC”) was established by the
23 National Association of Insurance Commissioners in
24 cooperation with several European insurance compa-
25 nies, European regulators, representatives of inter-
26 national Jewish organizations, and the State of

1 Israel, to expeditiously address the issue of unpaid
2 insurance policies issued to Holocaust victims.

3 (6) On July 17, 2000, the United States and
4 Germany signed an Executive Agreement in support
5 of the German Foundation “Remembrance, Respon-
6 sibility, and the Future”, which designated the
7 ICHEIC to resolve all insurance claims that were
8 not paid or were nationalized during the Nazi era.

9 (7) The ICHEIC’s deadline for receiving claims
10 applications is January 31, 2002.

11 (8) Three years into the process of addressing
12 the issue of unpaid insurance policies, companies
13 continue to withhold thousands of names on dor-
14 mant accounts.

15 (9) As of June 15, 2001, more than 84 percent
16 of the 72,675 claims applications filed with the
17 ICHEIC remained idle because the claimants could
18 not identify the company holding the policy.

19 (10) Insurance companies doing business in the
20 United States have a responsibility to ensure the
21 disclosure of insurance policies of Holocaust victims
22 that they or their related companies may have
23 issued, to facilitate the rapid resolution of questions
24 concerning these policies, and to eliminate the fur-
25 ther victimization of policyholders and their families.

1 (11) State legislatures in California, Florida,
2 New York, Minnesota, Washington, and elsewhere
3 have been challenged in efforts to implement laws
4 that restrict the ability of insurers to engage in busi-
5 ness transactions in those States until the insurers
6 publish the names of Holocaust-era policyholders.

7 (b) PURPOSE.—The purpose of this Act is to provide
8 information about Holocaust-era insurance policies to Hol-
9 ocaust victims and their heirs and beneficiaries to enable
10 them to expeditiously file their rightful claims under the
11 policies.

12 **SEC. 3. HOLOCAUST INSURANCE REGISTRY.**

13 (a) ESTABLISHMENT AND MAINTENANCE.—Chapter
14 21 of title 44, United States Code, is amended by adding
15 at the end the following:

16 **“§ 2119. Holocaust Insurance Registry**

17 “(a) ESTABLISHMENT.—The Archivist shall establish
18 and maintain a collection of records that shall—

19 “(1) be known as the Holocaust Insurance Reg-
20 istry; and

21 “(2) consist of the information provided to the
22 Archivist under section 5 of the Holocaust Victims
23 Insurance Relief Act of 2001.

24 “(b) PUBLIC ACCESSIBILITY.—The Archivist shall
25 make all such information publicly accessible and search-

1 able by means of the Internet and by any other means
2 the Archivist deems appropriate.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 21 of title 44, United States
5 Code, is amended by adding at the end the following:

“2119. Holocaust Insurance Registry.”.

6 **SEC. 4. FULL DISCLOSURE OF HOLOCAUST-ERA POLICIES**
7 **BY INSURERS.**

8 (a) REQUIREMENT.—An insurer shall cause to be
9 filed with the Secretary of Commerce in accordance with
10 subsection (b) the following information:

11 (1) The first name, last name, date of birth,
12 and domicile of the policyholder of each covered pol-
13 icy issued by the insurer or a related company of the
14 insurer.

15 (2) The name of the entity that issued the cov-
16 ered policy.

17 (3) The name of the entity that is responsible
18 for the liabilities of the entity that issued the cov-
19 ered policy.

20 (b) PROPER FILING.—A filing under subsection (a)
21 shall be made not later than the earlier of 90 days after
22 the date of the enactment of this Act or January 31, 2002,
23 in an electronic format approved jointly by the Archivist
24 of the United States and the Secretary of Commerce.

1 **SEC. 5. PROVISION OF INFORMATION TO ARCHIVIST.**

2 The Secretary of Commerce shall provide to the Ar-
3 chivist of the United States any information filed with the
4 Secretary under section 4(a) promptly after the filing of
5 such information.

6 **SEC. 6. PENALTY.**

7 The Secretary of Commerce shall assess a civil pen-
8 alty of not less than \$5,000 for each day that an insurer
9 fails to comply with the requirements of section 4, as de-
10 termined by the Secretary.

11 **SEC. 7. USE OF AMOUNTS RECEIVED AS CIVIL PENALTIES.**

12 To the extent or in the amounts provided in advance
13 in appropriation Acts, the Archivist of the United States
14 may use amounts received by the Government as civil pen-
15 alties under section 6 to maintain the Holocaust Insurance
16 Registry.

17 **SEC. 8. NOTIFICATION.**

18 (a) INITIAL NOTIFICATION.—Not later than 180 days
19 after the date of the enactment of this Act and periodically
20 afterward, the Secretary of Commerce shall notify each
21 State's commissioner of insurance of the identity of each
22 insurer that has failed to comply with the requirements
23 of section 4 or has not satisfied any civil penalty for which
24 the insurer is liable under section 6.

25 (b) REQUESTS BY STATES.—On request by the com-
26 missioner of insurance of a State concerning an insurer

1 operating in that State, the Secretary of Commerce shall
2 inform the commissioner of insurance whether the insurer
3 has failed to comply with the requirements of section 4
4 or has not satisfied any civil penalty for which the insurer
5 is liable under section 6.

6 **SEC. 9. STATE HOLOCAUST CLAIMS REPORTING STATUTES.**

7 (a) PREEMPTION.—Nothing in this Act preempts the
8 right of any State to adopt or enforce any State law re-
9 quiring an insurer to disclose information regarding insur-
10 ance policies that may have been confiscated or stolen
11 from victims of Nazi persecution.

12 (b) SENSE OF CONGRESS.—It is the sense of the
13 Congress that if any litigation challenging any State law
14 described in subsection (a) is dismissed because the
15 State’s commissioner of insurance chooses to rely on this
16 Act and therefore no longer seeks to enforce the State law,
17 each party should bear its own legal fees and costs.

18 **SEC. 10. DEFINITIONS.**

19 In this Act:

20 (1) COMMISSIONER OF INSURANCE.—The term
21 “commissioner of insurance” means the highest
22 ranking officer of a State responsible for regulating
23 insurance.

1 (2) COVERED POLICY.—The term “covered pol-
2 icy” means any life, dowry, education, or property
3 insurance policy that was—

4 (A) in effect at any time after January 30,
5 1933, and before December 31, 1945; and

6 (B) issued to a policyholder domiciled in
7 any area of the European Continent that was
8 occupied or controlled by Nazi Germany or by
9 any ally or sympathizer of Nazi Germany at
10 any time during the period described in sub-
11 paragraph (A).

12 (3) INSURER.—The term “insurer” means any
13 person engaged in the business of insurance in
14 United States interstate or foreign commerce, if the
15 person or a related company of the person issued a
16 covered policy, regardless of when the related com-
17 pany became a related company of the insurer.

18 (4) RELATED COMPANY.—The term “related
19 company” means an affiliate, as that term is defined
20 in section 104(g) of the Gramm-Leach-Bliley Act.

○

Mr. HORN. I now am delighted to recognize a member of the Democratic side of the full committee, Mr. Waxman, who has been with this problem for many years, and we hope that he can be satisfied by it also.

Mr. WAXMAN. Thank you very much, Mr. Chairman. And let me thank you for holding this hearing today and joining in support of this legislation. What we are trying to do is rectify a terrible injustice. The bill that is the subject of this hearing, the Holocaust Victims Insurance Relief Act, H.R. 2693, addresses one of the most difficult problems faced by Holocaust survivors and their families when they seek restitution from insurance companies that have refused to pay claims held by victims of Nazi persecution, and that is how to identify the insurance company that issued the policy.

I want to acknowledge the fact that not only Chairman Horn, but also Ranking Member Schakowsky is an original cosponsor of the legislation before us today, and I am very pleased that we are holding this hearing to help achieve justice for Holocaust survivors and their families.

The history of Holocaust insurance is shameful. After the war, survivors filing claims for life insurance often were rejected for the cruelest of reasons. Some survivors were rejected because they could not produce death certificates for loved ones who perished in the Nazi concentration camps. Other insurance companies took advantage of the fact that the claimants had no policy documents to prove their policy existed. In many cases, survivors recalled that their families had insurance, but could not name the company holding their assets.

In 1998, the International Commission on Holocaust-Era Insurance Claims, known as ICHEIC, was set up as a forum for the insurance companies to expeditiously settle outstanding policies. In November 2001, our full committee held an oversight hearing on the ICHEIC process and we found the work of ICHEIC disheartening. At the time, ICHEIC had received 77,800 claims for restitution but had resolved only 758, less than 1 percent. Today, nearly a year later, these statistics are not much better.

One of the main problems confronting the ICHEIC process was the difficulty in getting names of Holocaust-era policyholders. At the time of the hearing, less than 10,000 policyholders' names had been published by the companies involved in ICHEIC, and most of those names came from just one company. Without comprehensive policyholder lists to search for the names of family members, more than 80 percent of ICHEIC applicants filed incomplete claims, naming no insurance company at all. As a result, the rate of claims approval was very small.

A representative case is that of Israel Arbeiter, a Holocaust survivor who was born in Poland and came to the United States after being liberated from Auschwitz. As he testified at last year's hearing, Mr. Arbeiter knew his family had insurance policies, because he vividly remembers that every week an agent of an insurance company visited his home to collect premiums. The records were kept in a ledger left behind when the Nazi SS stormed into his home in February 1941. But he never knew which company had issued the policies of his parents and uncles who were killed at the

Treblinka death camp. As a result, ICHEIC has been unable to resolve his claim.

The purpose of the legislation we are considering today is to help Mr. Arbeiter and countless others who are in the same situation. This bill requires all insurance companies operating in the United States to provide information about Holocaust-era policyholders to the U.S. Government for publication by the Holocaust-era Assets Recovery Project of the National Archives.

We know this bill can work. It was patterned after a California State law which has already produced positive results within California. We will hear today from MONY Life Insurance, an insurance company that is fully complying with the California law. Because of the California law, policy information is getting out of companies' archives and into the hands of rightful beneficiaries.

There has been one positive development recently. The chairman alluded to it. Today we will have the opportunity to hear about a new agreement that was announced last week between ICHEIC and the companies in the German Insurance Association. Under the agreement, the names of Jewish policyholders who lived in Germany after 1933 are to be released publicly. Assuming that the German insurance companies actually comply and that a reliable list of Jews who lived in Germany can be compiled, this could help many families in filing restitution claims.

This agreement, as welcome as it may be, will not solve the problems. For one thing, it will not help Mr. Arbeiter and others like him, because he came from areas under Nazi control, not Germany proper.

What's clearly needed is a legislative response by Congress that will in effect compel recalcitrant insurance companies to provide complete lists of Holocaust-era policyholders. That's the goal of H.R. 2693.

Again, Mr. Chairman, I want to commend you for holding this hearing and I look forward to the testimony of the witnesses today so that we can have a record to learn from as we consider this legislation.

[The prepared statement of Hon. Henry A. Waxman follows:]

**Statement of Representative Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
at the Subcommittee on Government Efficiency, Financial
Management and Intergovernmental Relations?
Hearing on H.R. 2693
September 24, 2002**

Today we are holding a hearing on important legislation to help rectify a terrible injustice. The bill is the Holocaust Victims Insurance Relief Act (H.R. 2693). It addresses one of the most difficult problems faced by Holocaust survivors and their families when they seek restitution from insurance companies that have refused to pay claims held by victims of Nazi persecution: How to identify the insurance company that issued the policy.

At the outset, I would like to thank Chairman Horn and Ranking Member Schakowsky. They are both original cosponsors of the legislation before us today. I am very pleased that they have agreed to schedule this hearing to help achieve justice for Holocaust survivors and their families.

The history of Holocaust insurance is shameful. After the war, survivors filing claims for life insurance often were rejected for the cruelest of reasons. Some survivors were rejected because they could not produce death certificates for loved ones who perished in Nazi

concentration camps. Other insurance companies took advantage of the fact that claimants had no policy documents to prove their policy existed. In many cases, survivors recalled that their families had insurance but could not name the company holding their assets.

In 1998, the International Commission on Holocaust-Era Insurance Claims (ICHEIC –*pronounced I-CHECK*) was set up as a forum for the insurance companies to expeditiously settle outstanding policies. In November 2001, our full Committee held an oversight hearing on the ICHEIC process. We found the work of ICHEIC disheartening.

At the time, ICHEIC had received 77,800 claims for restitution, but had resolved only 758 -- less than 1%. Today, nearly a year later, the statistics are not much better.

One of the main problems confronting the ICHEIC process was the difficulty in getting names of Holocaust-era policyholders. At the time of the hearing, less than 10,000 policyholder names had been published by the companies involved in ICHEIC and most of those names came from just one company. Without comprehensive policyholder lists to search for the names of family members, more than 80% of ICHEIC

applicants filed incomplete claims naming no insurance company at all. As a result, the rate of claims approval was very small.

A representative case is that of Israel Arbeiter, a Holocaust survivor who was born in Poland and came to the United States after being liberated from Auschwitz. As he testified at last year's hearing, Mr. Arbeiter knows his family had insurance policies because he vividly remembers that every week an agent of an insurance company visited his home to collect premiums. The records were kept in a ledger left behind when the Nazi SS stormed into his home in February 1941. But he never knew which company had issued the policies of his parents and uncles who were killed at the Treblinka death camp. As a result, ICHEIC has been unable to resolve his claim.

The purpose of the legislation we are considering today is to help Mr. Arbeiter and the countless others who are in the same situation. H.R. 2693 requires all insurance companies operating in the United States to provide information about Holocaust-era policyholders to the U.S. government for publication by the Holocaust-Era Assets Recovery Project of the National Archives.

We know this bill can work. It is patterned after a California state law which has already produced positive results within California. In fact, we will hear today from MONY Life Insurance, an insurance company that is fully complying with the California law. Because of the California law, policy information is getting out of companies' archives and into the hands of the rightful beneficiaries.

There has been one positive development recently. Today, we will have the opportunity to hear about a new agreement that was announced last week between ICHEIC and the companies in the German Insurance Association. Under the agreement, the names of Jewish policyholders who lived in Germany after 1933 are to be released publicly. Assuming that the German insurance companies actually comply and that a reliable list of Jews who lived in Germany can be compiled, this could help many families in filing restitution claims.

But this agreement -- welcome as it may be -- will not solve the problems. For one thing, it will not help Mr. Arbeiter and others like him because he came from areas under Nazi control, not Germany proper.

What's clearly needed is a legislative response by Congress that will in effect compel recalcitrant insurance companies to provide complete lists of Holocaust-era policyholders. That's the goal of H.R. 2693.

Again, I commend Chairman Horn for holding this hearing and I look forward to hearing from the witnesses.

Mr. HORN. I am delighted also that the ranking member on the subcommittee is Jan Schakowsky, the gentlewoman from Illinois.

Ms. SCHAKOWSKY. I thank you, Mr. Chairman and Mr. Waxman, for the work that you and your staff have done to put together this important hearing on H.R. 2693, the Holocaust Victims Insurance Relief Act. I was proud to join Mr. Waxman, the author, as an original cosponsor in introducing this legislation, and I really want to commend him and thank him for his leadership and the leadership that he continues to demonstrate on this subject.

I represent the Ninth Congressional District of Illinois, which includes the village of Skokie, home to one of the greatest survivor communities in the country. Since before coming to Congress, I had been moved by stories of survivors in my district that lost everything during the Holocaust. These people lost their families, property, bank accounts. They came to this country with nothing, and struggled for years and years to cope with economic hardship, discrimination, and emotional trauma. Many were children at the time of the Holocaust. Now, years later, they are senior citizens. So representatives of the families are dwindling reminders of our historic and moral imperative to provide the utmost measure of justice to those who suffered at the hands of the Nazi regime.

Today's hearing will focus on insurance and a legislative proposal that many of us believe to be an appropriate mechanism to force progress on this issue after survivors and heirs of victims have waited for over 50 years to receive acknowledgment and restitution for their suffering. With the assistance of major insurance companies, some of which operate in the United States today, the Nazi regime took over and liquidated policies that were held by Jews that were killed, sent to concentration camps, and forced into slave labor. Those who died had paid into dowry, education, and life insurance policies for years. Their spouses and children never received the benefits they were owed. Others who survived were never paid for the investment they had made in various insurance policies.

Besides the reprehensible foot-dragging and refusal to accept responsibility for the shameful acts of their executives or their government during the Nazi era, Holocaust-era policy writers have to date not provided victims or heirs access to lists of those policies they wrote during that time period. Without access to names, survivors and victims' families have no way to know if they qualify for compensation under the ICHEIC agreement. I have had scores of constituents contact me with questions, dismayed that the process has gone on for so long and that they are still without answers or justice.

There are still some 10,000 survivors in Illinois and it is my understanding that roughly 1,100 of them have filed claims for insurance. To my knowledge, only a handful have received offers for payments. This is an issue that is beyond urgency. There are serious problems that need to be resolved, and Congress has responsibility to make sure that is done so that those who have lived to recall the Holocaust may also have some small measure of justice and dignity paid to them.

Last week it has been mentioned that twice there was a settlement reached to govern the framework for publication of lists and

the processing of claims for policies that were issued in Germany. While the settlement is not perfect because it is limited in scope, it does represent significant progress. I want to mention the fact that one of the hold-ups during these negotiations has been that the companies were demanding compensation for administrative costs that occurred as a result of their participation in ICHEIC and demanded that compensation come from funds contributed for the payment of claims. That was an unreasonable request, and I am pleased that ultimately—and because of the leadership of Nat Shapo, the chairman of the National Association of Insurance Commissioners and our Illinois insurance commissioner—because of his work and the work of the committee on this subject, and other people, that demand was dropped.

While last week's settlement does demonstrate progress, our work is not done. And that is why efforts to pass H.R. 2693 are still appropriate. It would improve upon all progress to date. Their bill requires that the U.S. Department of Commerce disclose critical information, names and places of birth listed on all life, dowry, education, and property insurance about policies that were in effect in all regions under Nazi control between 1933 and 1945. In addition, the bill requires the disclosure of the name of the company that issued the policy and the name of the company responsible for those policies today. The information would be made public through a registry operated by the National Archives.

Another important provision of the bill is the enforcement mechanism, \$5,000 a day for noncompliance. The history of this process and the behavior of the companies have demonstrated that only with the threat of financial consequences can results be achieved. Some States, including Illinois, have taken steps of their own toward revoking or considering the revocation of licenses of companies that do not operate as good-faith partners in the struggle to provide justice to Holocaust survivors. The Federal Government should follow suit. We should send a loud, clear, and long-overdue message to companies that do business in the United States that unless they agree to stop their dilatory and evasive tactics, own up to their shameful past, and provide needed information to the public, they should not expect to reap the large profits that they have come to enjoy from their customers in this country. H.R. 2693 would accomplish the goal of convincing insurance companies with unmet obligations to Holocaust survivors that they are better off cooperating.

Mr. Chairman, I want to welcome our witnesses today. I look forward to hearing their testimony and to a worthwhile discussion.

Mr. HORN. I thank the gentlewoman.

We will now start with the first presenter. We have five presenters. And when that is finished, we will open with questions and we will be able to see where we are. The honorable Randolph Marshall Bell is special envoy for Holocaust Issues at the Department of State. And I will note in the hearing on all of you and the background that you have had, that's relevant to this particular situation. And it's very impressive for many of us. Mr. Bell.

**STATEMENT OF RANDOLPH MARSHALL BELL, SPECIAL ENVOY
FOR HOLOCAUST ISSUES, DEPARTMENT OF STATE**

Mr. BELL. Mr. Chairman, Mr. Waxman, Ms. Schakowsky, ladies and gentlemen, I appreciate very much the opportunity to appear before the subcommittee today concerning H.R. 2693. The U.S. Government is committed to securing equitable compensation for Holocaust victims, and in pursuit of that goal, we have facilitated prolonged international negotiations and entered into several bilateral agreements. We have worked steadily to support international cooperative efforts to address and resolve Holocaust-era issues. We recognize and salute the active role of the U.S. Congress in this regard.

While we appreciate the purpose of the proposed legislation to provide information about Holocaust-era insurance policies to assist potential claimants, we do have serious concerns with it and the negative impact it could have on the implementation of agreements we have concluded with several countries.

This legislation's demand for information under the threat of sanctions against European companies on activities that took place more than 50 years ago is contrary to longstanding U.S. policy that matters of Holocaust-era restitution and compensation should be resolved through negotiation and cooperation and dialog. This legislation's mandate for disclosure of information on all policies issued in Europe from 1933 to 1945, rather than information only on those policyholders who were likely to have been Holocaust victims, could result in the publication of thousands of names of individuals whose claims would not be eligible for payment, and the subsequent creation of unrealistic public expectation. It is also highly likely that some policyholders or their heirs would object to publication on the grounds that it violates their privacy.

In my written testimony I have outlined U.S. policy with regard to Holocaust-era compensation and restitution. Mr. Chairman, I would like to enter for the record the September 19, 2002 statement made by State Department Deputy Spokesman Philip Reeker, in which the United States welcomed the announcement that ICHEIC and the German Foundation had reached agreement on the processing and payment of insurance claims last week. The chief component of this agreement includes a provision to make available the most comprehensive listing possible of insurance policies issued to potential victims of National Socialists.

As is the case with names currently published on ICHEIC's Web site, the listing generated under the ICHEIC Foundation agreement will be used to assist potential claimants. Insurance companies will research all claims received, using all of their electronic and paper records. Claimants do not need to find a name on a list in order to file a claim. That was made quite clear in the worldwide outreach program launched by ICHEIC in February 2000 that has subsequently generated more than 86,000 claim applications. Sources that will be used to assemble this list under the ICHEIC Foundation Agreement include the 1939 national census which contains information on Jews living in Germany as compiled by the German Federal Archives; immigration and deportation lists and other registers of German Holocaust victims, and electronic lists provided by companies with data on some 5 million policies to be

matched with the listing compiled from the census and archival registry.

ICHEIC members all accept the ICHEIC Foundation Agreement as a valid and worthy result. Representatives of the Claims Conference, Jewish Agency for Israel, the World Jewish Restitution Organization, the State of Israel, U.S. State insurance regulators, and individuals who themselves are Holocaust survivors, all have publicly endorsed the agreement, including the provision for the publication of names of policyholders.

Mr. Chairman, we share the frustration of many with the slow pace of progress of paying Holocaust-era insurance claims. However, 2 years of negotiations have now taken place and the parties have reached an agreement to do exactly what this legislation seeks to have them do; that is, to create usable lists of Holocaust-era insurance policies to facilitate the filing and payment of claims.

We think this agreement should be given the opportunity to succeed. We are concerned that if the legislation passes, it could frustrate or prevent the very goals it seeks to achieve.

In conclusion, it is the Department of State's view that H.R. 2693 would not be in the best interest of claimants, many of whom are elderly Holocaust survivors who, as you yourself have said, have waited for justice far too long while that justice has up to this point been denied.

I urge you, Mr. Chairman and members of the subcommittee, to take this into account during your consideration of a bill that may put undue pressure on European insurers to report to the Department of Commerce rather than through internationally agreed channels. This bill will have a seriously dampening effect not only on the recent ICHEIC Agreement, but also on the other institutions the United States has helped create and nurture under both the Clinton and Bush administrations in the bipartisan furtherance of the national interest and of longstanding U.S. policy goals. These institutions have widespread national and international support, and seek to help claimants receive a measure of justice in their lifetime. I thank you very much for the opportunity to appear before you today.

Mr. HORN. We thank you for that. We will have a number of questions.

[The prepared statement of Mr. Bell follows:]

Statement
by
Ambassador Randolph M. Bell
Special Envoy for Holocaust Issues
U.S. Department of State
Washington, DC

to the
U.S. House of Representatives
Committee on Government Reform
Subcommittee on Government Efficiency, Financial Management and
Intergovernmental Relations

September 24, 2002

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee today concerning H.R. 2693, the "Holocaust Victims Insurance Relief Act." The United States Government is committed to securing equitable compensation for Holocaust victims. In pursuit of that goal, we have facilitated prolonged, intense international negotiations and entered into several bilateral agreements to secure speedy resolution of claims. We recognize the importance of ensuring that unpaid insurance policies, issued in Europe during the Holocaust era, are honored, and we have worked steadily to support international cooperative efforts to address and resolve Holocaust-era insurance issues. We recognize and salute the active role of the United States Congress in this cooperative effort.

While we appreciate the purpose behind H.R. 2693 – to provide information about Holocaust-era insurance policies to potential claimants – we have serious concerns with this legislation and the negative impact it could have on the implementation of agreements we have concluded with several countries for the specific purpose of securing payment of survivors' claims.

This legislation's demand for information from European companies on activities that took place in Europe more than 50 years ago, under the threat of sanctions, is contrary to longstanding U.S. policy that matters of Holocaust-era restitution and compensation should be resolved through negotiation, cooperation and dialogue. If passed, this legislation could hinder or prevent important work that a number of established institutions are undertaking to help provide a dignified measure of justice to Holocaust survivors and their families worldwide.

This legislation also would undermine our policy of support for the International Commission on Holocaust Era Insurance Claims ("ICHEIC"), which has reached agreements with European insurers on publication of lists of policyholders who were likely to have been victims of Nazi persecution and has conducted research into public archives throughout Europe and published the results on the Internet. The mandate for broad disclosure of information regarding all policies issued in Europe from 1933 to 1945 – as opposed to information only on those policies issued to individuals who were likely to have been Holocaust victims – could result in the publication of thousands of names of individuals whose claims would not be eligible

for payment and the subsequent creation of unrealistic public expectations. It is also highly likely that some policyholders and/or their heirs will object strenuously to publication on the grounds that it violates their privacy.

U.S. Policy

With regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era, it is the policy of the U.S. Government that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation and cooperation. Since the end of World War II, the United States has worked in numerous ways to achieve restitution and compensation for Nazi victims. These efforts also include the work of the United States military during the immediate postwar period.

Recent activities include negotiations that culminated in the creation, under German law, of the Foundation, "Remembrance, Responsibility and the Future" ("Foundation"). In addition to the Foundation, the United States also has encouraged participation in the International Commission on Holocaust Era Insurance Claims (ICHEIC), a voluntary organization that has established procedures for the processing and payment of Holocaust-era insurance claims. As part of the German Foundation agreement, the German Government agreed that insurance claims against German insurance companies will be processed on the basis of claims-handling procedures established by the ICHEIC and any other procedures that have been agreed among ICHEIC, the Foundation, and the German Insurance Association ("GDV"). A 2001 bilateral U.S. agreement with Austria provides that up to \$25 million will be made available from the Austrian General Settlement Fund to cover claims against those Austrian insurance companies that are not already covered through ICHEIC or the German Foundation, and that claims will be processed by an independent panel using ICHEIC claims-handling procedures. In addition, under the U.S.-Swiss Joint Economic Commission ("JEC"), our two countries pledged to support the efforts of the ICHEIC to address Holocaust-era insurance issues expeditiously.

ICHEIC is a voluntary organization that was established in October of 1998 by the National Association of Insurance Commissioners ("NAIC"), in conjunction with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. The Association of Insurers in the Netherlands later joined ICHEIC on behalf of the entire Dutch insurance industry. The entire German and Austrian insurance industries are committed to using ICHEIC procedures for Holocaust-era claims as described above.

The U.S. Government has supported ICHEIC since its establishment and believes that it should be viewed as the exclusive remedy for unresolved insurance claims from the National Socialist era and World War II.

Since April 2000, ICHEIC has published 59,244 names (relevant to 86,472 insurance policies) in a searchable format on its website, www.icheic.org. The names come from a variety of sources, including research ICHEIC conducted in various European public archives and from lists of policyholders that were provided by ICHEIC member companies and then cross-matched

with Yad Vashem's database of Holocaust victims. ICHEIC is expected to publish an additional 2,000 names on its website this week.

The United States welcomed the September 19 announcement by ICHEIC Chairman Lawrence S. Eagleburger that an agreement had been reached with the German Foundation on the processing and payment of insurance claims against the entire German insurance industry. The Administration has strongly supported efforts to conclude the insurance agreement so that valid claims can be paid and humanitarian funds distributed during claimants' lifetimes. With this agreement, some \$100 million from the German Foundation will be made available to pay valid insurance claims against German companies and \$175 million will be distributed by ICHEIC for humanitarian purposes.

A chief component of the ICHEIC-Foundation agreement includes detailed provisions for former Jewish residents of Germany and their heirs to soon have access to the most comprehensive listing ever available of insurance policies issued to Jewish residents of Germany during the National Socialist era. The listing will be developed using information on Jews living in Germany from the 1939 national census that has been compiled by the German Federal Archive, as well as emigration and deportation lists and other registers of German Holocaust victims from various archival sources that have been recommended by experts. German insurance companies with existing electronic databases will provide information on policyholders, which will be matched with the listing compiled from the census and archival registers. Furthermore, the agreement provides that the ICHEIC claims database, which contains a significant percentage of claims that do not name a specific company, will be cross-matched with an electronic list of policies provided by German insurance companies.

As is the case with names currently published on ICHEIC's website, the listing generated from the provisions in the ICHEIC-Foundation agreement will be used to assist potential claimants. All actual claims will be researched by the companies using all of their records, regardless of whether the names are in an electronic format.

The U.S. Government understands that the members of ICHEIC— especially those representatives of the Conference on Jewish Material Claims Against Germany, the Jewish Agency for Israel, representatives of the State of Israel, U.S. state insurance regulators, and individuals who are themselves Holocaust survivors — all accept the ICHEIC-Foundation agreement as a valid and worthy result. They have endorsed the agreement's key provisions for publishing the most comprehensive list possible of German policyholders who may have been Holocaust victims.

All parties within ICHEIC have worked intensely for the past two years with the German Foundation to resolve the details of cooperation and establish a credible resolution mechanism for claims made against all German insurance companies. If passed, H.R. 2693 would undermine the agreement between ICHEIC and the Foundation, as well as ICHEIC's previous efforts — all of which have been supported by victims' and other Jewish organizations and U.S. state insurance regulators — to publish the names of policyholders who were likely to have been Holocaust victims.

We share the frustration of many with the slow pace of progress on paying Holocaust-era insurance claims. But after two years of negotiations, the parties have reached an agreement to do exactly what this legislation seeks to have them do – that is, to create usable lists of Holocaust-era insurance policies to facilitate the filing and payment of claims. That agreement should be given the opportunity to succeed. This legislation, however, would impose contradictory obligations, and potentially undermine the cooperation on which the recent agreement is based. In other words, passage of this legislation could frustrate or prevent attainment of the very goals it seeks to achieve.

Although based on legitimate concern for Holocaust survivors, sanctions such as those envisioned by H.R. 2693 divert attention from cooperation to confrontation and could undermine the work of the German Foundation, the ICHEIC and the Austrian General Settlement Fund and the objectives of the U.S.-Swiss Joint Economic Commission. Threats interfere with the conduct of international business, especially in the cases of insurance companies that have agreed to participate in the ICHEIC claims process to pay outstanding claims from the National Socialist era. Punitive measures will shift the focus away from the claims resolution we all desire to a debate over those actions.

In conclusion, it is the Department of State's view that H.R. 2693 would not be in the best interests of claimants on Holocaust-era insurance policies, many of whom are elderly Holocaust survivors, who have waited for justice that has been too long denied. I urge you, Mr. Chairman, and members of the subcommittee, to take this into account during your consideration of a bill that puts undue pressure on European insurers to report to the Department of Commerce, rather than through internationally agreed channels, and detracts from the public interest in furthering the purposes of institutions that have widespread national and international support and seek to help claimants receive a measure of justice in their lifetimes.

I thank you for the opportunity to appear before you today.



U.S. DEPARTMENT OF STATE

[Home](#) | [Contact Us](#) | [Email This Page](#) | [FOIA](#) | [Privacy Notice](#) | [Archive](#) | [Search](#)

[About the State Department](#) | [Press & Public Affairs](#) | [Travel & Living Abroad](#)
[Countries & Regions](#) | [International Topics & Issues](#) | [History, Education & Culture](#)

[Business Center](#) | [Other Services](#) | [Employment](#)

[\[Print Friendly Version\]](#)

Press Statement
Philip T. Reeker, Deputy Spokesman
 Washington, DC
 September 19, 2002



Holocaust Insurance Agreement Reached

The United States welcomes today's announcement of a \$275 million agreement to settle unpaid insurance claims that will benefit aging Holocaust survivors and their families worldwide. The agreement between the International Commission on Holocaust Era Insurance Claims, chaired by former Secretary of State Lawrence S. Eagleburger, and the German Foundation, "Remembrance, Responsibility and the Future," establishes a process to pay World War II-era claims against German companies. The International Commission and the German Foundation will work with the entire German insurance industry to distribute \$100 million for claims and processing costs and \$175 million in humanitarian funds, which were provided under a key provision of a bilateral agreement signed by the U.S. and Germany in July 2000.

This Administration has strongly supported efforts to conclude the insurance agreement so that valid claims can be paid and humanitarian funds distributed during claimants' lifetimes. Working in close cooperation with Germany, the United States has played a leading role in international cooperative efforts to right World War II-era injustices and has long been committed to seeking justice for Holocaust survivors and their families.

The U.S. has supported the International Commission since its establishment in 1998 and believes that it should be viewed as the exclusive remedy for unresolved insurance claims from the Nazi era and World War II.

The German Foundation has made payments to nearly one million survivors in recognition of the suffering they endured as slave and forced laborers during World War II. Today's agreement is a major success for U.S.-German cooperation, capping several years of work involving a wide spectrum of non-governmental organizations, political leaders, insurance executives, and private citizens in both countries. The U.S. Government is strongly committed to supporting the Foundation and its work through the U.S.-German Executive Agreement of July 2000.

[End]

Released on September 19, 2002

This site is managed by the Bureau of Public Affairs, U.S. Department of State. External links to other Internet sites should not be construed as an endorsement of the views contained therein.

Mr. HORN. And we now have Dr. Kurtz. Dr. Kurtz is the Assistant Archivist for Record Services, National Archives and Records Administration. And I believe the gentleman with you is Dr. Greg Bradsher, Director of the Holocaust-Era Assets Records Project of the National Archives and Records Administration. So I assume you are going to have it several ways.

STATEMENT OF MICHAEL KURTZ, ASSISTANT ARCHIVIST FOR RECORDS SERVICES, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION; AND GREG BRADSHER, DIRECTOR OF THE HOLOCAUST-ERA ASSETS RECORDS PROJECT, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Mr. KURTZ. Thank you very much, Mr. Chairman. Dr. Bradsher will talk about our contributions and our work with Holocaust-era records. As you may remember, for several years I was chair of the Nazi War Crimes Interagency Working Group and I want to take this opportunity to thank you, Congressman Waxman and Congresswoman Schakowsky, for your support of that effort which is ongoing.

I have submitted my testimony and I have a statement for the record.

In my oral testimony I would like to highlight several points of importance to the National Archives. If H.R. 2693 becomes law, the National Archives is committed to comply with the provisions calling for the establishment and maintenance of the Holocaust Insurance Registry. This is in keeping with the stated goal of the National Archives Strategic Plan, which is ready access for essential evidence.

We do have several concerns with the legislation that we would like to bring to your attention. First and—there are three points and they are related. First is the question of size and scope of the registry as envisioned. We have heard estimates ranging in the range of millions of names, and would see the placement of this size data base as potentially an undertaking beyond what our current funding would permit.

And as regards to number of expected inquiries—and I think there would be a substantial number of inquiries—we are considering setting up a separate Web site to be able to handle the inquiries in a very expeditious and quick way. Estimates in both of these areas would be essential in costing the impact of the legislation.

Our second and related concern is the funding source of the registry. It's unclear to us, at least to the National Archives, at least as drafted, if the penalty fees charged against noncompliant insurance companies would serve as the sole funding mechanism for the development and maintenance of the registry. If that is the case, the logic and the structure would seem to be reversed. In other words, if insurance companies comply with the law, the National Archives would have the responsibility of Web access to a potentially huge names registry, but would not receive any direct monies to establish and maintain the registry. If on the other hand, the insurance companies do not comply—and so the costs of the registry would be very low—but we would receive money by way of these fines with little end results.

If the former situation takes place, we would need to rely on increased appropriations to meet the legislative requirement. If the latter situation occurs—in other words, if there is noncompliance but the fines are levied—proper use of the fines would be somewhat in question.

And the third issue relates to the fact that the legislation does not have a sunset date for the maintenance of the registry on line and a Web-accessible format. We suggest that provision would be made for the National Archives to maintain the information in a Web-searchable format until the year 2020, which is 75 years after the end of World War II, and after such time we would still retain the electronic information and undertake individual searches when requested.

Mr. Chairman, this concludes my oral testimony and I would be glad to answer any questions and turn things over to Dr. Bradsher for some comments.

[The prepared statement of Mr. Kurtz follows:]

**STATEMENT
By Dr. Michael J. Kurtz
Assistant Archivist for Records Services
National Archives and Records Administration
Washington, DC**

**To the
Subcommittee on Government Efficiency, Financial Management and
Intergovernmental Relations
Of the
Committee on Government Reform
House of Representatives
Congress of the United States**

September 24, 2002

Mr. Chairman, I am Dr. Michael J. Kurtz, Assistant Archivist for Records Services and I am pleased to represent the National Archives and Records Administration (NARA) at this hearing on H.R. 2693, the Holocaust Victims Insurance Act.

For the record, Mr. Chairman, I have been on the NARA staff since 1974, and in my current position since January 1997. I was also the chair of the Nazi War Crimes Interagency Working Group for its first two years of operation. Also for the record, Mr. Chairman, I would like to note that my doctoral dissertation and several subsequent publications have focused on American policy after World War II on the restitution of European and Jewish cultural property looted by the Nazis.

As my colleague Dr. Greg Bradsher has indicated in the testimony he has submitted, NARA has been at the forefront over the past decade in getting records in Federal custody related to the Holocaust declassified and made available for research. Literally millions of pages of records are now publicly available at the National Archives which are directly relevant to Holocaust-era crimes and looted assets. I should also like to note that NARA has begun an extensive microfilm project designed to preserve fragile Holocaust-era records.

If H.R. 2693 becomes law, we are committed to having NARA comply with the provisions calling for the establishment and maintenance of the Holocaust Insurance Registry. This is in keeping with the stated goal in NARA's strategic plan: ready access to essential evidence.

But NARA does have three primary concerns with the legislation, should it become law as written.

1. First is the question of size and scope of the Registry as envisioned. We have heard estimates in the range of millions of names and would see the placement of this size data base a potentially extremely costly undertaking. As regards the number of expected inquiries, a separate web site might even be in order. Estimates in both of these areas would be essential in costing the impact of the legislation.
2. Secondly is the funding source of the Registry. It is unclear as drafted if the penalty fees charged against non-compliant insurance companies would serve as the sole funding mechanism for the development and maintenance of the Registry. If that is the case, the logic in this structure would seem to be reversed. In other words, if insurance companies comply with the law, NARA would have the responsibility of web access to a potentially huge names registry, but would not receive any direct monies to establish and maintain the registry. If, on the other hand, insurance companies do not comply, NARA's costs would be very low, but we would receive monies by way of these fines. If the former situation takes place we would need to rely on increased appropriations to meet the legislative requirement. If the latter situation takes place, proper use of the fines would be somewhat in question.
3. The third issue relates to the fact that the legislation does not have a sunset date for the maintenance of the registry on-line in a web-accessible format. We believe that provision should be made for NARA to maintain the information in a web searchable format until the year 2020 (75 years after the end of World War II) after such time we would still retain the electronic information and undertake individuals searches when requested.

Mr. Chairman, this concludes my testimony and I will be glad to answer any questions.

Mr. HORN. OK, Dr. Bradsher.

Mr. BRADSHER. Thank you, Mr. Chairman. I have been with the National Archives for 25 years and I have spent the last 6½ years as the Federal Government's expert on Holocaust-era assets records. The National Archives and Records Administration, as you know, preserves and makes available the permanently valuable records of our Federal Government. A significant amount of records in our custody relate to the Holocaust and Holocaust-era assets.

As we all should know by now, the Holocaust was not only the greatest murder in history but also the greatest theft in history. During and after World War II, some 30 Federal agencies created upwards of 20 million pages of records relating to the theft recovery and restitution of looted gold, art, cultural property, Jewish communal property, as well as the operations of European banking and insurance institutions, and slave and forced labor.

The volume of records that we have to deal with has increased somewhat the past several years as a result of the Nazi War Crimes Disclosure Act of 1998, which you certainly had a role in, Mr. Chairman. All this commends your efforts to make sure relevant records are declassified and open to research. In fact, amongst the records the CIA just declassified 2 years ago are the records of the Office of Strategic Services Intelligence Insurance Unit, which none of us knew even existed. This unit was established during World War II to monitor the operations of European axis and neutral-country insurance companies. In fact, every day researchers come to the National Archives to use the records relating to Holocaust-era assets and find them a very useful source in doing their research.

During the past 6½ years, much has been accomplished toward bringing justice and compensation to victims of Nazi persecution. Many issues both old and new are still unresolved. Thus, undoubtedly, interest in Holocaust-era assets issues will continue for years if not for decades.

Just as certainly, our agency and its archival holdings will continue to serve as important roles in the search for truth and justice. Mr. Chairman, H.R. 2693, given our agency's role in the Holocaust-era assets research effort, the National Archives would indeed be an appropriate location for the names registry envisioned by this legislation. As Dr. Kurtz pointed out, we do have some questions about its implementation.

I will shorten my testimony at this time to allow more time for questions at the appropriate time. Thank you very much, Mr. Chairman.

Mr. HORN. Thank you.

[The prepared statement of Mr. Bradsher follows:]

**STATEMENT
By Dr. Greg Bradsher
National Archives and Records Administration
Washington, DC**

**To the
Subcommittee on Government Efficiency, Financial Management and
Intergovernmental Relations
Of the
Committee on Government Reform
House of Representatives
Congress of the United States**

September 24, 2002

Mr. Chairman. Thank you for inviting me to testify before the subcommittee today. My name is Greg Bradsher. For the past six and half years I have been the Federal Government's expert on records relating to Holocaust-Era Assets. In that capacity I have worked closely with Federal agencies, Congress, foreign governments and commissions, domestic and foreign companies and financial entities, State governments, non-governmental organizations, and foreign and domestic researchers. Since 1996 I have been a member of the US delegation to two international conferences on Holocaust-Era Assets, served as the director of the National Archives Symposium on Records and Research Relating to Holocaust-Era Assets, served as my agency's representative to the Interagency Working Group on Nazi Assets, assisted the Presidential Advisory Commission on Holocaust-Era Assets in the United States, and served on the staff of the Nazi War Criminal Records Interagency Working Group. I have authored numerous articles and given numerous presentations on Holocaust-Era Assets subjects and compiled a 1,100 page finding aid to relevant records in the National Archives.

During the past six years and half years there has been a significantly increased worldwide interest in the assets that were looted and lost, recovered and restituted during and after World War II. This renewed interest, to a large extent, began in the spring of 1996 when a researcher showed up at the National Archives at College Park, Maryland interested in Jewish deposits in Swiss banks. She had come to the National Archives on behalf of U.S. Senator Alfonse D'Amato, the head of the Senate Banking Committee, to investigate the supposedly large quantities of dormant Jewish bank accounts in Swiss banks. The senator has been asked by the World Jewish Congress to conduct the research because it believed that there were billions of dollars in accounts and that the Swiss banks were making it difficult, if not impossible, for survivors of the Holocaust and heirs of victims of Nazi persecution to retrieve. Very early in her research the researcher located records that contained detailed information about Jewish deposits in a Swiss bank. Within a month of her discovery D'Amato's committee held hearings on Nazi looted assets and the Swiss bank accounts and shortly thereafter began a major, worldwide research effort into Holocaust-Era assets.

The research effort coupled with diplomatic, political, legal, moral, and economic pressures have forced countries, organizations, and companies to come to grips with their past and to meet their

current responsibilities. Much has been achieved. Settlements regarding bank accounts, slave labor, and other property matters, have been reached with the Swiss, Germans, Austrians, French, and others, in amounts well over \$6 billion. Work is on going with the unpaid insurance issue, the restitution of looted art, and Jewish communal and religious property. And \$50 million dollars' worth of gold that was probably composed of, in part, non-monetary gold, or victim gold, instead of being returned to the central banks of Europe, from which it was stolen, has instead been donated to victims of Nazi persecution. Additionally, in early 1998 Congress adopted the Holocaust Victims Redress Act that authorized \$20 million for restitution payments. Subsequently Congress appropriated \$25 million over three fiscal years for The International Nazi Persecutee Relief Fund. A key element in the restitution process has been the National Archives and Records Administration (NARA).

The National Archives and Records Administration, the repository of our nation's archival records, became a key element of the Holocaust-Era assets story because of its holdings: well over 15 million pages relating to the looting, locating, recovering, and restituting assets during and after World War II. These records, accumulated by over thirty Federal agencies, were relatively little used before 1996. Researchers, representing countries, organizations (including the International Commission on Holocaust Era Insurance Claims), companies, and financial entities, beginning in 1996, would find the records invaluable to their research. Law firms would find evidence for lawsuits and the media exploited the records for hundreds of stories. Historians have found the records exceedingly useful in expanding their knowledge of the financial and economic aspects of the Second World War.

Since March 1996 NARA's Archives II Building in College Park, Maryland has been visited and/or contacted by well over one thousand researchers interested in records relating to Holocaust-Era assets. Many of those researchers have spent weeks, months, and even years going through millions of documents. To assist these researchers NARA produced a 1,100-page guide to relevant records; sponsored a one-day meeting on art provenance and claims research, co-sponsored a two-day course on art provenance research, and held a Symposium on Holocaust-Era Assets Records and Research. Over 400 people, including representatives of numerous foreign governments attended this symposium. NARA in late 1998 created a Holocaust-Era Assets website: www.archives.gov/research_room/holocaust_era_assets/ and in early 2001 Dr. Michael Kurtz, the Assistant Archivist for Records Services, Washington, D.C., initiated a multi-year preservation and access program to microfilm and make more widely available Holocaust-Era related records.

NARA has been a major partner in the Federal Government's efforts to provide whatever measure of justice might be possible to Holocaust survivors, their families, and the heirs of those who lost their lives in the Holocaust. NARA staff was intimately involved during the 1996-1998 period in the work of an 11-member Interagency Group on Nazi Assets, headed by Under Secretary of State Stuart E. Eizenstat. This group produced for the President two reports detailing Nazi looting and criticizing the neutral nations for accepting looted assets. During the 1999-2000 period NARA staff worked with the Presidential Advisory Commission on Holocaust-Era Assets in the United States and materially assisted them in producing a report to the President and Congress in January 2001.

I wish to note, Mr. Chairman, the leadership of you and Congresswoman Maloney in the successful passage of the Nazi War Crimes Disclosure Act of 1998 and its contribution in access to records never before available. Since the enactment of the Act, NARA staff have played the key role in the Federal Government's declassification efforts to make available formerly classified records relating to Nazi war crimes and war criminals, Nazi persecution, and Nazi looting. Additionally, NARA staff have assisted the State Department's Office of the Special Envoy for Holocaust Issues and worked closely with the State Department planning for and participating in international conferences in Switzerland, England, Lithuania, and Washington, D.C.

During the past six years and half years much has been accomplished towards bringing justice and compensation to victims of Nazi persecution, as well as for providing for Holocaust memory, research, and education. Many issues, both old and new, are still unresolved. Thus, undoubtedly, interest in Holocaust-Era assets issues will continue for years, if not decades. And just as certainly NARA and its archival holdings will continue to serve as important roles in the search for truth and justice.

Mr. Chairman, as for HR 2693, the National Archives would be an appropriate location for the names registry envisioned by this legislation. Questions of resources, scope, and sunset that Dr. Kurtz will discuss this morning would need to be resolved. However, we stand ready to assist the committee in this or any future approach and to define how we might solve the problem at hand.

Mr. Chairman, I would be happy to answer any questions at the appropriate time.

Mr. HORN. We now go to Ms. Tick, and she is the senior staff counsel for the California Department of Insurance.

**STATEMENT OF LESLIE TICK, SENIOR STAFF COUNSEL,
CALIFORNIA DEPARTMENT OF INSURANCE**

Ms. TICK. Thank you for inviting me to speak with you this afternoon. I am going to summarize my written testimony and I'll be happy to answer any questions.

California Insurance Code Section 13800 et seq. is the law that H.R. 2693 is somewhat based on. It took effect in late 1999. The documents were due to the Department of Insurance in April 2000. However, in March 2000, the Department was sued, insurers claiming that the statute was unconstitutional. The litigation has been continuous and contentious since March 2000. The constitutionality of the statute has been upheld in the Ninth Circuit Court of Appeals in two separate published opinions. However, the statute is still not enforceable because the insurers are asking that the orders—that the opinions be stayed pending their appeal to the U.S. Supreme Court. So it's going to potentially take some time. It's unclear right now whether or not the Supreme Court will choose to hear the case.

What we did receive, though, before the statute was enjoined—and actually some companies complied after the statute was enjoined—roughly 1,500 insurers who were obligated to report. Four groups representing about eight insurance companies fully complied; that is, they gave us lists of names of policies that either they wrote or related companies wrote in Europe between 1920 and 1945. About another four groups representing another 43 companies provided partial or incomplete submissions; that is, they gave us the names of unpaid policies issued to Holocaust victims, whereas the California law, just like the Federal bill, requires all policies written. And then about 100 additional insurers just flat refused to comply. And all the rest basically told us, we either weren't around in those days or we searched and have nothing to tell you.

I would like to point out, if I could, some differences between the ICHEIC requirements for lists and the German Foundation's requirements for lists and what the California law requires and what this Federal bill would require, because there are significant differences. We were very happy that the German Foundation Agreement was resolved. We supported it all along. It's a tremendous step forward, but as far as the lists go, it doesn't resolve the issue as completely as it should be resolved. The ICHEIC requires its member companies to provide lists of unpaid policies issued to Holocaust victims. That left it up to the company to determine who was a Holocaust victim and who wasn't, which is inordinately difficult to do, even if you're only dealing with Jewish victims. It is impossible to do if you're dealing with homosexuals, Jehovah's Witnesses, political dissidents, and the other myriad of victims of the Nazis. So it leaves out all those people.

There was also a problem with the definition of "unpaid." The companies told ICHEIC and told California at various hearings that they did not include policies that had been paid to the Nazis as unpaid, because they considered those policies to have been paid. So those policies are not on the ICHEIC lists.

The German Foundation calls for the German companies to create a list of policyholders that they already have on computer, that they already have digitized. I believe those are life insurance policies in force, which I believe would mean unpaid, although that's not entirely clear. Those names will be matched against this new list of German Jews, and whichever names stick will then be published. So it is not the full 5 million list that will be published. It is a subset of that. Again, these are just German names. Policyholders issued by German insurers—and again, the California law and the Federal law would go further than that to include policyholders from all over Europe. Those are just some of the important differences.

Another issue, as Mr. Waxman pointed out, is that most of the names published on the ICHEIC list don't come from the insurance companies. In fact, 85 percent of them do not come from the insurance companies, and those 15 percent that do come from the insurance companies are mostly from one company. So it seems that the ICHEIC insurers have not been able to truly meet even the ICHEIC requirements, which are lesser than the California and Federal requirements would be. And I'll be happy to answer any questions.

[The prepared statement of Ms. Tick follows:]

**Testimony of Leslie Tick, California Department of Insurance
 United States House of Representatives Government Reform's Subcommittee on
 Government Efficiency, Financial Management and Intergovernmental Relations.
 September 24, 2002
 2:00 pm.**

Good afternoon. My name is Leslie Tick. I am senior staff counsel at the California Department of Insurance. I have been with the Department for the past 10 years and have worked on the Holocaust era insurance issue since late 1997.

In pre-war Europe, insurance was sold extensively and primarily to middle and working class people. Many individuals invested in life insurance policies and in annuities because retirement planning tools, such as pensions, were not widely available. Dowry and education policies were also very common during this time. These policies were purchased when a child was born and paid when a daughter married or a son commenced higher education.

As the religious, ethnic and political repression preceding World War II spread, and later, as the war and Holocaust enveloped Europe, more people purchased insurance products in an effort to keep their assets safe.

Over the past 50 years, some insurers have consistently refused to pay benefits or provide information about these policies. The reasons given for non-payment include:

- No death certificate provided by the claimant;
- Policyholders stopped making premium payments during the war;
- Proceeds of policies sold to Jewish insureds were already paid to the Nazis or nationalized;
- Reparations to Holocaust survivors were made by government restitution treaties, which covered insurance proceeds;
- Companies located in eastern bloc countries were taken over by communist regimes and their assets were confiscated so that no funds exist to pay claims; and
- Records no longer exist to verify the individual's status as a policyholder beneficiary.

An estimated 50,000 to 100,000 Holocaust survivors live in the United States. California has the second largest number of survivors with estimates ranging from 6,300 to 20,000 survivors. If these policies were paid today, at present value with currency adjustments and interest, it is estimated that the total due could reach into the hundreds of millions of dollars.

In order to see that justice is done and provide assistance to those survivors who may wish to file claims on these policies, information needs to come from the insurance companies. Most survivors and their heirs no longer have documentary proof of insurance. Most survivors were children during the war. Some recall details regarding insurance — the agent coming to their home for payment, or their parents telling them that they were insured. The majority of claimants, however, have no actual knowledge of whether or not their family members were insured, but believe they must have been because of their social and economic status, business holdings, or because they believe that their parents took good care of the family.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was formed in August 1998 to try to address the issues surrounding these policies in a consensual manner. The ICHEIC is made up of a few European insurers (Allianz, Generali, Zurich, AXA and Winterthur), American and European insurance regulators, representatives of Jewish and survivor organizations, and the State of Israel. In order to address the problem of claimants' lack of records, ICHEIC required each member company to provide a list of unpaid policies issued to Holocaust victims. It was envisioned that this list would be made available to the public so that potential claimants would be able to see if they or their relatives had a policy.

ICHEIC required that its member companies provide lists of policies held by victims of the Holocaust, but left each insurer to decide who was and who was not a victim of the Holocaust. Even if some names are known as "Jewish names" a company cannot determine with certainty which policyholder was, or was not, a Jew. And for those who were victims by virtue of the fact that they were homosexual, Roma, disabled, or Jehovah's Witness, for example, it would be entirely impossible.

Another problem arose from ICHEIC's requirement that the insurers provide policyholder names just for those policies that remained unpaid. There was a widespread practice during the pre-war and war years for the Nazis to confiscate policies outright or for the policies held by victims to be paid into "blocked accounts." These "blocked accounts" were in the policyholder's name, but the account only worked one way. The account holder was forced to deposit his assets, but was not allowed to make any withdrawals. Unfortunately, the insurers considered these policies to be "paid" even though they were not paid to the beneficiary of the policy, and these names were not included on the lists.

Another problem with the ICHEIC lists is that most of the ICHEIC insurers simply refused to provide lists, saying that European law would forbid such disclosure, or saying that it would simply take too much time and cost too much money to collect the data. Allianz, for example, with approximately 1.3 million paper files, refused to put the information into electronic format, citing cost and difficulty and its decision that such an effort would be unlikely to yield enough Jewish policyholders to make the exercise cost effective. Allianz eventually agreed with ICHEIC to digitize information regarding a small sampling of the 1.3 million policies and to match those names against the Yad Vashem¹ database of Jews killed in the Holocaust, in order to determine which of the policies were victims of the Holocaust. The Yad Vashem database, however, contains the names of only about half of Jewish victims of the Holocaust. The matching was ultimately never done, as Allianz was not willing to agree to the Yad Vashem matching system and so, to date, there are no Allianz names on the ICHEIC database that came from this exercise.

ICHEIC also undertook limited research of non-insurer archives for evidence of individual policies. ICHEIC searched state archives in various locations around Europe and looked mostly at documents reflecting the forced documentation of Jewish assets to be either taxed by or collected by the Nazis. These names were collected in ICHEIC's research database and were

¹ Yad Vashem is the Holocaust memorial in Israel, which to date, has the world's largest collection of names of Jewish Holocaust victims.

added to the policyholder database that is publicly available on ICHEIC's website (www.icheic.org).

To date the ICHEIC policyholder database contains 59,244 policyholder names. Only 15% of those names (8,929) came from ICHEIC's member insurers. Of the 8,929 names provided by the insurers, 94% (8,388 names) come from just one company. Generali, which provided 94% of the names on the ICHEIC database, actually collected information on 360,000 policies in force in 1939 but was only willing to give ICHEIC a smaller list of 90,000 "unpaid" policies. Those were then matched against the Yad Vashem list, resulting in the 8,388 names currently published.

When the German Foundation negotiations are completed, the German insurers say that they will provide a list names of policies in force, to be matched against a list of German Jews. Virtually none of these names will come from Allianz, as the German insurers agreed to provide those names that were already in electronic format. The resulting matched names will be added to the ICHEIC website database. Since the matching will be done against a list of German Jews, it will not capture homosexual, disabled, Jehovah's Witness or Roma victims of the Nazis.

In contrast to the ICHEIC list requirements, AB 600, codified as California Insurance Code §13800 (attached) directs insurers to provide to the Department data regarding *all* insurance policies they or a related company wrote in Europe between 1920 and 1945. This requirement addresses the problem of insurers deciding for themselves who was and who was not a victim of the Nazis and deciding which policies were paid and which were not paid. It also allows survivors and the families of victims who were not targeted because they were Jews, to be able to search for names.

The statute directs the Department to suspend the certificate of authority of any insurer that fails to comply. The statute required insurers to provide their data to the Department of Insurance by April 10, 2000.

Beginning in March 2000, various insurance companies (Gerling, Generali, American Reinsurance, Winterthur) and the trade association American Insurance Association (representing an additional one hundred or so insurers), filed four separate federal lawsuits against the California Insurance Commissioner asserting that the statute and its implementing regulations violated their federal constitutional rights.

On June 9, 2000, the United States District Court for the Northern District of California granted plaintiffs' request and enjoined enforcement of the statute.

On February 7, 2001, the United States Court of Appeals for the Ninth Circuit rejected the insurers' commerce clause and foreign affairs constitutional challenges. (Opinion attached as Exhibit 2). The Court kept the injunction in place pending proceedings on the merits regarding due process, the insurers' one remaining constitutional challenge.

In September 2001 the parties argued cross motions for summary judgment on the due process issues. On October 1, 2001, the District Court denied the Commissioner's Motion for Summary

Judgment and granted Plaintiffs' motions, finding that the statute violated the insurers' due process rights.

Both sides took the due process ruling back to the 9th Circuit Court of Appeals. The Court heard oral argument on May 8, 2002.

On July 15, 2002, the Court of Appeals ruled that the statute was not unconstitutional for any of the reasons set forth by plaintiffs (amended Opinion attached as Exhibit 3).

The Court of Appeals denied plaintiffs' request for rehearing en banc on September 9, 2002.

On September 13, 2002 the insurers requested that the Court stay the ruling pending their request to the United States Supreme Court that it hear the case.

Prior to the injunction, which prevented the California Department of Insurance from enforcing the statute, approximately 1,500 California insurers submitted reports.

Four groups representing approximately eight insurers provided reports that fully comply with the statute.

Four groups representing approximately forty-three California insurers provided partial, incomplete submissions, such as policy information regarding unpaid policies issued to Holocaust victims.

The Department has further questions regarding the reports submitted by five groups representing approximately fifty-eight insurers.

Approximately one hundred insurers refused to comply.

The remainder, and overwhelming majority of the insurers reported that they either wrote no insurance in Europe during the applicable time period or that they searched and were unable to find any data responsive to the statute.

#226672 v1

Exhibit 1

CALIFORNIA INSURANCE CODE

§13800. This chapter shall be known and may be cited as the Holocaust Victim Insurance Relief Act of 1999.

§13801. The Legislature finds and declares the following:

- (a) During World War II, untold millions of lives and property were destroyed.
- (b) In addition to the many atrocities that befell the victims of the Nazi regime, insurance claims that rightfully should have been paid out to the victims and their families, in many cases, were not.
- (c) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies' very existence may have perished along with the Holocaust victims.
- (d) At least 5,600 documented Holocaust survivors are living in California today. Many of these survivors and their descendents have been fighting for over 50 years to persuade insurance companies to settle unpaid or wrongfully paid claims. Survivors are asking that insurance companies come forth with any information they possess that could show proof of insurance policies held by Holocaust victims and survivors, in order to ensure that closure on this issue is swiftly brought to pass.
- (e) Insurance companies doing business in the State of California have a responsibility to ensure that any involvement they or their related companies may have had with insurance policies of Holocaust victims are disclosed to the state and to ensure the rapid resolution of these questions, eliminating the further victimization of these policyholders and their families.
- (f) The international Jewish community is in active negotiations with responsible insurance companies through the International Commission on Holocaust Era Insurance Claims to resolve all outstanding insurance claims issues. This chapter is necessary to protect the claims and interests of California residents, as well as to encourage the development of a resolution to these issues through the international process or through direct action by the State of California, as necessary.

§13802. For purposes of this chapter, the following definitions shall apply:

- (a) "Holocaust victim" means any person who was persecuted during the period of 1929 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers.
- (b) "Related company" means any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliate company of the insurer.
- (c) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

§13803. The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies, as described in Section 13804, of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era

Insurance Registry. The Attorney General, in coordination with the department, shall establish appropriate mechanisms to ensure public access to the registry.

§13804. (a) Any insurer currently doing business in the state that sold life, property, liability, health, annuities, dowry, educational, or casualty **insurance** policies, directly or through a related company, to persons in Europe, which were in effect between 1920 and 1945, whether the sale occurred before or after the insurer and the related company became related, shall, within 180 days following enactment of this act, file or cause to be filed the following information with the commissioner to be entered into the registry:

- (1) The number of those insurance policies.
- (2) The holder, beneficiary, and current status of those policies.
- (3) The city of origin, domicile, or address for each policyholder listed in the policies.

(b) In addition, each insurer subject to subdivision (a) shall certify to any of the following:

- (1) That the proceeds of the policies described in subdivision (a) have been paid to the designated beneficiaries or their heirs where that person or persons, after diligent search, could be located and identified.
- (2) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors.
- (3) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds.
- (4) That the proceeds have not been distributed and the amount of those proceeds.

An insurer who certifies as true any material matter pursuant to this subdivision, which the insurer knows to be false, is guilty of a misdemeanor.

(c) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945, shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing under this section.

§13805. Any insurer that knowingly files information about a policy required by this chapter that is false shall, with respect to that policy, be liable for a civil penalty not to exceed five thousand dollars (\$5,000), which penalty is hereby appropriated to the department to be used by it to aid in the resolution of Holocaust insurance claims.

§13806. The commissioner shall suspend the certificate of authority to conduct insurance business in the state of any insurer that fails to comply with the requirements of this chapter by the 210th day after this section becomes effective, until the time that the insurer complies with this chapter.

§13807. The commissioner shall adopt rules to implement this chapter within 90 days of its effective date. The rules shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the rules shall be considered by the Office of Administrative Law to be necessary for the immediate reservation of the public peace, health and safety, and general welfare.

CALIFORNIA CODE OF REGULATIONS

Title 10, Chapter 5, Subchapter 3, Article 1.1

§2278 Purpose

These regulations establish standards for reporting under the Holocaust Victim Insurance Relief Act of 1999 which creates the Holocaust Era Insurance Registry and insures public access to that registry (California Insurance Code Section 13803).

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Section 13800 et. seq., Insurance Code.

§2278.1 Definitions

(a) The term "Europe," means areas in the European Continent that were at some time occupied or controlled by Nazi Germany, its allies or sympathizers.

(b) The terms "parent" and "subsidiary" include both direct and/or indirect relationships. The term subsidiary is as defined in California Insurance Code Section 1215(f).

(c) The term "managing general agent" means a relationship as defined in California Insurance Code Section 769.81(c) and the NAIC Model Laws and regulations regarding managing general agents.

(d) The term "insurer" means any insurer doing business in California on or after October 10, 1999.

(e) The term "affiliate company of the insurer" is as defined in California Insurance Code Section 1215(a).

(f) The term "sold to persons in Europe" means policies which were sold to the policyholder when he or she was in Europe.

(g) The term "unpaid" includes policies paid to some person or entity other than the insured, policyholder or beneficiary.

(h) The term "Department" means the California Department of Insurance.

(i) The term reinsurer means a parent, subsidiary or affiliate of the insurer that provides reinsurance as defined in California Insurance Code Section 620.

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Sections 620, 769.81(c), 1215(a), 1215(f), 13801(e), 13802(b) and 13804, Insurance Code.

§2278.2 Who is required to submit a Report

(a) Every insurer that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, directly or through a related company to persons in Europe, which policies were in effect between 1920 and 1945, whether the sale occurred before or after the insurer and the related company(ies) became related must submit a report. If the insurer states that it has no actual policies to report because the records are no longer in the possession of the insurer or its related company(ies), it shall provide a complete explanation of that statement.

(b) A consolidated report may be submitted by the reporting insurer's holding company on behalf of all members of the holding company required to file a report. A consolidated report shall designate one insurer as the reporting insurer for purposes of compliance with CCR Title 10 Section 2278.3(a)(1) and Section 2278(a)(2), and shall specify what insurers are included in the report. Insurers that choose to file a consolidated report must comply with all other requirements of these regulations and all such insurers are subject to liability under California Insurance Code Sections 13805 and 13806.

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Section 13804, 13805, 13806, Insurance Code.

§2278.3 Report Format

(a) The report shall be submitted on letterhead of the reporting insurer, dated, signed and verified as provided in California Code of Regulations Title 10 Section 2683.22 by an officer of the insurer who has authority to bind the insurer (this person shall be the contact person for the purpose of implementing these regulations), with paragraphs numbered as follows:

(1) Insurer Identification

This paragraph shall state the name, address, phone, fax, email, and website for the main office of the insurer making the report.

(2) Contact Person

This paragraph shall state the name, address, phone, fax and email for the Contact Person as set forth in California Code of Regulations Title 10 Section 2278.3(a).

(3) Related Companies

This paragraph shall state the current name, address, phone, fax, email and website for each company related (as defined in California Insurance Code Section 13802(b) and in these regulations) to the insurer (as defined in these regulations) which sold insurance as set forth in California Insurance Code Section 13804(a). This paragraph shall include a detailed statement with attached exhibits as necessary which describes the relationship, including but not limited to dates the relationship commenced and ended, percent ownership interest, and any other information which would set forth the relationship between the insurer and the related company(ies). This paragraph shall also include the information in the form of an organization list or organization chart showing current and past relationships with the related company(ies).

(4) Number of Policies

This paragraph shall state separately for the insurer and for each of its related companies, the number of insurance policies sold to persons in Europe which were in effect between 1920 and 1945 whether the sale occurred before or after the insurer and the related company became related.

(5) Policy Information

To the extent that it is contained in any records currently in the possession of the insurer or its related companies, the following policy information shall be provided.

(A) Policyholder Name

The insurer shall provide the policyholder's full name. The names shall be listed as LAST NAME, FIRST NAME, MIDDLE NAME in alphabetical order by last name. If the insurer has information indicating that the policyholder had more than one policy, all required information shall be entered separately for each policy.

(B) Policyholder Address

The insurer shall provide the complete address, city of origin or domicile of the policyholder at the time the policy was issued. The information provided shall be the most complete information that the insurer has. For example, if the insurer has the policyholder's complete address, that should be entered. If the insurer only has the city of origin or domicile, that information should be entered.

(C) Insured Name and Address

The insurer shall provide the name and address of the insured if the insured is different from the policyholder. This information shall be provided as described in the Policyholder Address section herein.

(D) Beneficiary Name

The insurer shall provide the named beneficiary or beneficiaries as stated on the policy.

(E) Current Status

The insurer shall state, for each policy, whether the policy is paid or unpaid.

(F) Insurance Company

The insurer shall provide, for each policy, the name of the insurance company which issued the policy at the time the policy was issued and the name of the insurance company which is currently responsible for the liabilities of the insurance company which issued the policy.

(G) Certifications

The insurer shall complete each of the following certifications for each listed policyholder and insured.

1. Certification that the proceeds of the policy have been paid to the designated beneficiary(ies) or heir(s). The insurer must state YES or NO.

2. Certification that the proceeds of the policy (where the beneficiaries or heirs could not, after diligent search, be located or identified) have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors. The insurer must state YES or NO.

3. Certification that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds. The insurer must state YES or NO.

4. Certification that the proceeds of the policy have not been distributed and the amount of those proceeds. If the proceeds of the policy have not been distributed, the insurer must state YES and state the amount of the proceeds of the policy as defined in California Insurance Code Section 13802(c). If the proceeds of the policy have been paid other than as described in Certifications 1, 2, or 3 the insurer shall state NO and shall state to whom the proceeds of the policy were paid and whether they were paid directly or to a bank account.

(b) Reports shall be provided on paper (original plus one copy) and in an electronic format approved by the Commissioner. Reports shall be mailed to the Department to the address below. Faxed reports will not be accepted.

Holocaust Era Insurance Registry
California Department of Insurance
45 Fremont Street
San Francisco, California 94105

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Section 13804, Insurance Code.

§2278.4 Timeframe for submission

The report shall be received at the Department on or before April 7, 2000. The Commissioner may require additional reports, as necessary, consistent with the requirements of these regulations.

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Section 13804(a), Insurance Code.

§2278.5 Establishment of the Holocaust Era Insurance Registry

Pursuant to California Insurance Code Section 13803, the Department shall establish and maintain a central registry containing information received from insurers pursuant to the

California Insurance Code Section 13800 et seq. regarding insurance policies in effect in Europe between 1920 and 1945. The registry shall be known as the Holocaust Era Insurance Registry and shall be accessible to the public at the Department's Public Viewing Rooms in Los Angeles and in San Francisco or pursuant to some other means as the Commissioner shall deem appropriate.

NOTE: Authority cited: Section 13807, Insurance Code. Reference: Section 13803, Insurance Code.

Mr. HORN. Before we move to Mr. Waldman, I would like to know who was the author of the California law. It's a very fascinating situation. So do you know which State senator or assembly man?

Ms. TICK. Assemblyman Wally Knox, who is no longer in the assembly. He's from Los Angeles.

Mr. HORN. He is a very creative author, to say the least.

And now, Mr. David Waldman is vice president and chief operations counsel of MONY Life Insurance Co.

STATEMENT OF DAVID WALDMAN, VICE PRESIDENT AND CHIEF OPERATIONS COUNSEL, MONY LIFE INSURANCE CO.

Mr. WALDMAN. Good afternoon, Mr. Chairman and members of the subcommittee, my name is David Waldman. I'm the vice president and chief operations counsel of MONY Life Insurance Co., formerly the Mutual Life Insurance Co. of New York, which was chartered in 1842 and issued the first mutual life insurance policy in the United States. It was my responsibility to provide legal advice to the team of individuals at our company who prepared and filed the reports required under the various State Holocaust Victims Insurance Relief Acts, including that of California.

Thank you for inviting me to testify today and for affording me the opportunity to share with you our experience in complying with the California act. In response to the enactment of the various State Holocaust Victim reporting laws applicable to insurance companies, MONY conducted an extensive and exhaustive examination of its records relating to its European business, including an attempt to identify any policies sold to persons in Europe that would have been in effect between 1920 and 1945. Such records that did exist indicate that MONY sold life insurance and annuity products in Europe in the early 1900's. However, MONY completely discontinued writing new business in Europe by 1914. Moreover, it appeared in the 1920-26 time period, MONY disposed of virtually all its existing European business by transfer to European-domiciled insurers.

There were a number of policies in various European countries that were not transferred and we conducted an investigation of any documentation we might have concerning them. There were several boxes of paper files, related record cards on microfilm, and policy payment vouchers in the archives of our record center dating back to the relevant time period. A review of our paper files resulted in the identification and inputting of 6,813 potentially relevant policies.

The next step was the retrieval of material data on these policies as well as on an eventual 4,700 additional policies which were identified in our records center as potentially relevant. This investigative process resulted in the definite identification of 6,149 policies sold to persons in Europe that were in effect in Europe between 1920 and 1945. We reviewed our records from that era, including cards denoting policy status in numerical order, covering the entire period in question, and vouchers evidencing payment dating from 1926.

The data obtained from this research, together with any additional information obtained from our files, was then input into our

data base and organized into a format conforming with the prescriptions of the act.

Subsequent to this initial examination, we embarked upon a second phase which consisted of the direct review of all of our policy records during the relevant time period and identification of the policies derived from those records sold to persons in Europe that were in effect between 1920 and 1945. The number of policies identified in the second phase was 27,603. The data for these policies was combined with that for the 6,149 identified in the first phase and incorporated into a report reflecting the data for a total of 33,752 policies.

The review of our records resulted in our finding only two cases identifiable as Holocaust victim claims, one with an agency of record of Brussels and the other in the United States. Both included references to concentration camps on the death benefit voucher as the cause of death. One indicated payment of proceeds in 1945 and the other in 1950. In addition, there was one claim with the cause of death listed as killed by Germans, and payment of proceeds was indicated in 1949.

The interpretation and inputting of data from our files was an extremely resource-intensive and time-consuming task. We eventually had four persons in our operations area and three temporary workers dedicated full time to the project, and expended over 8,286 hours in identifiable staff time. The work did serve as the basis for our reports for all the States that have enacted Holocaust Victim Insurance Relief Acts, although some adjustments were needed to define and populate the data bases used in the various States due to the differing wording in their laws, particularly in the time periods and geographic areas covered. The data base we created also allowed us to respond in quick order to inquiries we received on particular individuals either directly, through State insurance departments or from the International Commission on Holocaust-Era Insurance Claims.

I may add that in no case was there any documentary evidence of the failure on our part to pay, or an improper payment of, the proceeds of a policy on the life of a Holocaust victim or the claim of a Holocaust survivor, or any attempt on our part to avoid our contractual obligations under any of the policies found in our records.

In closing, I would like to express my appreciation to the extremely dedicated group of individuals MONY Life assigned to this project, who worked tirelessly and with heartfelt concern for the subject matter until it was completed, and to MONY Life which willingly devoted the resources necessary to do a good job not only because it was the law, but also because it was the right thing to do.

And I would be happy to answer any questions at the appropriate time.

Mr. HORN. Thank you, Mr. Waldman.

[The prepared statement of Mr. Waldman follows:]

**Prepared Statement of David S. Waldman, Vice President-Chief Operations
Counsel
MONY Life Insurance Company for the House Committee on the Government
Reform's Sub-Committee on Government Efficiency, Financial Management and
Inter-Governmental Relations Hearing on H.R. 2693 on September 24, 2002**

Good afternoon, honorable members of the Sub-Committee. My name is David Waldman and I am the Vice President-Chief Operations Counsel of MONY Life Insurance Company, formerly The Mutual Life Insurance Company of New York, which was chartered in 1842 and issued the first mutual life insurance policy in the United States. It was my responsibility to provide legal advice to the team of individuals at our Company who prepared and filed the reports required under the various state Holocaust Victim Insurance Relief Acts, including that of California. Thank you for inviting me to testify before this Committee and for affording me the opportunity to share with you our experience in complying with the California Act.

In response to the enactment of the various state Holocaust Victim reporting laws applicable to insurance companies, MONY conducted an extensive and exhaustive examination of its records relating to its European business, including an attempt to identify any policies sold to persons in Europe that would have been in effect between 1920 and 1945.

Such records as did exist indicated that MONY sold life insurance and annuity products in Europe in the early 1900's. However, MONY completely discontinued writing new business in Europe by 1914. Moreover, it appeared that in the 1920-26 time period, MONY disposed of virtually all its existing European business by transfer, with the consent of the policyholder, to European domiciled insurers.

There were a number of policies in various European countries that were not transferred, and we conducted a detailed investigation of any documentation we might have concerning them. There were several boxes of paper files, related record cards on microfilm and policy payment vouchers in the archives area of our record center dating

back to the relevant time period. The review of our paper files resulted in the identification and inputting of 6,813 potentially relevant policies.

The next step was the retrieval of material data on these policies as well as on an eventual 4,700 additional policies which were identified in our records center as potentially relevant. This investigative process resulted in the definite identification of 6,149 policies sold to persons in Europe, as defined under the California Act, that were in effect between 1920 and 1945. We reviewed our records from that era including cards denoting policy status in numerical order covering the entire period in question and vouchers evidencing payment dating from 1926. The data obtained from this research, together with any additional information obtained from our files, was then input into our database and organized into a format conforming with the prescriptions of the Act.

Subsequent to this initial examination, we embarked upon a second phase which consisted of a direct review of all our policy records during the relevant time period and an identification of the policies derived from those records sold to persons in Europe that were in effect between 1920 and 1945. The number of policies identified in this second phase was 27,603. The data for these policies was combined with that for the 6,149 identified in the first phase and incorporated into a report reflecting the data for the total of 33,752 policies.

The review of our records resulted in our finding only two cases identifiable as Holocaust Victim claims, one with an agency of record of Brussels and the other in the United States. Both included references to concentration camps on the death benefit voucher as the cause of death; one indicated payment of proceeds in 1945 and the other in 1950. In addition, there was one claim with a cause of death listed as "killed by Germans;" and payment of proceeds was indicated in 1949.

The interpretation and inputting of data from our files was an extremely resource-intensive and time-consuming task. We eventually had four persons in our Operations

area and three temporary workers dedicated full-time to the project, and expended over 8,286 hours in identifiable staff time.

This work did serve as the basis for our reports to all the states that have enacted Holocaust Victim Insurance Relief Acts, although some adjustments were needed to define and populate the databases used in the various states due to the differing wording in their laws, particularly in the time periods and geographic areas covered. For example, while California law applies to policies in effect between 1920 and 1945 and sold to persons in areas in the European Continent that were at some time occupied or controlled by Nazi Germany or its allies, other state laws apply to policies issued between 1920 and 1945 to a Holocaust Victim which may include persons in any other neutral European country or area in Europe under the influence or threat of Nazi invasion. The database we created also allowed us to respond in quick order to inquiries we received on particular individuals either directly, through State Insurance Departments or from the International Commission on Holocaust Era Insurance Claims. I may add that in no case was there any documentary evidence of a failure on our part to pay, or an improper payment of, the proceeds of a policy on the life of a Holocaust Victim or the claim of a Holocaust Survivor, or any attempt on our part to avoid our contractual obligations under any of the policies found in our records.

In closing, I would like to express my appreciation to the extremely dedicated group of individuals MONY Life assigned to this project who worked tirelessly and with heartfelt concern for the subject matter until it was completed, and to MONY Life which willingly devoted the resources necessary to do a good job, not only because it was the law but also because it was the right thing to do.

Exhibit A**Assumptions Underlying California Report**

In some cases the terminology prescribed for the layout was not reflective of the actual policy designations or transactions; in such cases we added appropriate descriptions. As the records requested were from a time that extended well beyond what our normal record retention guidelines would have covered, much of the data was nonexistent, illegible, and/or incomplete, which we indicated on the report, except in such cases where we were able to make reasonable assumptions. A synopsis of those assumptions follows.

1. A policy was included in the report where our records indicated a City or Country of Origin or Domicile in Europe as defined in the California regulations and a year reflecting an in force status between 1920 and 1945.

2. The agency of record where the policy was issued and the location of that agency were reported as Policyholder and Insured City/Country of Domain, which corresponded to City of Origin or Domicile and Country in California's prescribed layout.

3. Since the policy payment vouchers in our records only dated from 1926, the best evidence of payment prior to that date was the record cards. Payment would ordinarily have been made within one year of the effectuating event. Consequently, if the record card noted that a policy that went out of force prior to 1926 was a death or maturity, we assumed that payment of the proceeds was made to the person entitled to them under the policy. Conversely, if the record card noted that a policy went out of force 1926 or later, we did not report that a payment was made on a death or maturity unless there was a corresponding payment voucher for the policy. If there was a payment voucher for the policy, then we assumed that payment was made. Where the record card noted a surrender, we assumed that payment was made to the person entitled to payment for all years regardless of whether there was a payment voucher for the policy, since a

surrender would have been precipitated by the policyholder contacting us and minimal requirements would have been applicable to payment.

4. With regard to policy payment vouchers, the standard guidelines we followed were to look for a voucher for the year noted on the policy record card plus an additional seven years (a typical escheat period of the time) for a death or maturity, but only one additional year for a surrender based on the same reasoning that resulted in our differentiated treatment of surrenders under 3. above.

5. If payment was made, then we assumed it was made to the person entitled to payment under the policy unless there was documentation to the contrary. This would have been reported as Bene/Heir in accordance with California's prescribed layout even though the payee would generally have been, for example, the owner in the case of a surrendered policy or a matured endowment and the annuitant in the case of a supplementary annuity contract in settlement of a policy. For annuities, the annuitant was also reported as the Insured. When our records only reflected a person named with no identifying label, we assumed that person was the Insured.

6. N/R inserted in a field indicated either that no records existed for that field, the records we did have in our files for that field were illegible, incomplete or otherwise nonresponsive, or the field was not applicable (e.g., payee data where proceeds were not payable).

7. Amount of proceeds was only reported where our files indicated Unpaid, in accordance with California's prescribed layout. The amount unpaid was reported in the Amount Paid field only if the amount was known to us. If the amount was not known to us, it was reported as N/R. If our files indicated Paid, that field was reported as N/R, which in this case denoted not applicable (to California's reporting requirements).

8. For payments assumed prior to 1926 (where no vouchers would have existed), payment method (if applicable) was reported N/R (no records exist). For

payments made after 1926 (where a voucher was found), it was assumed that payment method (if applicable) was Paid Directly unless there was documentation to the contrary.

9. Where our records identified a year for a transaction or occurrence but not an exact date, it was assumed that it took place at the end of that year.

10. In the case of apparently inconsistent data in our records, it was assumed that the most recent data was also the most accurate.

Mr. HORN. I am going to start the questioning and then turn it over to my colleague, Mr. Waxman. But let me ask Ambassador Bell, to start with, what is your basis for stating that enactment of H.R. 2693 would undermine the international Commission process?

Mr. BELL. Let me, if I may, begin by noting that the U.S. Government in this matter—my predecessor, James D. Bindenagel, probably told you all in November—has been an observer to these negotiations, albeit a very active and to the best of our ability informed observer rather than a direct participant. So everything I had to say orally and in my written statement and I shall be saying in questions is based on that observer status and the information that comes to us. So it is all to the best of our knowledge.

To the best of our knowledge, this, like other negotiations in which the United States has been a direct participant, has turned on the creation of an exclusive mechanism or venue for the settlement of claims. The basic dynamic of the negotiation has been you come across—“you” meaning in this case the companies—with that which we require, “we” being the victim side of the table—the Jewish groups and the State regulators—and we will consider that this is the exclusive venue for settling these claims. And if you then remove that exclusivity or if you proclaim it to be defective or you proclaim it to be replaced by another mechanism, you have gotten to the very heart of the political negotiation.

Mr. HORN. Just for the record here, who were the members of the Commission?

Mr. BELL. ICHEIC consists of, of course, its own leadership. It also involves the State regulators from States in the United States. It involves the Conference on Jewish Material Claims Against Germany, which also deals with claims against other countries in Europe as well. It involves the World Jewish Restitution Organization. It involves the Jewish Agency for Israel, the State of Israel, and it involves, of course, also the German companies, the German regulators, and the German Foundation.

Mr. HORN. Are most of the commissioners very well with history and experience on that Commission, or are there a lot of politicians there? Not that I am against politicians.

Mr. BELL. Only if you consider officials of States of the United States to be politicians. But most of the people who have participated in this have worked in these issues quite professionally, quite well, with strong belief and strong motivation from their very diverse perspectives.

One of the things that has made this such a lengthy and painful process has been that it represents great diversity. What could be more historically divided than the two sides of such a table? Because all of them, however, believe so strongly in what they are doing, it has been necessary to establish confidence among them, and many of the things that happened over these past few years come under that rubric.

Mr. HORN. Would you agree that until very recently the Commission proceeded at a glacial pace?

Mr. BELL. I think what you need to do when answering that question, or even posing it, is look at what has proceeded. It has been the negotiations. And I think I just offered an answer. It isn't

the Commission so much. The Commission consists of the people sitting around that table and negotiating. It took a very long time for them to reach conclusions, arrangements, detailed accomplishments, which they all support; and they all now publicly do. It also took a lot of money, as has been noted in many of the press reports on this, and that money in large measure has gone for research and archival work, the provision of auditing and monitoring mechanisms.

Mr. HORN. You state that the agreement reached last week does exactly what H.R. 2693 would have the insurance companies do. Could you elaborate on this point?

Mr. BELL. Mr. Chairman, if I may have a minute or two to do that, I would be happy to. What we are really talking about here is the strongly shared objective. I very much endorse and pray that the activities of this committee, the subcommittee, Mr. Waxman, yourself, Ms. Schakowsky, try to create circumstances in which people who have any reason whatever to believe that they may have had an unpaid Holocaust-era insurance claim, can find the tools and the information necessary to move forward and have processed such a claim. That's what we all want to achieve.

What is at issue here is whether to pursue the publication of a great many names that are not directly related to furthering that end, especially if at the same time that activity undercuts the political basis on which the recent agreement rests. If I could just take a moment to tell you, if it's of interest to you, what I know of this agreement with respect to the question you just posed. Let's look just a minute at the key elements of the agreement. I don't wish to digress if you don't wish me to do so. I will do it in short order.

Mr. HORN. Don't rush. I am for getting to the bottom of things.

Mr. BELL. All German insurance companies will be required to process claims, both those that name a specific company and those that do not, using the ICHEIC standards and guidelines. And let me address in that connection—the German companies will also be required and have agreed to deal with the business that they were doing outside Germany, in other countries in Europe.

I think that addresses one of the points one of the other speakers raised. The provision for processing these claims involves what are called relaxed standards of proof. It is not incumbent on a claimant to come forward with documentary evidence that person could not possibly obtain. They need show only the plausibility of the claim under a very relaxed standard. The burden of proof immediately shifts to the German company. That company then has to show either that the claim is not plausible or it has to immediately process it and show how much it is going to pay. It imposes ICHEIC valuation rules. That is what the money of that era translates into in the money in this era, and it imposes it on all the companies. It imposes it also for blocked account claims. That is, when policies were paid out during the Nazi era into accounts to which under Nazi law nobody, practically, had any access. That payment doesn't count. It has to be paid again. It deals with publication of lists, and I will give you some more information on that in a moment.

With matching, it provides for audits, including what's called a second-stage peer review in which the companies are submitted to rigorous audits a second time over. It submits even the non-MOU

companies to audits by the German regulators. It provides for a monitoring group under Lord Archer, which will further ensure MOU insurance companies' compliance. It involves an appeals mechanism and, of course, it has provision for funding which breaks down to \$100 million of claims and related expenses and \$175 for humanitarian purposes; as the panelist pointed out, no credits for prior payments by the companies.

Let us look for just a minute, if we may, at first what the current state of publication of names is, and then what will happen under this agreement. There was a very extensive outreach program undertaken by ICHEIC in the year 2000. There's an important point we need to remember about this; that is, it wasn't on the basis of lists that this outreach occurred. It was on the basis of going out in many directions, not only through archival research but also through publication of the fact that we're looking for claims, and it produced 86,472 claims on policies. The sources for that outreach included research in European public archives including the Vienna State Archives which hold the 1938 asset declarations—people leaving the German Reich—and archives in the United States, Europe, and the former Soviet Union. It involved lists provided by the MOU companies, that is the ICHEIC members which were cross-matched with Yad Vashen's data base on Holocaust victims, and that was agreed by all the parties by ICHEIC. It involved also sources in the Czech Ministry of Finance, the Dutch Insurance Association, and the Washington State Insurance Commissioner's Office. So that's what is out there.

What now, as I detailed earlier, they propose to do is reach out to other lists for publication, reaching back to the 1939 national census information in Germany on Jews living in Germany at the time, immigration and deportation lists and other registers of German Holocaust victims. These are from the archives that are recommended by the experts participating in the negotiation, electronic lists provided by companies with data on 5 million policies to be matched with the listing compiled from the census and archival registers, and then additional research on the 1938 asset declarations that is underway in public archives supplementing ICHEIC's research.

So what actually happens: You take all of that, everything from that archival information—the German companies have already an electronic data base of 5 million Holocaust-era policies—and you check everything that comes out of that effort against those 5 million policies.

I think it's important also to recognize what happens if you publish names in great quantities that do not pertain in any way to this effort. There is a sort of human element in play here, and that is that people, if their names appear, or appear to appear, will of course conclude emotionally and in many other ways that they have an expectation. Again I say, I only know what people tell me, but I know a great many participants in the process spend a great deal of their time talking with people who under, you know, the rigors of further evidence do not have a claim and are gravely disappointed when they so discover.

We operate, the U.S. Government, on the premise that the participants must be satisfied. And I'd like to just leave the most im-

portant of my contentions in, you know, a sort of summation of this. If the Claims Conference, the World Jewish Restitution Organization, the State of Israel, the survivors, and the state regulators believe that this mechanism gets to the totality for—it has been said to me over 99 percent of the totality of the field—then the executive branch of the U.S. Government is hardly going to question them.

Thank you for your indulgence.

Mr. HORN. Thank you.

The gentleman from California, Mr. Waxman, for interrogation.

Mr. WAXMAN. Thank you very much, Mr. Chairman. For the record, I wonder if we could have a copy of the agreement for the record, so we could put the—

Mr. BELL. Well, that—Mr. Waxman, again, I get back to, you need to get that from the direct participants. I do not have that with me today. I can ask the Commission to provide it to you, and I will immediately do so, sir.

Mr. WAXMAN. Mr. Bell, I appreciate all that you had to say, but notwithstanding that—I have some questions about the German agreement, but I still think that the legislation is needed, because I'm skeptical that the agreement is going to produce anything like a result that is going to satisfy 99 percent of the potential claims that are out there. I think it's going to fall far short.

But let me pursue some questions about this German agreement, even though we'll have to get a copy of it for the record from the participants.

Mr. HORN. Without objection, that will be put in the hearing record at this point.

Mr. WAXMAN. Ambassador Bell, approximately how many policies will be included in this new data base being provided by the German companies?

Mr. BELL. Well, again, sir, if you want to get into the particulars of their numbers, I would strongly suggest it would probably be wise to call direct participants in the negotiation to your hearing, to this or another one.

Mr. WAXMAN. Well, you are suggesting to this committee that you don't think legislation would be necessary, as I understand your views, because you feel that the German agreement is going to satisfy the problem.

Mr. BELL. I'm reporting to you, sir, that which is reported to me by the direct participants in the negotiation.

Mr. WAXMAN. Do they tell you how many policies are going to be included in the new data base?

Mr. BELL. I don't think you can know how many policies are going to be included in the new data base until the agreement has been given a chance to work. You know, it has to actually go into operation. It is very likely that it will turn up a large number of new claims, and then we will know the answer to that question.

Mr. WAXMAN. How soon after the agreement is finalized do we expect the 5.5 million policyholder names to be turned over to ICHEIC?

Mr. BELL. The 5-plus million figure will be used as a company list against—as I understand it, against which the products of the

other lists I have delineated will be matched. That 5.5 million figure is not a list that is to be published; that's my understanding.

Mr. WAXMAN. But it's to be turned over to ICHEIC?

Mr. BELL. I am not sure it's turned over to ICHEIC. I believe that the companies cooperate in the mechanism. It is probably—

Mr. WAXMAN. Using the ICHEIC mechanism?

Mr. BELL. Right.

Mr. WAXMAN. How many criteria will be required for a policy match between the policy data base and the list of German Jews to be released for publication?

Mr. BELL. Again, Mr. Waxman, I cannot speak to criteria. There is just this limitation that, as an observer to the negotiation, we don't have all the technical data. And I would have to respectfully refer you to the participants.

Mr. WAXMAN. You indicated that these companies are going to not only deal with the Jews who had lived in Germany, but Jews who had lived in other countries. When we had a hearing in November, RAS said they mostly issued policies in Hungary and elsewhere outside of Germany.

Does the German policy data base include policies issued by RAS or other German subsidiaries that issued policies outside of Germany? And how would you match them against the list of German Jews if their beneficiaries lived outside of Germany?

Mr. BELL. My understanding, sir, is that the agreement covers all of the companies that are regulated by the German regulators. I don't have that list; ICHEIC has that list. Estimates of how many that is have informally come my way of approximately 350 companies.

It is further my understanding that the Foundation agreement covers the foreign-owned portfolios of these German insurance companies. It logically follows from that any German company regulated by the German regulators would turn over all information concerning—or the agreement would cover that company's portfolios outside Germany.

Mr. WAXMAN. During our November hearing, the committee learned that ICHEIC companies that signed the ICHEIC memorandum of understanding, or the MOU companies, are only required to publish names matched against the Yad Vashem data base.

Ambassador Bell, should the State Department be concerned that the Yad Vashem data base contains the names of only about half of the Jewish victims of the Holocaust?

Mr. BELL. We base our concerns and our level of concern in general and in particular on how the victims' organizations react to what has been achieved. I cannot go behind that. I cannot usefully offer you anything but what all of them have said to us. We have conscientiously spoken with the leadership of each of these organizations and groups to ask them whether they are satisfied with these provisions.

Mr. WAXMAN. Well, I have a lot of detailed questions that I would like to have responses to, but your last statement seems to indicate that you are really not going to look at—

Mr. BELL. How we see our role in this is in trying to be informed, as much as we can. The participants in the negotiation conduct the negotiation. We endeavor to do two things. One is to keep track of

whether they are satisfied with what is proceeding. We endeavor to learn from them whether what they have achieved will cover the entire range of prospective claimants and ask them actively whether that is the case.

Mr. WAXMAN. In September 2000, when the case against the California Holocaust Victims Insurance Relief Act was about to be heard in the Ninth Circuit Court of Appeals, I wrote a letter, also signed by my colleague, Representative Schakowsky, urging the U.S. Government not to intervene in that case.

Mr. BELL. Yes, sir.

Mr. WAXMAN. It was just after the agreement with Germany, and we were very concerned about emerging reports about ICHEIC's abysmal record on claims handling. As you know, Ambassador Bell, our request was denied.

But in his response to our letter, Solicitor General Seth Waxman—a friend, but not a relative, as far as I know—added, “Should the German Foundation fail to be funded and brought into full operation, or should the United States conclude that ICHEIC cannot fulfill the function for which it was created, the United States will certainly reconsider the balance reflected in his views on the constitutional issues.”

Is this still the U.S. Government position?

Mr. BELL. The U.S. Government position on the California statute, as put forward by the Department of Justice, to my understanding, has not changed. The Department of Justice has continued actively to find—and I would not speak for them. I can only tell you I understand informally that their arguments turn on constitutionality as well as extraterritoriality. That has provided a difficulty for us again with regard to the legislation under consideration here today.

If I understand it correctly, section 9(a) provides for ceding to state legislatures a central role in creating legislation, additionally to that which you yourselves put forward. We would probably consult with the Department of Justice as to whether that creates the same constitutional problems.

There was, as you know, a case in Florida which was similar to the—in its handling—to the California statute, in consequence of which there are two districts of the Federal court system that have taken diverging views on almost the same issue, at least as the lawyers inform me, which is one of the reasons that government lawyers in the executive branch consider that there is a prospect of this matter coming before the Supreme Court.

Mr. WAXMAN. As I understand what I hear you saying about your position, even if the ICHEIC process weren't working—because we have seen it's paid barely 1 percent of the claims, and even if the German Foundation funds haven't been transferred or allocated properly, if some of these outside groups are saying they are satisfied, you are not going to look behind what they say.

Mr. BELL. Well, Mr. Waxman, my understanding is that if the agreement is permitted to work, there will be a much more rapid and highly accelerated processing of claims discovery and processing. That is certainly the hope of all of the participants. So we would by no means conclude at this juncture, after last week's development, that the ICHEIC process is not working.

Again, I think it would probably be best, if I may be so bold, to recommend that the subcommittee or the full committee call direct representatives of ICHEIC and of the ICHEIC negotiation.

Mr. WAXMAN. When we did have Mr. Eagleburger here before us in November, I asked him if he had opposition to H.R. 2693, and he said no. Representatives from the National Association of Insurance Commissioners and the Jewish organizations also raised no objections. Why then does the State Department believe that the bill might undermine ICHEIC?

Mr. BELL. Well, it's my objective and best informed view that the circumstance at this juncture is materially different. The process which led to the agreement last week rested on the assumptions I earlier outlined and that, in consequence of now having reached this agreement, it would be highly unlikely that the one side of the table—that is, the German companies' side—would continue to cooperate in the manner they have obligated themselves under the agreement to do if there were created an alternative reporting requirement.

I can't state that categorically to you and I would not be, you know, in any way honest if I did. The situation has not transpired. But every indication we have from the political analysis of what led to this agreement inclines us very much to that view.

Mr. WAXMAN. Mr. Chairman, I'm going to ask for a second round, but I know Ms. Schakowsky wants to ask her questions, so I'm going to defer to her.

Mr. HORN. Sure. The gentlewoman from Illinois.

Ms. SCHAKOWSKY. I thank you very much, both of you, for the questions that you have been asking.

Mr. Bell, let me just first react to something that you said, that this demand for information from European companies on activities that took place in Europe more than 50 years ago under the threat of sanctions is contrary to longstanding U.S. policy, that matters of Holocaust-era restitution and compensation should be resolved through negotiation, cooperation, and dialog.

And in reacting to that, I have to reflect some of the impatience, frustration, misery, being distraught, of—of many of the people in my district, fewer of the people in my district, because in this half century some of the leaders of the effort to get restitution have died. Erna Gans, who was one of the great leaders we had in Illinois, is now deceased before seeing restitution. And so this idea of negotiation, cooperation, and dialog has not really yielded what so many of my constituents are really feeling.

So it's—quite naturally, I was very happy to become a cosponsor of a bill that sought a way—I mean, I quite frankly am so skeptical that this kind of process is going to yield, although I'm happy that the agreement was reached. I think that we do need to operate on parallel tracks.

That really wasn't a question, but go ahead, sure.

Mr. BELL. Thank you, ma'am.

Well, you know, I, as you may see in my biographic statement, worked on quite a lot of what we as a government—executive, legislative, Democratic, Republican, Independent—have all been working on with regard to securing payment and a dignified measure of justice in their lifetimes to Holocaust victims and their heirs.

We have done this through the agreement we reached with the Germans that created the Foundation. That's 10 billion marks. We have done this through the agreement reached with the Austrians on property claims, which created a general settlement fund of \$210 million. We have done this through the agreement we reached with the French on dormant bank accounts and other matters. We have done this by being an amicus in the Swiss bank negotiations.

You all know as well as I the many endeavors that have been out there. I can only note that those are, all of them, imperfect achievements as they may be—and nobody, including my friend Stu Eizenstat, if he were sitting here next to me today, would say those are perfection. But what they are is the wherewithal to get the best possible deal that all of us who participated in it thought we could get after arduous efforts so that we can pay people while they are still alive.

Our concern with what would happen if we undermine the agreement of last week is that the lesson of the last 2 years would be the lesson of the next many years. We all know that if that agreement had not come about, people in many quarters, not merely in the Congress of the United States, but also in the German Bundestag for different reasons, among N G Os, would have very likely set about taking apart the ICHEIC process. My own impression, had it come to that, is that we would not be paying insurance claims and the publication of lists would not lead to their payment.

What we wish to do, all of us, from our various perspectives is, get people paid in a dignified and conscionable manner while there is still time.

Ms. SCHAKOWSKY. I guess I would also question the absolute conclusion that you have reached that the publication of names in a broad way would create expectations that would be devastating. It's hard for me to imagine people more devastated than they are, and the opportunity to put—empower them in a greater way than this process does, I think would be a good thing to do.

But let me ask something more specific. Anyone can answer it. We're talking with this agreement that has been reached only, I—is that only in respect to German companies? What about the rest of Europe?

Mr. BELL. It's with respect to German companies, but reaches out far beyond that. ICHEIC claim handling procedures, as they existed when our executive agreement was signed in July 2000, and all those which additionally have been reached as a result of these negotiations, then get applied broadly. The MOU companies apply them and the non-MOU companies apply them.

With respect to the subject matter that we have touched upon of what happens, you know, for claimants who had policies outside the territory of the German Reich, I have attempted to explain it to the very best of my knowledge. All the companies covered by the agreement then apply that to their—the policies they had written outside the Reich's territory.

There is—let me just add on that point one footnote with regard to Eastern Europe. There is the problem, however you go about this, of what happened in the Communist era and what happened to archives and names and what happened to lists in those coun-

tries because of Communist nationalizations and manipulations of records.

Ms. SCHAKOWSKY. Well, Ms. Tick, then, regarding the scope of what the agreement was and what you would hope to do to implement in California, how do those differ?

Ms. TICK. Well, if I can back up for a minute, the ICHEIC was formed in 1998 with five or six insurance companies. The ICHEIC set up this whole relaxed standard of proof and all the claims processes and all the evaluation processes, and it was because the German slave labor agreement brought German insurers in, that resulted in this small piece of it or separate piece of it, the German Foundation Agreement, applying to German insurance companies.

All the other insurance companies, for the rest of the world, that you refer to have already been going on through the ICHEIC process. The German Foundation agreement brings the German companies in. They were refusing to participate in the process; now they are in the process.

So it's not the German insurance companies that are bringing in all the rest of them. All the rest of them are in already, to whatever extent they were there, and the German Foundation brought in the German companies, the business they wrote in Germany and the business they wrote outside of Germany.

I think this issue came up before with lists. The lists of German policyholders will be matched against a list of German Jews, which raises the question of, well, what about the insureds the German insurance companies insured that lived outside of Germany? They would have nothing to be matched against.

My understanding is that those companies, particularly RAS—and I'm not sure; I think there were two or three companies that this applies to—will publish their entire lists. They will not be matched at all, which actually creates a better scenario than basic ICHEIC which—those companies are supposed to match their names against the Yad Vashem, which Congressman Waxman pointed out only has about half the names. And actually they haven't even been matched yet, as far as I know. You can see from the numbers of names that have actually been published that in all probability they haven't been matched yet.

So there are a lot of little twists and turns on this, but for the insurance companies insuring the rest of the world to whatever extent they are involved in ICHEIC, the process has been ongoing since 1998.

Ms. SCHAKOWSKY. So if you were then to sum up—I'm sorry I was out of the room for your testimony; I've looked over it briefly.

Sum up how your legislation would go beyond what this agreement does and how it would better be able to guarantee some restitution to Holocaust survivors.

Ms. TICK. Well, it covers more names. The California law requires all policies written between 1920 and 1945. The ICHEIC system and, I believe, the German agreement require lists of policies in force, which would mean policies that are still unpaid.

The German companies and the ICHEIC companies have told us, though, if they paid a policy to the Nazis, they consider that policy paid, so that policy does not turn up on the list.

For the ICHEIC companies and the German Foundation companies, those names are matched against lists of Jewish victims; only the ones that match get published. So there are going to be some mistakes in the matching process. Of course, it can't be perfect. But the biggest populations that it leaves out are those victims of the Nazis that were not Jews.

There are big groups of victims of the Nazis that were not Jews. I think what the California legislature wanted to do was get the biggest list possible so that people who thought that they had a policy could look and just make a claim. It is no guarantee that they are entitled to anything. It just gives them the ammunition they need to make a claim, and then it's up to somebody else to decide whether the claim is valid or not, either in whatever from they choose.

Ms. SCHAKOWSKY. And the opposition to the implementation of the legislation, what were those arguments?

Ms. TICK. Well, there's 2½ years' worth of litigation. There are many—there were several constitutional arguments based on foreign affairs, that individual States shouldn't participate in foreign affairs based on commerce clause issues and due process.

Ms. SCHAKOWSKY. But the arguments wouldn't apply to Federal legislation. Were there any rationales for not complying?

Ms. TICK. For why the companies—well, the California companies, by and large, are not the ones that wrote and—are not the ones that wrote the policies. It was their European affiliates that wrote the policies. And the California companies are saying our European affiliates won't give us the information, so we can't give it to you.

And the court's answer to that is, well, you don't have to do business in the United States if you can't live up to U.S. law. That was basically what the Ninth Circuit said.

The California companies also said that European law would preclude them, European privacy. Somebody mentioned that policyholders or survivors, descendants of policyholders, maybe wouldn't want this information published. I have never heard—and I've been working on this since the summer of 1997—

Ms. SCHAKOWSKY. You mean the privacy concerns that were raised?

Ms. TICK. I've never heard any claimant have any privacy concerns. By and large, the names of the people on these lists are long deceased, and the amount of information that there is to even identify them is so sparse that it would be virtually impossible to identify anyone.

Early on, people were saying, well, if these names were published, they would be victims of hate mail, etc. I mean, it says Goldberg, Joseph, Minsk. There is no way to find him now or to find his descendants now. It just doesn't apply.

Ms. SCHAKOWSKY. Can I just—I think it was you, Mr. Bell, who mentioned the—

Mr. BELL. It wasn't with regard to Holocaust victims. I would be very much surprised if anybody who is the—him- or herself a victim, or the heir of a victim just generally, would object to publication. I think it's—the phenomenon is, if you take everything in that long historical period that any company has on file about any appli-

cant or any claimant or any policyholder, you then take in a vast field of people who have no connection with the Holocaust whatever; and it is from among those—from among that group that this phenomenon has arisen. So I don't think—

Ms. SCHAKOWSKY. Maybe I'm missing what you are saying.

It is also highly likely that some policyholders and/or their heirs will object strenuously—

Mr. BELL. Right.

Ms. SCHAKOWSKY [continuing]. To publication on the grounds that it violates their privacy?

Mr. BELL. Those are people who have no connection whatever with the Holocaust. Some of them in the past have said they would not want these policy data put forward.

Ms. SCHAKOWSKY. Yes. I would like to yield to Mr. Waxman.

Mr. WAXMAN. I have to admit, this all sounds like a bunch of excuses. I can't imagine that there are that many people that are going to rise up and say, I'm really offended.

Mr. BELL. I couldn't tell you how many, sir.

Mr. WAXMAN. We can't tell how many, but it can't be more than a handful. What we know is, we have perhaps millions of people who cannot get the satisfaction of their claims against insurance companies because their descendants' names are not published so that they can make a claim to ICHEIC.

The idea of ICHEIC was to streamline the process for people to make their claims. Under ICHEIC, they would not need the policy and the death certificate and all the things that we ordinarily require, because the Holocaust made it impossible for many of these things to happen. And so ICHEIC was supposed to be an abbreviated, simplified procedure. But it can't work if people don't have any basic information. And they can't get that basic information unless the names are published so they can identify that there was a policy. Then the burden shifts under the ICHEIC process.

So, Ms. Tick, let me—could I just—

Ms. SCHAKOWSKY. Sure. Go ahead.

Mr. WAXMAN. Ms. Tick, I'm going to pursue this with you because you have had experience with the California law.

Ms. TICK. Yes.

Mr. WAXMAN. And before I ask you any questions, let me just thank you on behalf of my staff and myself for all the help you have given us, working with our constituents who have had claims and helping us figure out how to deal with this process.

Ms. TICK. You are welcome.

Mr. WAXMAN. California has this law that has said that if you want to do business in California, you should make sure that your company, for which you are related and sold policies in Europe, publishes the names.

Now, that hasn't kept, in my view, the negotiations from taking place or anything else from happening that Ambassador Bell now would argue might be undermined. That law has been on the books and has been tested in the courts and now found to be constitutional. It hasn't interfered with the agreement that has now been reached.

But the California law and the law we are proposing would go far beyond what this agreement proposes; isn't that correct?

Ms. TICK. Yes. I agree with you, it hasn't interfered at all. ICHEIC has gone along all throughout the pendency of the litigation on the California law. The German agreement has been in negotiation for several years, hasn't—it hasn't moved slowly because of the California law. And it came to a successful resolution—we are very happy about that—this week.

The way I see it, the California law, supplemented by the Federal law, would only help the process that ICHEIC is engaged in, because once someone finds their name on a list, they can to make a claim. And that's who they would make the claim through; they would make the claim through ICHEIC. There is very limited ability to make the claim in any courts that I know of—very, very limited. Basically, people would make a claim through ICHEIC. All the list does is give them some small amount of information, and then they have to make a claim.

So, if anything, this Federal law would supplement what ICHEIC has started, just expand upon it; that's the way I see it. And also, all of these companies—with the exception of Allianz, that chose not to put their 1 million policy files on a computer data base, all the companies already have this information on disk.

Mr. WAXMAN. And, therefore, they could make it available?

Ms. TICK. Yes. They could make it available with a small amount of work. They don't have to start searching through warehouses and transcribing ancient languages into modern computerese. It's all there already. It was all done in the mid-1990's.

Mr. WAXMAN. There are concerns about other ICHEIC companies not covered by the German settlement, namely Winterthur, AXA, and Zurich. At the time of our hearing last November, Winterthur had published four policies, Zurich had provided 20, AXA had given information about 191.

Can we expect additional policyholder names to be released by these companies?

Ms. TICK. Well, they're in the same position as Generali which—it's a matter of whether they are made to comply with the basic ICHEIC standards. They should take their lists and either publish them completely, which is what I would like to see, or at least run them through Yad Vashem. But that hasn't been accomplished.

Mr. WAXMAN. Even though Yad Vashem is going to miss so many people?

Ms. TICK. Yeah. Yeah. Well, that's why I think that the Yad Vashem system is—that the system envisioned by the Federal law is better; it would cover more people. But these companies have not even done what—the lesser standard, what the ICHEIC requires of them.

Mr. WAXMAN. Tell us the situation with Generali.

Ms. TICK. Generali has a list of—and these are round numbers, but they are accurate. Generali has a list of 360,000 policies that were in force in 1939. They boiled that list down to 90,000 that remain unpaid. And they gave the list of 90,000 to Yad Vashem, who matched it and came up with 8,388 matches, which are the names that Generali has—which are the Generali names that are published on the ICHEIC list.

If Generali were to comply with the Federal law, they would hand over—they would publish the full list of 360,000 policies; and

it is entirely possible that people would make a claim and would get a letter back saying, Sorry to tell you, but your great aunt was already paid in 1954; therefore, you are not entitled to anything. And I don't think that would cause people problems at all. In fact, the people whom I talk to just want know what happened.

Mr. WAXMAN. Generali wouldn't even be affected by the German agreement, would it?

Ms. TICK. You know, I don't know off the top of my head if Generali did business in Germany. But probably not, because they've already made a list of all the policies that they have.

Mr. WAXMAN. I have other questions. But Mr. Chairman, I'm willing to—

Mr. HORN. I will move to a few other witnesses, and then get back to that.

Mr. WAXMAN. OK.

Mr. HORN. Dr. Kurtz, I am curious. You raise some concerns in your testimony about the cost and the funding of this project. What kind of effort will it take for the archives to fulfill its duties under the act?

Mr. KURTZ. Well, Mr. Chairman, I consulted with our technology experts, and we don't expect that there would be any problem from the point of view of being able to convert data and create the data base. But building the data base and the maintenance of the data base, our estimate for our first year of operations would be \$1 million, and then \$250,000 each year thereafter for maintenance, because I think we would need to set up a separate Web site and separate data base administration, because it would be such a large number of names, to be able to efficiently process them.

Mr. HORN. How are we doing on the Freedmen's Bureau?

Mr. KURTZ. We are doing very well.

Mr. HORN. OK. That's something we were able to get \$10 million more.

Mr. KURTZ. In fact, we are ahead of our schedule for this year.

Mr. HORN. OK. And when do you see that being done?

Mr. KURTZ. Well, we have a 3-year time period to completely the microfilming, and we'll be done on time or before.

Mr. HORN. Well, let me just go one more since you are under oath.

Mr. KURTZ. Yes.

Mr. HORN. Where are the Japanese war crimes? Are any in the archives anyplace or in the State Department? Do you know?

Mr. KURTZ. Well, I'm a little bit removed from that since I'm no longer the Chair. But it's my knowledge, at least when I was involved with it, that there is, compared to the German-related records, a far smaller corpus to work with. And the records that were sent back to Japan by the U.S. Government between 1958 and 1961 are over there. I think it's very difficult to get access to those records. They are under Japanese Government control.

But everything that's in U.S. Government control is in the process of being identified and opened.

Mr. HORN. Now, there's four members of the Diet that want all of that to be open and to get with it. Now, do you know if all those records were destroyed?

Mr. KURTZ. Mr. Chairman—do you have some information on that, Greg?

Mr. HORN. Dr. Bradsher.

Mr. BRADSHER. Interestingly enough, about 2 weeks ago I went to the CIA and read a still-classified history of the Washington Document Center, which was the institution here in Washington that physically housed these records before they came to the National Archives and before we sent them back.

We have been discussing with the Japanese—I met an hour this morning with a representative of the Deputy Archivist of Japan to discuss this. And sometimes there is a terminology problem.

We returned to the Japanese every record that we basically took from them, with a few exceptions.

Mr. HORN. And yet we had no microfilm of them ourselves?

Mr. BRADSHER. The U.S. Army historians microfilmed a small portion, a bunch of historians microfilmed a small portion, and during the war itself there was an operation at Camp Ritchie, MD, called PACMIRS, Pacific Area Command Military Intelligence Research Service, that translated and published these translations. In the Pacific, General MacArthur had the Allied Translator and Interpreter Section that did the same thing.

So we were learning more and more that rather than microfilming the records, that during wartime itself, ATIS, the Allied Translator Interpreter Section, had 2,700 people doing this. Until January, I'd never heard of ATIS, and now that's all I see, that these records were fully exploited by the Americans for war crimes purposes at the time, and we just sort of lost record of that. It's like the corporate memory, we all didn't know what we were doing before the records came to us.

Mr. HORN. Is there something at Camp Ritchie?

Mr. BRADSHER. They turned the records over in April 1946 to the Washington Document Center, who then turned them over to the National Archives in 1948. In 1946, the military gave up operation to the Central Intelligence Group, and their interests changed from Japan to the cold war and they were done with the Japanese situation.

In Japan, it appears that the records are primarily opened, but like our situation, they haven't made finding aids to the records; you have to rely on the archivist. Also, some of the records are closed because of lawyer/client privilege. Some of the war criminals, their attorneys' files are not open for research.

But we have learned a lot just in the last 9 months on the strange story of the Japanese records, and I will have an article published in the next issue of the Interagency Working Group's newsletter explaining this, and will make sure that you get a copy.

Mr. HORN. Well, I'd like to do it before the end of the 107th Congress, because we all know that they want Japan to be our ally and all that, and that's fine. But it seems to me that you want to—just as they are doing in Germany—for heaven's sake, let's pull it out of the clouds and on to the tables and see what is there and clean it up.

And that's what the four members of the Diet want—a couple of them came over to see me on this. If you have any thoughts, I

would like to hear them. And if we're going to have to subpoena somebody, why, let me know on that, too.

Mr. BRADSHER. We can certainly provide in writing to you a more detailed capture, exploitation, and return of the records. It's something that we have spent a lot of time on in the last 8 months, since January.

Mr. HORN. Well, I'm delighted because when we started on this, we were told they are not around, etc. And of course I suspect, if CIA was involved, we don't know if they are there or not. So I think we will get to that.

Mr. KURTZ. We will get you the information as soon as possible.

Mr. HORN. Thank you. Under the terms of this act that we're discussing, the Secretary of Commerce will transfer to the Archivist any information filed with the Secretary concerning Holocaust-era insurance policies.

Can you envision any problems with this data exchange?

Mr. KURTZ. No. And in speaking with our technology experts, we do not anticipate a problem with data exchange.

Mr. HORN. Ms. Tick, I was very interested in what you had to say. Do you believe that last week's agreement eliminates the need for the California law or/and enactment of H.R. 2693?

Ms. TICK. No, I don't. Because, as I've said, there are differences between what's required under the German agreement and what's required under the ICHEIC and what would be required under the Federal law. The Federal law requires a broader base of information which would be beneficial to claimants.

Mr. HORN. Do you believe the enactment of H.R. 2693 would be helpful in overcoming the legal challenges to the California law and other similar State laws?

Ms. TICK. Well, we believe the California law has already been upheld by the Ninth Circuit, so it's already been established that it is constitutional. But the additional weight of the Federal law would be welcome and would certainly help in future challenges.

Mr. HORN. Do you believe we should move forward then?

Ms. TICK. Yes, I think you should move forward. I don't think that the Federal law does anything to disrupt ICHEIC or does anything to disrupt the ability of organizations helping claimants to get paid. I think it only helps.

Mr. HORN. Well, thank you very much.

And, Mr. Waldman, you state that MONY Life devoted the resources necessary to comply with the California statute, "not only because it was the law, but also because it was the right thing to do."

Why are not other insurance companies choosing to fight the statute in court rather than adopting the same attitude?

Mr. WALDMAN. It's not for me to say what other companies are doing. I mean, we did—we understood the importance of the law and the seriousness of the subject matter, and complied to the best of our ability.

Mr. HORN. Do you have any suggestions for improving H.R. 2693?

Mr. WALDMAN. Well, I guess, as with all the laws, companies have varying amounts of files, whether the completeness of them, the legibility of them, the relevance of them. And I guess there has

to be some discretion within the—in the case of the State's insurance department, I suppose in the administration, in the regulatory scheme of things as to how the law would be applied, in certain situations, the terminology is not going to match the records of the companies versus what's in the—what would be in the bill. Policy—might have policyholder versus insured versus beneficiary, as to what the domicile is.

One particular point, I think, is that in all of the State laws, when a date comes up, it's the date of death rather than the date of birth. And I think, at least from our standpoint, we would have very little material on date of birth of many policyholders because we have—the records that we do have generally are going to be when the policy went out of force for payments that weren't made.

And probably from the standpoint of the survivors and the claimants, as well, I think they're more likely to know the date of death, even though not exactly certainly, because of the circumstances of the war, but rather than the date of birth.

So, I mean, if it comes to the point where there is questioning with the company and you find that you have a possible match and you get to negotiations, then you can go into detail of whether you have date of birth or not.

But I think if you want to pick a date that would be on the report, I think the date of death is probably more helpful and more likely to be in the records of the company than the date of birth.

Mr. HORN. Are there any other ways to get the fact that the individual was alive at a certain time—because, as I remember, some of the Protestant churches changed a lot of their files when the Nazis were steaming up in 1937–1938, and they changed some of the parish names because they didn't want to be a Jew in that time. Will any of that help in terms of looking at some of those files?

Mr. WALDMAN. I guess within our own records we would have a record of possibly when the policy was issued, certainly when it went out of force. So we are assuming that the person was alive at the time it went out of force, so we would know that they would be alive at that time. But as far as whether they are still alive, that information we wouldn't have. But whether they were alive during the period in question, we would have, to the extent that we know when it went out of force.

So if it went out of force after 1920, if that's the year that we pick, or 1933, I think the Federal—the California one I think was 1920—then, to that extent, we would assume that they were alive at that point.

Mr. HORN. The gentleman from California.

Mr. WAXMAN. Just a few questions for the record, Mr. Chairman, because you have covered some of these points.

But, Mr. Waldman, based on what you know of H.R. 2693, do you believe that lists already compiled by MONY Life Insurance would enable you to be in compliance with the proposed Federal law?

Mr. WALDMAN. Well, certainly the scope of policies that were covered by the State laws would be—in toto, would be greater than what's subject to the Federal law, because you have, for example, 1933 to 1945 instead of 1920 to 1945.

The only question from our standpoint would be, we would have it within—the individuals and the policies would be within the data base. It would just be a question of whether we would need to provide additional detail, for example, date of birth versus date of death. We'd need additional research perhaps.

I don't think we would have much on that, but we'd have to do additional work on that. But as to the population of policies, it would already be covered by having complied with the State laws.

Mr. WAXMAN. Thank you.

Dr. Kurtz, you also mentioned you have concerns regarding the size and scope of the registry envisioned. I'd like to know your thinking about that. And can you suggest reasonable ways to limit the size and scope?

Mr. KURTZ. Actually, what I was trying to note, Congressman Waxman, is that it was really related to the second point about funding that is going to be, because of the potential size of it, a large data base, a large Web site; and so adequate resources are needed, more than trying to figure out ways to slim down the size.

Mr. WAXMAN. Dr. Bradsher, the California law and the parameters of ICHEIC require the review of all policies between 1920 and 1945. H.R. 2693 only requires information about policies in effect between 1933 and 1945. Do you think this would significantly cut the amount of policy information that would have to be provided?

Mr. BRADSHER. I'm not an expert on this subject, but I remember some testimony that was given before a House committee several years ago. And talking to Yakov Lazowitz, who is with the Yad Vashem archives, it seems that an awful lot of policies were sold in the 1930's because people—even Jewish salesmen, targeted Jews, saying, Things are getting bad here, you need insurance. And this was more of a 1930's phenomenon, let's say, 1920's.

But I really can't truthfully say that—what date. But Jews were certainly targeted for insurance in the late 1930's, where they were just targeted to be sold insurance. And as we know now, that's—some of these people were sold the policies and then liquidated, and then the Nazis cashed in on them, on the policies.

Mr. WAXMAN. Dr. Bradsher, the Nazi regime confiscated policies and killed Jews based on the Nuremberg laws that identified anyone with at least one Jewish grandparent as a Jew. Many of those who were persecuted did not even consider themselves Jewish, or maybe didn't even know that they had identi—they didn't even know that they had grandparents who were Jewish. So their names wouldn't be on census lists, and they didn't have identifiable Jewish names that might lead people to put them on a list.

Do you think this will have an impact on the ability to collect a comprehensive list of Jews who may have held policies?

Mr. BRADSHER. I know that the Yad Vashem archives, as you have indicated, they had 1,000 people taking every single document they had and keying it into a data base. And many times, especially in Polish towns, people spell their name one way on the census of the town, and then the Germans spelled it another way, so there is a problem there.

I know that, in 1962, the Swiss banks, when they were trying to come to agreement on dormant accounts, they hired rabbis to go through lists and try to identify Jewish names, and found it impos-

sible. So that—the problem of names is—I don't think can be overcome unless someone is willing to invest the time and money, going through the records of the National Archives, the Holocaust Museum, the Yad Vashem.

It's simply doing a worldwide census. You're going to end up not capturing everyone. And even if you capture all names of all existing humans, then in terms of their religion—that's one problem, as Ms. Tick pointed out, that Communists, homosexuals, gypsies, and other people are also part of these victims. And that presents a whole 'nother series of problems.

Mr. WAXMAN. Ambassador Bell, I believe you mentioned that about 2,000 additional names will be added to ICHEIC's Web site this week. Are those names from member companies' records? And if not, from where?

And did ICHEIC make an announcement regarding the release of those names?

Mr. BELL. I believe, sir, it's correct that ICHEIC did make an announcement concerning that, although again, you know, ICHEIC usefully needs to be interviewed on this.

It is my understanding that those are claims which arose out of the outreach project that I mentioned to you earlier. And like a great many things, they awaited the conclusion of this agreement to come into the pipeline.

One of the things I would add that comes on line with the agreement coming into force is the use of this list of names and matching model as an example for the non-MOU companies, including—we have made mention of some of the Swiss companies where there has been no movement. Many of those companies, it is my understanding, sir, have been awaiting the outcome of this agreement. And it is certainly my profound hope, and I believe the expectation of others in the process that they would now replicate this approach in what they are doing.

So, again, it gets back to the point earlier of, will there be an acceleration of all of this when the agreement begins to operate? And my answer to that would be yes.

Mr. WAXMAN. Well, we all hope so.

Mr. BELL. Thank you, sir.

Mr. WAXMAN. Mr. Chairman, I want to thank all the people who have testified in this panel. I wonder if we could leave the record open so that if—there may be additional questions we'd like to submit to the witnesses and have them respond in writing for the record, so we can get those responses in the record.

Mr. HORN. Certainly. Absolutely. Put that in the record at this point.

And we do have the staff of both the majority and the minority, and the members, might send you some questions—and you are all under oath, etc.

I am looking very carefully at Dr. Greg Bradsher. I never saw such a very fine scholar in so many single spaces of what you have done. And I would just like to ask you now that I've taken notice. You've got special assignments with the Interagency Group on Nazi Loot assets; you have got U.S. Representative, Independent Commission of the Experts Switzerland Meeting on the Nazi Gold

Records; the Looted Archives and Libraries at the U.S. Holocaust Memorial Museum; and about 100 here of items.

Now, that leads me to getting back to the International Commission, which we haven't met. A lot of the people, I think on those points here, are on that International Commission, aren't they? And I'd just like to know your feeling on whether they will do something or drag their feet.

Mr. BRADSHER. I can't speak for commercial companies and so forth, but I echo Ambassador Bell's comments that all the people that have labored so hard since 1996 when Senator D'Amato and others initiated this effort, I think they have all been very dedicated and very professional. And I would not list names, but there are several of them in the room here today that just simply because of their interests have come to attend this hearing.

I think our fellow citizens are very lucky that we have people that are knowledgeable and caring about the survivors and victims.

Mr. HORN. Well, that's helpful. And with that, if my colleagues don't have any more questions here? OK.

I want to thank the people that helped in preparation of this: our staff director, Bonnie Heald; Bonnie is back here. Henry Wray had to go to a family situation, and is the senior counsel. Dan Daly, to my left, your right, is the counsel today. Chris Barkley is the majority clerk.

The minority staff: Michelle Ash, counsel; and then Zhava Goldman of Mr. Waxman's office; Jean Gosa, minority clerk; David McMillen, minority professional staff; Jonathan Samuels, legislative director for Ms. Schakowsky; and the court reporters, Nancy O'Rourke and Tina Smith. Thank you very much.

And, with that, we are adjourned.

[Whereupon, at 3:52 p.m., the subcommittee was adjourned.]

