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HOLOCAUST-ERA CLAIMS IN THE 21ST CENTURY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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HOLOCAUST-ERA CLAIMS IN THE 21ST CENTURY

WEDNESDAY, JUNE 20, 2012

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:39 p.m., in room S–115, The Capitol, Hon. Charles Schumer, presiding.

Present: Senators Schumer, Klobuchar, Blumenthal, Grassley, and Sessions.

Senator SCHUMER. The hearing will come to order, and I want to apologize in advance.

We are going to have to keep order here, please. We are going to have to keep order and close the door, if need be.

Anyway, I want to apologize to everybody. Because of all these votes 10 minutes apart, we had to move the hearing room from our usual Judiciary room to right here, and we are going to have to be skedaddling back and forth, unfortunately, to go upstairs and vote and come back. But it is a much quicker walk and will delay us a lot less.

I have an opening statement which I will read, but again, because of how the votes are working, Senator Nelson, who is the spirit and the driving force to have this hearing and who has done such a good job on this issue, is going to make his opening statement before mine. Then I will make mine, and then we will call on the witnesses.

Senator Nelson.

STATEMENT OF HON. BILL NELSON, A UNITED STATES SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Mr. Chairman, thank you very much.

The first thing I would like to insert in the record is an op-ed by Annette Lantos, who just came in, the widow of our former colleague, Tom Lantos, and it is directly on point. So I will give this to you, Mr. Chairman.

Senator SCHUMER. And without objection, we will put the entire statement in the record.

[The op-ed appears as a submission for the record.]

Senator NELSON. I appreciate you calling this, and for the cramped quarters we apologize, but please understand this was the only room available here close to the Senate chamber, and the choice was either a postponing of the hearing or going ahead with it in this location because of the votes upstairs on the second floor.

This issue is extremely important. It is compensating Holocaust survivors and their loved ones for the value of insurance policies they held before and during World War II. These policies, of course, and the insurance company records were lost, they said, stolen from them or destroyed by the Nazi regime. And so I am very grateful to Senator Schumer for calling this hearing, and I would note that I am a cosponsor of Senator Schumer's bill, which is the Holocaust Rail Justice Act, which is also the subject of today's hearing.

Naturally, I come to the table, the two of us come to the table from two States that are two of the three States with the most Holocaust survivors. Of course, most of them are now in their 80's or 90's and in urgent need of assistance.

Two survivors that are here today are constituents of mine. I want to recognize them: David Murmelstein from Miami and Jack Rubin from Boynton Beach. David and Jack, we first became friends when I was the elected insurance commissioner of Florida, and I had the occasion when it suddenly dawned on me that I had jurisdiction because some of those European insurance companies did business through subsidiaries in my State, and there that regulatory hook, we went to work. And, of course, Annette is here, and that is the article that I have submitted for the record.

Now, I want to introduce Renee Firestone. She will testify regarding this legislation. It is an issue that Senator Feinstein and I agree, which Senator Feinstein has graciously allowed me to introduce her constituent, Renee.

Renee was born in Czechoslovakia and at age 19 was taken to Auschwitz. Of her family, only Renee and her brother Frank managed to survive the war. And like many survivors, after the war Renee immigrated to the U.S. with a husband and an infant daughter. They settled in Los Angeles. She quickly dedicated herself to social justice and Holocaust remembrance and the education of her country. Her commitment to justice earned Renee many distinguished awards, including the Elie Wiesel Holocaust Remembrance Medal and the Golda Meir Award. Renee's compelling life work was featured in the Steven Spielberg film "The Last Days."

The Judiciary Committee hearing today gives the Senate another opportunity to examine what has been done to help survivors like Renee and the others that I have introduced from Florida.

Members of this Committee will review the efforts to compensate Holocaust victims for the value of their insurance assets, and many feel that these efforts have been delayed, flawed, and insufficient. And as a former insurance commissioner who had to deal with those European companies, I can tell you I know all the tricks, and they have employed all of them.

The International Commission on Holocaust Era Insurance Claims concluded in 2007 and left many of the claimants dissatisfied or undercompensated, and many continue to feel that some of the insurance companies that participated in the commission still have not done enough to compensate Holocaust survivors. And that is why I introduced this legislation that creates a new Federal cause of action that enables survivors to sue these companies in Federal court for damages and attorneys' fees for compensation for their insurance policies. And with ICHEIC's disbandment, the

court system represents one of the few remaining avenues by which Holocaust victims and their survivors may still pursue their legal rights.

We all know that no amount of financial compensation can ever make up for the wrong of the Holocaust, but many of us who have been working on this issue for years are committed to doing what we can to help those survivors recover whatever we can that has been taken from them.

I have always believed that people who are wronged are entitled to seek justice. I remain committed to advocating for the compensation for them, and that is why serving Florida's Holocaust survivor community has been a clear top priority of mine in my years in public service.

Mr. Chairman, I want to thank you for the privilege of letting me come here and kick this hearing off.

Mr. Chairman, I have heard every excuse in the world on, "Well, we lost the policies," or "They have already claimed their assets," or "Well, show us proof of death." The last time I checked, Hitler did not keep any of those records. I have heard all the excuses, and it is time for us to do justice for these people.

Senator SCHUMER. Well, let me thank you. Senator Nelson, you have been a true leader on this issue.

Senator Nelson is one of our most effective Senators. He is a real fighter for things he believes in, and I know he believes in this. As I said, it was at his request that we had this hearing and joined our two proposals in the hearing. And I can tell people who are seeking justice that they could not have a better advocate than Senator Nelson.

Thank you.

[Applause.]

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Now I am going to give my opening statement, and first I want to start by thanking our Chairman, Chairman Leahy, for letting me have the gavel today in order to explore this exceptionally important topic: how to resolve what I hope, what we all hope are among the last remaining reparation claims stemming from the murder of 6 million Jews during the Holocaust. We all know the horror of the Holocaust. My great-grandmother, who was the matriarch of her family, was told to leave her home. She and her family had gathered on the front porch. They refused to leave, and they just machine-gunned all of them down in 1941. So, obviously, I have personal experience with the horrors of the Holocaust, but the horrors are just awful.

Sometimes we refer to the horror as "unspeakable." But unspeakable is exactly what the Holocaust must never become. Those who perpetrated it, those who benefited from it want us not to speak. But we are here to speak and to have this hearing.

Now, we must continue to find words to describe if not explain what happened during those very dark years of human history. We must make sure the stories of the survivors and the witnesses who have gone before us live on and become part of our human DNA. We must ensure that we listen to those who are still with us, and

at the least, the very least, it is our collective moral obligation to make sure that those whose lives were forever changed by the Holocaust are not forgotten.

As the survivors among us grow old, too many are sinking into poverty and neglect. In fact, the numbers are shocking and will surprise people who have not studied the issue.

The Jewish Claims Conference reports in 2010 that of the 517,000 living Holocaust survivors in the world, half live in poverty. That is disgraceful. Most of these now elderly survivors live in the former Soviet Union and in Israel. Many survivors who are eking by nonetheless need nursing care and other services that can be impossibly expensive.

I am certain that everyone in this room agrees on one thing: that we need to do everything in our collective power to make sure that these survivors, these resilient, brave people, our dear friends and family, do not fall through the cracks. International efforts to hold accountable the perpetrators and accomplices of this terrible crime have been a very important part of giving the Holocaust survivors some modicum of peace and well-being.

The two bills we will discuss today arise from the desire to ensure that survivors can get an approximation of justice, and we can only call it an approximation, and not even a close one, because nothing will ever make this right or make them whole. They all live with the memories. They all live with the holes in their hearts of loved ones who perished.

The first of our two bills is the Holocaust Rail Justice Act. Today is the first hearing that has been held on this bill in the U.S. Senate, and I am pleased to have the opportunity to talk about it. Here is the relevant history.

During World War II, more than 76,000 Jews and thousands of other so-called undesirables were transported from France to Nazi death camps aboard trains owned and operated by the Societe Nationale des Chemins de Fer Francais, the SNCF. Fewer than 3 percent of those deported or those who boarded those awful trains survived. Many did not survive the train ride itself. And that train, which was operated independently by SNCF, having entered into an agreement with the German Government to maintain control of its trains was itself a horror.

A report commissioned by SNCF found that SNCF alone decided to use cattle cars to transport victims, refused to provide food or water despite the pleas of Red Cross workers.

In a tragic example of irony, something worthy of Dickens' "Bleak House," SNCF escaped legal liability for its actions in France by claiming it was a commercial entity and could not be sued in French administrative court. Meanwhile, in the U.S. SNCF escaped liability by arguing it was an instrumentality of the French Government and, therefore, entitled to sovereign immunity. They were one thing in one place, the opposite in another place, all to escape liability.

Just recently, 70 years after deportations began, SNCF expressed regret for its deportations. But as we will hear from witnesses today, that must only be the beginning. It has never paid for its actions. Never. Even if the French Government's reparation programs could somehow be said to cover SNCF's actions—and I be-

lieve they cannot—those programs are, arguably, closed to Americans or at least highly inaccessible.

The Holocaust Rail Justice Act would make clear that SNCF cannot claim sovereign immunity for its independent actions against the Jews and other deportees and would allow SNCF to be sued in U.S. courts. At this point, opening up the U.S. courts may be the only way that survivors can obtain the reparations they so clearly deserve from SNCF.

I want to note here that this bill is intended only to cover SNCF, which was not a party to any Holocaust litigation settlement entered into by the United States. The bill is not intended to allow claims against any companies that are covered by the U.S.-German Holocaust Settlement Agreement or any other settlement agreement, and we are redrafting the bill to reflect that so we can make sure that the bill is effective and not litigated against.

Now, the second bill that will be considered is Senator Nelson's bill. It is called the Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2011, and as Senator Nelson talked about, the purpose of this bill is to allow survivors and heirs who believe that they may have claims against European insurers because of unpaid policies from the Holocaust to sue those insurers in U.S. courts. Several factors have led to substantial debate about this bill.

First, the assets of many if not almost all European insurers were nationalized by the Nazis, the Soviets, or both. For the most part, the hundreds of small insurance companies that existed before the war either collapsed during the economic crisis of the 1930s or ceased to exist during the war. Many, many records were lost forever.

Second, in 1998, the National Association of Insurance Commissioners, six remaining European insurers, the Claims Conference, the World Jewish Restitution Organization, and the State of Israel signed a memo of understanding that became known as ICHEIC. In addition, the Department of State under both Clinton and Bush administrations and now under the Obama administration have supported ICHEIC in court as the exclusive forum for resolving these particular Holocaust-era claims. Numerous Jewish groups, including B'nai B'rith International, the Anti-Defamation League, and the American Jewish Committee, also support ICHEIC as the acceptable forum for resolving the 70-year-old policy insurance claims.

ICHEIC eventually paid out $300 million to 47,353 claimants, over 34,000 of whom were awarded $1,000 humanitarian payments because no issuing company could be identified from the remaining records. Some survivors were left extremely dissatisfied with this process and remain concerned that, put simply, too few claims were honored. They have argued in court and here in Congress that the State Department had no authority to effectively settle these claims on their behalf, and they want their day in court. They have asserted that these insurers have not been forthcoming with their records or assets, and we are going to hear and bring to light important testimony on these issues of critical importance to the survivor community. And I am pleased to welcome everyone here to participate in the discussion.

I share the survivors' goal: to make sure that remaining survivors are not left destitute, are respected, and have access to the records, resources, and justice that they are, frankly, entitled to. It is the very least we can do.

And so with that, let me call on Senator Sessions if he would like to make a statement. And while Senator Sessions speaks, I am going to go up and vote and come right back down, and then you can go up and vote. And if Senator Sessions finishes, we will recess until I come back.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Chuck would be perfectly happy if I missed the vote. [Laughter.]

But he is not going to miss it. You can be sure of that. I know he works hard, but I can usually get to the gym a little before he does in the morning. He is a hard worker, I can tell you that.

I would just say that I am looking forward to learning more about this issue. I got involved with the Japanese World War II prisoners of war and the abuses there and the litigation attempts over that. We engaged the State Department and tried to figure out what the principles are in these kind of cases, and as a former United States Attorney for 12 years, I just have some sense that we need to be sure we are doing this right. Even though people deeply feel they are wronged, I think it is perfectly healthy and good to bring out what happened, put the facts on the table, and let us not be timid about knowing the truth, and then we will ask ourselves what the proper legal remedies are and how it should be handled. You have to acknowledge that there are wars and settlements of wars all over the world, and it is hard to settle if decades later people are still litigating over it.

So I do not know what the right answer is, frankly, but I respect Chuck. He is a very good lawyer and sophisticated in these issues, and I look forward to working through the hearing.

I guess I will take my moment and go vote, and I look forward to coming back and hearing the comments of the witnesses as we go forward. Thank you.

[Recess at 3 to 3:03 p.m.]

Senator GRASSLEY. This is a terrible environment in which to hold a hearing, meaning not the environment of this room but the fact that we have votes upstairs and it is not very well organized. It is no fault of this Committee or the Chairman or anybody else.

I am glad that we are able to work together on this hearing between the Chairman and this side of the aisle. I am also glad for all the witnesses that have been able to come and that we had consensus on that. And I appreciate the witnesses' sharing their experiences and perspectives with us. I am very interested in hearing—now I will have to read the testimony.

Let me ask each of you, if you would—these are very general questions. I hope you appreciate that. And I do not suppose all of you would have to respond, but if a few of you would respond, I would appreciate it.

Is there anything beyond your written testimony or beyond what has already been given in the Committee that I have not heard yet,

but I would like to give each of you an opportunity to expand on anything that has not been said that you would like to expand upon? I am not calling on a specific person, but maybe you did not get a chance to give your view.

Mr. ROSENBERG. We have not given our testimony yet.

Senator GRASSLEY. OK. Well, what happened in the last half-hour? [Laughter.]

Mr. ROSENBERG. We were waiting.

Senator GRASSLEY. You go ahead.

Mr. ROSENBERG. We were waiting for——

Senator GRASSLEY. Is it OK if he starts to give his testimony?

Staff. Absolutely, unless you would like to read the introductions.

Senator GRASSLEY. Well, if they have not been introduced yet, yes.

The Honorable Samuel Rosenberg, Delegate, 41st District of Maryland, has been a member of the Maryland House of Delegates since 1983 and currently serves as Vice Chair of their Ways and Means Committee. Delegate Rosenberg has created programs encouraging students to enter public service and help extend Maryland's civil rights laws. Among his many significant legislative accomplishments, last year Delegate Rosenberg's landmark legislation passed unanimously and was passed into law. Governor O'Malley signed it in May 2011. This bill requires any entity pursuing publicly funded rail contracts to disclose participation in transporting victims to Nazi death camps during the Holocaust and to post all records online.

Leo Bretholz is a survivor and SNCF victim. He lived in Vienna until he was forced to flee in 1938. He spent the next 7 years running from the Nazi regime. In 1947, he arrived in the United States where he married and raised a family. In 1998, he co-authored a book chronicling his experiences during the Holocaust entitled "Leap into Darkness: Seven Years on the Run in Wartime Europe." The title references the evening he leapt to freedom from a moving SNCF train bound for Auschwitz. He frequently lectures at schools, universities, synagogues, churches, and various groups.

Professor Edward Swaine teaches and writes in the area of public international law, foreign relations, international antitrust, and contracts. Professor Swaine joined the George Washington University Law School faculty in 2006 after serving for one year as a counselor on international law at the Department of State. At GW he is a member of the Executive Council of the American Society of International Law, co-chairs the international law and domestic interest groups, and is a member of the Advisory Committee on Public International Law of the U.S. State Department.

If you will continue, please?

Senator SCHUMER. It would be my pleasure, and I want to thank my good friend Senator Grassley for stepping in and doing the introductions. We are up to Ms. Firestone.

Senator GRASSLEY. Yes. I just read the first page.

Senator SCHUMER. OK. At the age of 19, Ms. Firestone was imprisoned for 13 months in Auschwitz-Birkenau. In 1948, she arrived in the United States with her family where she became a noted fashion designer. She is a tireless leader in many areas of social justice and Holocaust remembrance and education. She has

conducted workshops for educators, lectured, and has been the subject of countless interviews regarding the Holocaust and its contemporary implications. We are honored you are here, Ms. Firestone.

And, finally, Ambassador Bindenagel served as the U.S. Special Envoy for Holocaust Issues from 1998 to 2002. He previously has testified at congressional hearings on the negotiation and implementation of the agreement regarding the International Commission on Holocaust Era Insurance Claims, ICHEIC. Ambassador Bindenagel played a prominent role representing the U.S. Government negotiations that led to the creation of Foundation Remembrance, Responsibility, and Future in Germany as part of the 2001 U.S.-German Holocaust settlement. For the last 7 years, he served as vice president at DePaul University in Chicago.

We welcome all of you. Your entire statements will be read into the record, your full statements. We ask each of you to limit your statements to 5 minutes, particularly because of the unusual and rather warm circumstances in this room. So we will start from my left and work our way over. First, Honorable Samuel Rosenberg. Welcome, Mr. Rosenberg.

STATEMENT OF THE HONORABLE SAMUEL L. ROSENBERG, DELEGATE, 41ST DISTRICT OF MARYLAND, STATE OF MARYLAND, BALTIMORE, MARYLAND

Mr. ROSENBERG. Thank you very much. Senator Schumer, Senator Grassley, Senator Sessions, thank you for the opportunity to express support for the Holocaust Rail Justice Act and share my efforts for Maryland to require transparency from SNCF. Senator Schumer, your tireless fight to provide these survivors their day in court is remarkable.

I also applaud those who support this legislation in the House and the Senate, including the many members of the Maryland congressional delegation. With the increasing number of bipartisan supporters, including Majority Leader Reid, Foreign Relations Committee Chairman Kerry, Senator Nelson, and Senator Rubio, I am confident that this Congress will provide the victims with their long-awaited day in court.

After SNCF's related companies sought to bid on a Maryland commuter rail contract, I was stunned to learn about the company's actions during the Holocaust and its ongoing mistreatment of my constituents. SNCF's blatant refusal to fully acknowledge its role in the Holocaust led me and my colleagues in Annapolis to pass legislation requiring transparency.

Until recently, SNCF refused to acknowledge its role in the Holocaust. Today, SNCF does not deny sending 76,000 Jews and thousands of others, including 11,000 children, to their deaths. Yet the company refuses to take responsibility.

SNCF willingly collaborated with the Nazis and retained control of the technical conditions of the deportations which ultimately led to those deaths. SNCF hides behind foreign sovereign immunity, as Senator Schumer pointed out, claiming it should not be held accounts in U.S. court. The company has neither paid reparations to its victims nor to existing French reparations programs which do not specifically cover the SNCF deportations.

SNCF's actions during World War II were unconscionable and unforgivable. The company's ongoing mistreatment of its victims makes clear that these are no longer the sins of SNCF's fathers. The company is engaged in an extensive PR campaign to downplay its role in the Holocaust and stem the growing tide of opposition standing between the company and lucrative contracts.

In 2010, the company issued its first apology. The Los Angeles Times editorial board said it best, noting that the apology was "apparently not prompted by regret. Rather, it seems to have been spurred by the company's desire to win multibillion dollar high-speed rail contracts in California and Florida."

I am proud that my State, California, and Florida have all taken a stand on this issue. As Florida contemplated undertaking a $2.6 billion high-speed rail project, the company sought to underwrite a partnership between the Shoah Memorial of France and Florida's Task Force on Holocaust Education. Survivors were outraged by the company's attempt to influence Holocaust education. I would like to enter into the record a letter written by roughly half of the Florida delegation to Florida's Commissioner of Education stating that "[i]nstead of attempting to engage in a public relations campaign, SNCF would be wise to resolve the claims of the Holocaust survivors as a consequence of their actions."

Senator SCHUMER. Without objection, the letter will be added to the record.

Mr. ROSENBERG. Thank you.

[The letter appears as a submission for the record.]

Mr. ROSENBERG. The Florida Education Commissioner ultimately, and rightfully, canceled the partnership.

When SNCF sought to bid on public contracts, California Assemblymember Blumenfield and I each introduced legislation to ensure that our constituents would know the character of the companies seeking tax dollars. Maryland's law requires companies seeking to bid on MARC contracts to digitize and post online relevant Holocaust-era archives.

True to form, after the Maryland legislation was signed into law, the company released documents to three Holocaust museums and issued a press release boasting of its proactive new phase of transparency while failing to mention the law's requirements.

The Maryland legislation should provide transparency, but that is not enough. For over 10 years, SNCF has escaped responsibility in the courts arguing one way, and then the other as Senator Schumer pointed out.

I am certain, if I may close on a personal note, that Telford Taylor, my constitutional law professor at Columbia and chief prosecutor for the Nuremberg War Crimes Tribunal, would be immensely proud of our work. I recently returned from a visit to Yad Vashem where I viewed a film of individuals about to be executed by a Nazi firing squad. While it is too late for those victims to seek justice, the approximation of justice, it is not too late for SNCF's victims like Leo Bretholz, my friend and constituent.

While SNCF tries to run out the clock on the survivors, we must all stand up—on the local, State, and Federal levels—and together demand that the company finally be held accountable.

Thank you.

[The prepared statement of Mr. Rosenberg appears as a submission for the record.]

Senator SCHUMER. Thank you, Mr. Rosenberg, for your service in Maryland, and thank you for staying within the time limit.

We will next hear from Mr. Bretholz. Welcome.

STATEMENT OF LEO BRETHOLZ, HOLOCAUST SURVIVOR, AUTHOR OF "LEAP INTO DARKNESS," BALTIMORE, MARYLAND

Mr. BRETHOLZ. Thank you. I just want you to know, if you know——

Senator SCHUMER. If you could just pull the microphone a little closer, that would be great, Mr. Bretholz.

Mr. BRETHOLZ. If you know some of my story, I escaped from trains and crossed rivers and crossed the Alps, but to come to this room to find this room was another experience. [Laughter.]

I just want you to know.

Senator Sessions, Ranking Member Grassley, Senator Schumer, and members of the Committee, my name is Leo Bretholz. I am a Holocaust survivor. After World War II, I immigrated to the United States and settled in Baltimore. I am 98—sorry. That will be one time. I am 91 years of age and speak regularly about my experiences during the Holocaust.

Thank you for the opportunity to testify about the atrocities that I experienced at the hands of the French rail company SNCF. Thank you especially, Senator Schumer—and Senator Cardin is not here, he was supposed to be, and my Senator from Maryland, Senator Mikulski, who are very supportive of all of this, and the other members of the Maryland congressional delegation, and the many legislators who have made certain that I and SNCF's other victims are not forgotten.

Senator Schumer, thank you particularly for holding this hearing today and for your unwavering pursuit of justice for the survivors. Many thanks.

This year marks the 70th anniversary of the first SNCF transports from Drancy—a transit camp north of Paris—toward death camps, yet I still remember the haunting night I jumped from an SNCF train bound for Auschwitz as if it was yesterday. Ladies and gentlemen, this was the 6th of November 1942, and if it were not for that day, I would not be sitting here.

In October 1942, at the age of 21, I ended up near Paris in the internment camp Drancy. We called it the "antechamber of Auschwitz." The train to Auschwitz was owned and operated by SNCF. They were paid per head and per kilometer to transport innocent victims across France and ultimately to the death camps. They collaborated willingly with the Germans. Here I have a copy of an invoice sent by SNCF seeking to be paid for the services they provided. A money matter. SNCF pursued payment on this bill after the liberation of Paris, after the Nazis were gone. This was not coercion. This was business. I would like to submit this invoice for the record. I think you have that.

Senator SCHUMER. Without objection, yes. Definitely.

[The invoice appears as a submission for the record.]

Mr. BRETHOLZ. SNCF deported 76,000 Jews on those trains, including over 11,000 children. They would count us off, 50 into each

cattle car. Now, this was all done with precision, with deception, and with cruelty, as an aside. They were counted off, 50 into each cattle car and the 51st person was the young boy that belonged to that family. The boy began to scream, and the father pleaded to allow them to stay together. But with cold precision, the boy was shoved in one car, his family into another. I believe that was the last time they saw each other.

For the entire journey, SNCF provided us one piece of triangle cheese—you know, Laughing Cow—one stale piece of bread, and no water for the entire trip. There was hardly room to stand or sit or squat in the cattle car. And there was one bucket in the car to relieve ourselves for 50 people. Visualize this. Within that cattle car, people were sitting and standing and praying and weeping and arguing and fighting—the whole gamut of human emotions. My friend Manfred who was with me, also a Viennese fellow, and I began to try to escape. Many in the cattle car fearing the guards would punish everyone if we were found out, urged us not to even try. I also was beginning to doubt our plan when an elderly woman on crutches spoke out. She wielded that crutch like a weapon and pointed it at me and said, "You must do it." A woman on crutches. "If you get out," she said, "maybe you can tell the story. Who else will tell the story?" I can still see her face today. An elderly woman.

Manfred and I set out to pry apart the bars on the windows. First we tried belts. They slipped off. Then someone suggested we dip our sweaters into the human waste on the bottom of the car. There was all around human waste. We kept twisting the wet sweaters tighter and tighter like a wet tourniquet. The human waste dripped down our arms. We kept going for hours with our rolled-up shirt sleeves. Kept going for hours. We kept going for hours until finally there was just enough room for us to squeeze through. I went first. My friend Manfred helped me climb out of the tiny window, and I stood on the coupling between the two cars. He followed me and we held on tight so as not to slip and fall beneath the train and waited for it to take a curve where it would slow down. Then we jumped to our freedom in eastern France.

Of the 1,000 people with me on the SNCF convoy number 42—there were over 70 convoys; this was number 42—on the 6th of November 1942, only five survived the war of the 1,000. If I had not jumped from that train, I would not be here today. It is my duty to speak for those who did not survive—for the old woman who pushed us to escape, for my family, and for the millions of others who were silenced.

SNCF willingly collaborated with the Nazis. Had the company resisted, even to a small degree, or had they not imposed those horrific conditions, many lives would have been saved. In the almost 70 years since the end of the war, SNCF has paid no reparations nor been held accountable. The company did not even apologize until 2010 when it was criticized for pursuing high-speed rail in the United States without fully accounting for its role in the Holocaust. As it was during the Holocaust for SNCF, so it is now—all about money. They made money shipping people, and they wanted to make money building railroads.

The Holocaust Rail Justice Act is the last opportunity we will have to see justice and our day in court within our lifetimes. The survivors seek only to have our day in court for the first time. Seventy years is far too long to wait for a company to accept responsibility for the death and suffering it caused. I urge you please to pass the Holocaust Rail Justice Act this Congress before it is too late.

Thank you very much.

[The prepared statement of Mr. Bretholz appears as a submission for the record.]

Senator SCHUMER. Thank you for your ever so powerful testimony, Mr. Bretholz. Thank you for your courage as well.

Professor Swaine.

STATEMENT OF EDWARD T. SWAINE, PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, WASHINGTON, D.C.

Mr. SWAINE. Senator Nelson, Senator Schumer, thank you for the opportunity to testify about the international law implications of the Holocaust Rail Justice Act. I am honored and moved to be in the presence of Holocaust survivors and others who advocate on their behalf.

I am speaking about a different aspect of this important issue, but I would stress the room for agreement here. All would agree that, irrespective of liability and immunity issues, justice for the victims of Holocaust deportations, given these deeply disturbing claims, is imperative, and attention by political bodies in the U.S., France, and elsewhere is welcome.

There should also be agreement that international law plays a role, most importantly, the human rights articulated in the wake of the Holocaust, but also respect for international institutions and for other international principles such as State responsibility, the obligation to make reparations, and any applicable immunity. Ultimately we should advance according to the rule of law.

As I explained in my submission, Congress designed the Foreign Sovereign Immunities Act with a view to what international law permitted. These standards protect the U.S. Government as well. My objective is to describe these parameters and to try to find constructive solutions.

The International Court of Justice recently provided guidance in a case involving crimes committed during Germany's occupation of Italy. The court held that Italian suits against Germany were barred by customary international law principles of sovereign immunity, which also bind the United States.

Those facts were different than those here. The wrongs were by the German military, not a state-owned entity like a railroad, and judicial proceedings were conducted in Italy where the wrongs were committed. But some of the court's principles translate.

For example, the court held it was required to apply the modern law of sovereign immunity, not the law as of when the wrongs occurred, since immunity concerns the judicial proceedings that occur in the present day.

The court also held that immunity for sovereign acts applies regardless of the nature of the underlying international wrongs, no

matter how terrible they are. These holdings express the traditional view, which is also how our courts have previously understood the Foreign Sovereign Immunities Act.

Applying our Foreign Sovereign Immunities Act, courts have dismissed claims against the French national railroad on the reasoning—that I simply report—that SNCF is part of a foreign state and that no exceptions apply. The restrictive theory immunity allows suits to be brought based on a foreign state's commercial activities, but claims have to be brought under the present law based on activity in the United States or otherwise satisfy a geographic nexus.

The bill would change this result in two ways. First, it focuses on the status of the railroads during World War II as opposed to today. Second, as to those railroads and those claims, it would remove any requirement of a U.S. connection.

Based on my examination of the Act, I would say that U.S. law can be changed. The questions I address are how to develop law that can be effective while at the same time respecting our international law obligations.

The bill's historical perspective is in some tension with the view expressed by the United States and by other courts that sovereign immunity focuses on the present. Sovereign immunity is not about whether a defendant thought it would be immune when it acted. No one—no one—should be confident when they act that they can commit international crimes. Rather, the topic of immunity concerns a sovereign state now and the burden of judicial proceedings in foreign courts. Doing what the bill suggests would, in my estimation, require additional safeguards.

International law does seem to permit treating certain kinds of separate state entities distinctly. Perhaps the United States could argue that this present law, the present international law, permits applying this approach even to prior facts as they then existed. Even this, however, would not permit disregarding any proof that a state entity might offer that they were exercising sovereign authority. It is hard to avoid continuing litigation as to the scope of immunity while remaining consistent with international law. I do not presuppose anything about how that test would apply to the French railroad.

The second solution, disregarding any U.S. connection, puts the bill at the frontier of attempts at universal jurisdiction. This is a controversial area. It is difficult to identify bright lines. But it is notable that the bill would combine this extraterritorial reach, which presents its own issue, with what appears to be at least a marginal encroachment on sovereign immunity. This makes the case harder in some respects than the case of Germany versus Italy. Again, we can discuss creative solutions which might include focusing on U.S. events or U.S. nationals.

Any solution involves a dilemma. The bill is targeted, appropriately and reasonably, at a limited class of compelling claims during a limited period against a limited class of defendants. This helps reduce the potential for diplomatic objections. The difficulty is that targeting particular states and their immunities is a provocative and easily copied approach here and abroad, including in matters that might involve the U.S. Government. Ideally, the FSIA

would be updated, if necessary, with a clear view as to how it applies to other cases, and articulate an international standard to which the United States itself would be willingly held. I am hopeful that this or some other solution may be reached.

Thank you.

[The prepared statement of Mr. Swaine appears as a submission for the record.]

Senator SCHUMER. Thank you very much for your erudite testimony, Professor Swaine.

We will now hear from Ms. Firestone.

OK. There is a voting starting, Ms. Firestone. I am going to go vote while Senator Klobuchar and Senator Sessions are here, and then I will be back down. So we will not have to interrupt the hearing.

Ms. Firestone, you may proceed.

STATEMENT OF RENEE FIRESTONE, HOLOCAUST SURVIVOR, LOS ANGELES, CALIFORNIA

Ms. FIRESTONE. Dear Chairman Schumer and members of the Committee, thank you for inviting me to present a voice in support of Senate bill 466. I come before you as an individual, but I speak on behalf of all survivors and the millions whose voices will never be heard.

My name is Renee Firestone. I am an Auschwitz survivor. I would like to address a serious situation still plaguing the survivors.

For years, we have been trying in vain to collect on insurance policies issued to our families prior to World War II and which remain to date largely unpaid. When we tried to make our claim to the insurance companies, they had the audacity to tell us that we needed original documents or we were asked for death certificates of the people to whom policies were issued. Were they really insane? Did these insurance companies really believe that after the Nazis stripped us of our families, our rights, our possessions, our dignity, even the hair on our heads, that they were standing at the door of the gas chambers, where they murdered my mother, handing out death certificates proving their crime?

This insult would have been bad enough, but we survivors, now American citizens, many of whom after emerging from the depths of Hell, came here and served in the American military, are being deprived by our own Government of our constitutional right to seek redress from the courts and claim what is rightfully ours.

You can never know, Mr. Chairman, just how painful and retraumatizing that is to us survivors. I hear weekly from many of my fellow survivors how hurt and outraged they are that this is happening to them. In fact, their frustration finally reached the breaking point, and over the last 2 weeks, hundreds of survivors and their families, family members, and supporters signed petitions, the majority of which were from New York and California. Signers include a Nobel Laureate and his wife, a well-known medical researcher, and the petitions have gone to other Members of Congress as well as to the media. They want the world to know that injustice has been heaped on them.

In spite of what was promised by ICHEIC, Allianz, Generali, Exa, and others who are the sole repositories of the proof of these policies never released the full list of the insured. In my case, I was told that my father's name was not found. However, my first cousin, Fred Jackson, was the first survivor who applied to ICHEIC and collected from Generali because he was lucky enough to find some papers in his house on his return from the death camp. Fred's mother was my father's sister. We lived in the same town where my father built our beautiful villa, which is still there, and where he had a successful business in the main center of our town.

My father was the oldest sibling and adviser to the whole family. He and my aunt were very close. There is no way that my aunt had insurance and my father did not. Why would he advise others to get insurance and not get it for himself and for his family?

All we are asking for is to have our rights restored through Senate bill 466 and to be able to seek the aid of our court system to enforce our claims under these insurance policies. We are not beggars or greedy, as some call us. Our families paid for these policies with the sweat of their brows, and now we only want what is rightfully ours.

Shamefully, many Jewish organizations stand in opposition to the will of the survivors and the passage of Senate bill 466. How obscene and repugnant that our own people would deny the rights of the survivors and how painful. Where were these same organizations when we and our parents, brothers, sisters, and friends were being murdered? Did they come to our aid? How dare they now oppose us.

I wish that my dear friend Congressman Tom Lantos, the original champion of this bill, would be here with us today. I know his lovely wife, Annette, is here, and I want her to know how grateful I am to both of them.

Again, I am here today to ask this honorable Committee to support Senate bill 466 and ensure its swift implementation while some survivors are still alive. We are in our 80s and 90s now. Half of all the survivors in this country are destitute. Mr. Chairman, time is of the essence in order to serve justice and preserve the dignity of the remaining survivors in our final hours.

I thank the Chairman and the members of the honorable Committee for your time and for giving me an opportunity to be heard. Thank you.

[The prepared statement of Ms. Firestone appears as a submission for the record.]

Senator KLOBUCHAR [presiding]. Thank you.

Mr. Bindenagel.

STATEMENT OF THE HONORABLE J.D. BINDENAGEL, VICE PRESIDENT FOR COMMUNITY, GOVERNMENT, AND INTERNATIONAL AFFAIRS, DEPAUL UNIVERSITY, CHICAGO, ILLINOIS

Mr. BINDENAGEL. Thank you, Mr. Chairman and members of the Committee. I am J.D. Bindenagel, the former Special Envoy for Holocaust Issues, and it is humbling to be among Holocaust survivors, Annette Lantos and others. I would also like to acknowledge that there are two others who are here with me today: Max

Liebman is a Holocaust survivor, and he is accompanied by Menachem Rosensaft, a vice president of the American Gathering of Holocaust Survivors.

I have been asked to review what the efforts of the International Commission on Holocaust Era Insurance Claims were regarding unpaid insurance claims from World War II and the Nazi period. That acronym, as Senator Schumer——

Senator SCHUMER [presiding]. Could I just interrupt you, Ambassador Bindenagel.

Mr. BINDENAGEL. Yes, sir.

Senator SCHUMER. Senator Klobuchar is very interested and has been a great supporter on this issue, but she has to go up and vote. So I wanted to——

Senator KLOBUCHAR. Thank you.

Mr. BINDENAGEL. Quite understood. Thank you very much.

Senator SCHUMER. We are joined now by Senator Blumenthal, another supporter. Please proceed.

Mr. BINDENAGEL. Thank you, Mr. Chairman.

As a reviewer of the efforts of ICHEIC, I would like to start off by noting that the overarching interest of ICHEIC negotiations was to bring some measure of justice to Holocaust survivors and other victims of the Nazi era through compensation, where appropriate, but also information where available. We set out, as Senator Schumer noted earlier, concerned parties, governments, nongovernmental organizations, to resolve Holocaust-era insurance claims through dialogue, through negotiation and cooperation rather than subject victims and their families to the prolonged uncertainty and delay that would accompany litigation against the industry.

U.S. regulators and European companies and the Holocaust survivor representatives created ICHEIC in 1998 and established policies and processes to identify claimants, locate unpaid insurance policies, assist Holocaust survivors and their families in resolving claims.

Survivors and their heirs were able to submit inquiries and claims to insurers and partner entities at no cost and in their native language. ICHEIC, in close cooperation with 75 European insurance companies and a number of partner entities, resolved more than 90,000 claims. In short, the ICHEIC process went to great lengths to be claims-driven, claimant-friendly, and included vocal advocates of the claimant community. One only had to file a claim and specify the name and home town of the victim. No lawyers were needed to file a claim, and there was no cost to the claimant in the process.

Claimants could then, and now can, also access the website where there appear more than 550,000 names and a list of likely policy holders, regardless of whether they were outstanding or compensated in the past, in search of a deceased relative who also was a Nazi victim. Moreover, virtually all significant insurers of Holocaust victims participated in this process.

Of course, accepting that ICHEIC was not and could not be perfect, especially given the loss of information during and after World War II, some key numbers from ICHEIC will help summarize what was achieved regarding insurance claims. ICHEIC paid some 48,000 claimants out of the 90,000 claims that were analyzed, pay-

ing about $300 million. There are some more details in my submitted testimony.

But more important is that ICHEIC as an organization ceased to function in 2007, and the most important development since then is the continuing commitment of all the companies that participated in ICHEIC to process claims under relaxed standards of proof. That is, despite the fact that ICHEIC has closed, anyone who believes that an ICHEIC insurance company has failed to pay a claim may send his application to the company or to the Holocaust Claims Processing Office of the New York State Banking Department of Financial Services and that claim will be analyzed. Methods of analysis are the same as they were under the operations of ICHEIC, and there is no charge to the claimant, and the relaxed standards of proof still apply.

The German Insurance Association has continued to report—and I have submitted their most recent report—on the statistics of continuing claims since ICHEIC was actually closed. They include 219 inquiries for insurance policies of Holocaust victims as of last Monday, June 18, 2012. One hundred and two policies were identified in those claims; 41 were eligible for compensation, and 61 have been previously paid. Some claims are still being reviewed.

Mr. Chairman, the insurance companies' commitment to this ongoing process can be seen and can be tested by their continued outreach efforts, an example of which can be found in an advertisement they placed in the Washington Post on Monday, which is also attached to my statement.

But at the same time, the fulfillment of the U.S. Government commitment to comprehensive and enduring legal peace, as set forth in the July 17, 2000, executive agreement is equally important to the continued resolution of outstanding claims, which, I will emphasize, were not extinguished by this agreement.

The purpose of ICHEIC was to pay unpaid insurance claims and/or provide information on insurance policies so that victims of the Nazis could achieve some sort of measure of justice and some closure. ICHEIC itself was not designed or intended to address the ongoing social needs of survivors, many of whom live in poverty and deprivation, as you, Mr. Chairman, have noted.

Significantly, in 2010, the German Government greatly increased funding to provide 110 million euros for Holocaust survivors' "home care". After some negotiations with the Conference on Jewish Material Claims Against Germany last year, a 3-year home care agreement was finalized and will provide for another 513 million euros, that is, $650 million for Holocaust survivors' home care.

These agreements, which supplement the ICHEIC process, and other litigation settlements will provide another measure of support for Holocaust survivors. The ICHEIC process itself represented one of many ways the United States addressed and continues to address the plight of Holocaust survivors.

With that, I would like to say thank you, Mr. Chairman, for the opportunity to speak to the committee.

[The prepared statement of Mr. Bindenagel appears as a submission for the record.]

Senator SCHUMER. Thank you, Ambassador. Your entire statement will be read into the record.

Mr. BINDENAGEL. Thank you.

Senator SCHUMER. Senator Blumenthal wants to say a few words, and he has been one of the big fighters for this in the Senate and always cares about issues of justice, so I would like to call on him for a second.

Senator BLUMENTHAL. Thank you, Senator Schumer, for the inspiration of your leadership, and thank you to all of the Holocaust survivors and their advocates who are here today. I view this hearing as tremendously and profoundly important. I am sorry that it is in the midst of a series of votes which may seem somewhat distracting, but I would just like to assure everyone who is here that the ultimate issue commands our attention, as it should, as a matter of justice, and I am very proud to join in the fight that Senator Schumer has so courageously waged over many, many years and thank him for holding this hearing.

Senator SCHUMER. Thank you, Senator Blumenthal.

I have a few questions, although I have to say that the testimonies of both Leo Bretholz and Renee Firestone speak for themselves, and I will hope all of my colleagues can read it because that says it all, and I thank the two of you particularly for your courage as well as the other witnesses.

I want to ask you, Mr. Bretholz, has SNCF ever reached out to you in any meaningful way?

Mr. BRETHOLZ. No.

Senator SCHUMER. And what about some of the efforts SNCF made in France? And they have been met somewhat receptively by the French Jewish community.

Mr. BRETHOLZ. I can really not speak for the French Jewish community, but the French Jewish community is somewhat reluctant to what you call rock the boat, you see, because——

Senator SCHUMER. I am sure there is a French expression for that that neither of us knows. [Laughter.]

Mr. BRETHOLZ. You just heard what happened in Toulouse with the killing.

Senator SCHUMER. Yes.

Mr. BRETHOLZ. They are afraid if they would rock the boat, there will be more atrocities.

Senator SCHUMER. Understood.

Mr. BRETHOLZ. That is really the issue. They do not want to——

Senator SCHUMER. That is all too often the mentality in some of the European communities. Praise God it is not here in America, nor yours.

OK. I want to ask Delegate Rosenberg—and I first want to commend him for his efforts in Maryland.

Mr. ROSENBERG. Thank you.

Senator SCHUMER. Now, as SNCF continues to obscure its role in the Holocaust, thanks to your legislation in Maryland we are going to have the historical record of a true, whole account of their records from that time. Are they planning to comply with your legislation, do you believe?

Mr. ROSENBERG. Well, we do not know for sure. They have submitted a bid for the contract in Maryland, and they have submitted information. The State archivist, under our law, will determine

whether they have complied, whether they have given the relevant information, and we expect to know that within the month.

Senator SCHUMER. Thank you.

And for you, Professor Swaine, as you know, Congress successfully passed amendments to the FSIA in the past. For example, we amended the FSIA to allow civil suits by U.S. victims of terrorism against designated state sponsors of terrorism. Additionally, we enacted legislation enabling those held hostage in the U.S. Embassy in Iran to bring suit in U.S. court.

Did the Congress have the authority to enable terror victims and hostages to sue? And does Congress now have the authority to pass a narrow amendment to the FSIA as seen in the Rail Justice Act?

Mr. SWAINE. Thank you, Senator Schumer. Congress undoubtedly has the authority as a matter of our domestic law. There is no question that under the Constitution Congress can do this. The issue that I think is worth examining in light of the values that Congress has previously expressed is how to make changes to the law compatible with international law and with our international interests.

Congress has revised the FSIA to, as you say, expand the possibility of immunity—the possibility of liability for state entities that would otherwise consider themselves immune. Those have typically been very narrowly drawn, not unlike this legislation, but without focus on particular states or entities, rather on classes of conduct in general. For example, the terrorism measure focus has an administrative component to it. States have to be designated as "sponsors of terrorism," and there are other limits in it as well, including limitations based upon nationality or other identity of the plaintiffs.

So Congress has in the past had sometimes internationally controversial but well-considered changes to the FSIA, and my point is simply to urge the same kind of focused attention to these issues.

Senator SCHUMER. All right. Great. Thank you, Professor Swaine.

Ms. Firestone, I want to thank you for being here and standing up for what you believe in so strongly, not only on behalf of yourself but other survivors. If the legislation is passed, what do you hope and expect to happen in court if the surviving European insurance companies are sued?

Ms. FIRESTONE. Mr. Schumer, I do not think I will live long enough to finish a court session about this insurance. What I want and what most survivors want, we do not want to die as second-class citizens in this country, like my parents died somewhere else. That is the only reason we are fighting for this. We want to have the same rights to go to court and claim our issues like any other American.

Senator SCHUMER. And you could not be more on target in asking for that. You are entitled to it.

Ms. FIRESTONE. So I hope you will fight, you will vote.

Senator SCHUMER. We will do our best, of course.

Now, to Ambassador Bindenagel, one of the criticisms that Ms. Firestone and others have made about the ICHEIC process is that the list of names that the companies use were not made available and accessible to the survivors. Can you address this issue and also

explain where the list came from, whether they were ever audited by someone outside of ICHEIC?

Mr. BINDENAGEL. In fact, Senator, thank you very much for that question. It is a very, very important question. The 550,000 names actually were compiled through many ways, and I will find here in 1 second where they were. There is a website at the Yad Vashem that has those names. Those names were compiled in the first instance by taking names of Jewish citizens in all of the countries and matching them against the lists of the companies. That is the basic understanding of how that list was created, and the 550,000 names were there. That does not mean they all had policies, but it did mean that some of those Jewish citizens who are named had policies. They were checked against the companies. It was overseen by several other organizations in the process of making sure that that was a legitimate list.

But, again, it was not everybody that had a policy but, rather, the list of people that could potentially have had policies.

Senator SCHUMER. What could be done to make it better and more complete?

Mr. BINDENAGEL. One of the things that would be very important—the information is really very complete as far as the historical record is that the claimants still have the opportunity to take that list—it is still public knowledge; it is on the website at Yad Vashem; it can be seen—and clamaints can still make a claim. We never closed off the claims process. When I checked, the companies have continued to keep their process open. If anything, there should be oversight of that process. We should look at the reports that come out of the insurance association. How many of the last 219 inquiries were addressed, so that there would be an interaction with Holocaust survivors and heirs? They would have an opportunity to say, yes, these claims are still being processed, and also could work with the Holocaust Claims Processing Office in New York. The Holocaust Claims Processing Office has been very helpful in doing research that has been necessary for those claims.

Senator SCHUMER. Well, again, I thank you. We have a little bit of difference of opinion here for sure.

Mr. BINDENAGEL. Yes.

Senator SCHUMER. But I want to thank our first witnesses. We have another vote. Do you have any questions, Senator Blumenthal?

Senator BLUMENTHAL. I want to again express my appreciation. Ambassador, is it your feeling that SNCF has been held adequately accountable?

Mr. BINDENAGEL. I did not deal with the SNCF argument, but I will tell you it never came up in the negotiations that we did with the Holocaust.

Senator BLUMENTHAL. But I would believe that in your view as someone who has a lot of experience in this area as to whether you feel as a matter of equity SNCF has been held adequately accountable.

Mr. BINDENAGEL. SNCF needs to be held accountable. That is my view.

Senator BLUMENTHAL. And has not been so far.

Mr. BINDENAGEL. They need to be accountable.

Senator SCHUMER. You can see why he was one of the best Attorneys General.

Mr. BINDENAGEL. He is very good.

Senator BLUMENTHAL. Let me turn to Professor Swaine. I do not mean to ask an indelicate or undiplomatic question, but are you assured that claims for anyone who passes away during the pendency of any litigation that may be brought, assuming that the Congress does act, will be adequately protected?

Mr. SWAINE. Sir, the claim of decedents, people who inherit the claim?

Senator BLUMENTHAL. Correct.

Mr. SWAINE. I am not assured of that. That would be an issue that would be presumably adjudicated in U.S. courts were this bill to pass.

Senator BLUMENTHAL. Can we do something to assure that those interests are protected as part of what the Congress might do?

Mr. SWAINE. Congress might attempt to address that to a degree that it has not previously. There are a host of domestic litigation issues connected with the bill that I did not address in my testimony, including the difficulty conceivably of recovering. One of the issues that is frequently faced in these actions is enforcing the judgments and simply exposing any state entity to a suit does not guarantee the enforceability of any judgment—which I think is in the past one of the reasons why diplomatic efforts have sometimes been preferred, because they are often a surer way of getting a foreign entity to contribute its assets to reparations than domestic litigation.

Senator BLUMENTHAL. I would be interested in talking to you and others about those secondary issues that may arise. We do have another vote. I apologize that I am going to have to leave.

Senator SCHUMER. We are going to have to close the hearing because of the other vote. It has been great. I would just like the survivors—there are many survivors here who have come to witness. Would you please just rise so we can acknowledge you and thank you?

[Applause.]

Senator SCHUMER. Thank you. I thank all of the witnesses and all of those who came. Again, we are sorry for the cramped conditions, but the record will be open for a week for people to submit written testimony.

With that, the hearing is adjourned.

[Whereupon, at 3:53 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

July 12, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
Washington DC 20510-6275

Sent electronically to:
Halley Ross, Hearing Clerk

Dear Chairman Leahy:

I write in response to the written questions sent to me following my June 20, 2012 testimony before the United States Senate Committee on the Judiciary in support of S. 634, the Holocaust Rail Justice Act.

In response to the question concerning the Maryland law requiring SNCF to open up its archives, digitize its records, post these records on-line, and provide a written statement of property taken, individuals deported, and reparations paid, I attach a written letter recently sent to the Maryland State Archivist. As noted in this letter, the Maryland State Archivist is responsible for overseeing and ultimately making a determination on SNCF's compliance with the law.

The letter, signed by me and the two Committee Chairs of Jurisdiction, Senator Joan Carter Conway of the Education, Health and Environmental Affairs and Delegate Pete Hammen of the Health and Government Operations Committee, raises serious concerns about the independence, as required by the law, of the historian hired by SNCF and approved by the State Archivist. Additionally, this letter addresses SNCF's failure to provide, as required by the law, a written statement summarizing property taken, individuals deported, and any reparations paid.

Given the serious issues now raised with respect to SNCF's purported compliance with the statute's requirements, it is impossible at this time to more fully address the two specific subparts of Question 1. However, if the Committee should so desire, I would be pleased to keep the Committee apprised of any further relevant developments. Thank you for the opportunity to respond to this question.

Sincerely,

Samuel I. "Sandy" Rosenberg
Delegate

43rd Legislative District
Baltimore City

Chair
Education, Health, &
Environmental Affairs Committee

Chair
Health Subcommittee

Vice Chair
Environment Subcommittee

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July 9, 2012

Dr. Edward C. Papenfuse
State Archivist and Commissioner of Land Patents for Maryland
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Annapolis, MD 21401

Dear Dr. Papenfuse:

We write to you regarding our very serious concerns about the independence of the historian approved for the review of the digitized records submitted by SNCF in connection with Sections 12-501 through 12-511 of the State Finance and Procurement Article. As outlined in detail below, and based upon the information we have reviewed, the historian selected by SNCF and approved by the State Archivist, Dr. Michael Marrus, seems to be anything but independent of SNCF, as required by Section 12-506.

Pending a determination of the nature of the relationship between Mr. Marrus and SNCF and thus whether Mr. Marrus can indeed, given the facts outlined below, be considered independent, we respectfully request that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these troubling issues can be undertaken.

In addition, based upon our review of your written notice submitted on June 22, 2012, and all of the related materials that you have provided in connection with this notice,[1] we are deeply concerned that the entity has failed to meet the

[1] These materials included, as provided in the email you sent to Delegate Sandy Rosenberg on June 22, 2012 at 4:50 PM, (1) the letter from Michael R. Marrus to Dr. Edward C. Papenfuse dated December 13, 2011; (2) the Final Report of Michael R. Marrus dated March 12, 2012; (3) the letter from Trudy Huskamp Peterson to Dr. Edward C. Papenfuse dated December 13, 2011; (4) the Final Report by Trudy Huskamp Peterson dated March 24, 2012; (5) the letter from Trudy Huskamp Peterson to Dr. Edward C. Papenfuse dated June 19, 2012; and (6) the Report from Henri Zuber dated May 24, 2012.

requirements of Sections 12-507(2) through 12-507(5). Nowhere in your written notice or in any of the supporting documentation provided by the designated historian, the designated archivist, or the entity, have we seen anything that even addresses, let alone fulfills, certain requirements of these sections.

As you can appreciate, this glaring omission is deeply troubling and of grave concern to our constituents. To the extent that the information required by these sections has not been provided to you, it would seem to be impossible to determine that the entity has met the requirements of this statute. Again, we respectfully reiterate our request above that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these apparent omissions can be undertaken.

Outlined below are instances we have found, from publicly available sources, that raise serious questions about the "independence" of the designated historian, Michael Marrus, as required by the statute. As you will no doubt appreciate, all of these statements, indicating a clear bias and lack of impartiality, were made in 2010, the year before passage of the statute at issue, and thus before Mr. Marrus was designated as the relevant historian.

- "Michael R. Marrus, a University of Toronto law and history professor who has written extensively about Jewish persecution in Vichy France, said SNCF "became part of the Nazi war machine" after Germany defeated France in 1940. Marrus said the French government took responsibility for the crimes of its World War II-era Vichy government in the mid-1990s and has paid reparations to survivors and victims' families. Those payments have been slow to come and in many cases had to be forced by lawsuits, Marrus said. ***However, he said, he believes continuing to "stigmatize" SNCF more than 60 years after the atrocities were committed is "nonsensical." "No one in the SNCF now was making decisions back then," Marrus said."*** (emphasis added). "Holocaust Group Faults VRE Contract," *The Washington Post*, July 7, 2010.

- "Michael Marrus, a historian and University of Toronto professor, has written extensively about the Holocaust in France. ***He agrees with Townsend that SNCF and its subsidiary shouldn't be punished today for what happened 70 years ago.*** "When the deportees reached Paris, they were taken on a bus, so what about the bus companies?" Marrus asks. "What about the companies that supplied the petrol for the buses?" In occupied France, the entire society became part of the Nazi war machine, Marrus says...***But, Marrus says, the French government and SNCF have come to terms with their past. In the 1990s, the government began paying reparations, and the train company opened its books."*** (emphasis added). "Holocaust Survivors Blast French Rail's U.S. Pursuits" *NPR.org*, August 23, 2010.

- "University of Toronto law professor Michael Marrus told The Jerusalem Post that the California bill was "a misguided effort in the generally admirable

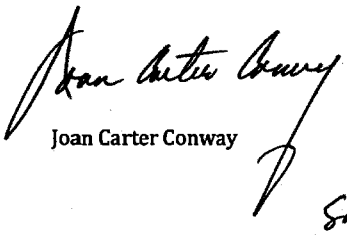
quest for justice for historic wrongs." ... "How does one draw the line?" he asked. "What about American companies or institutions that profited from slavery?" ... ***"To what degree is the SNCF in 2011 the company that committed wrongs or crimes in 1942-45?" he asked. "All, or almost all, of the wrongdoers have now died. Should the present-day company pay? And who should be paid? French courts have, after lengthy litigation, decided no." Marrus said SNCF had made "extraordinary efforts" to come to terms with its past, holding both a symposium and commission of inquiry into its wartime role. "When is full disclosure and acknowledgement of responsibility enough?" he asked."*** (emphasis added). "Railroads to Disclose Holocaust Role under Proposed CA Bill," *Jerusalem Post*, August 16, 2010.

As you can see, Mr. Marrus' public statements, made well before the passage (or even introduction) of the legislation at issue, raise serious concerns about his impartiality and the independence required under the law. In fact, these statements display significant and deeply entrenched preconceived notions and biases about SNCF, its current responsibility for its role in the Holocaust, and indeed even the status of the company "open[ing] its books" (the very subject of the statute at issue).

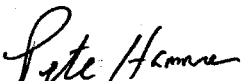
We are also attaching to this letter an invitation to a March 1, 2012 event at the Embassy of France. This invitation makes clear the exhibition "was made possible through the generous support of SNCF" and that Michael R. Marrus would be present at the event. This event, involving both SNCF and Michael R. Marrus, was held less than two weeks before Mr. Marrus issued his Final Report in connection with this statute. Consistent with the statements outlined above, it is very difficult for us to understand how Mr. Marrus could be considered "independent" as required by the law.

For the reasons stated above, we respectfully request that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these troubling issues can be undertaken.

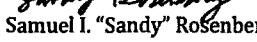
Respectfully,



Joan Carter Conway



Peter A. Hammen



Samuel I. "Sandy" Rosenberg

cc: Secretary Beverly K. Swaim-Staley
Matthew D. Gallagher, Chief of Staff, Governor Martin O'Malley
Frank Principe, Chief of Staff, MDoT
Bonnie A. Kirkland, Assistant Attorney General

From: Mémorial de la Shoah <deborah.farnault@memorialdelashoah.org>
Date: February 24, 2012 10:34:09 PM EST
To: [redacted]
Subject: Invitation from the Ambassador of France to the United States, and M. Jacques Fredj, Director of Mémorial de la Shoah

"Hélène Berr - A Stolen Life"
An exhibition created, designed and toured by
The Mémorial de la Shoah, Paris, France.

Opening Reception Invitation

March 1, 2012
La Maison Française
Embassy of France

Almost two years after the publication of her journal, written between 1942 and 1944, the Mémorial de la Shoah chose to return to the tragic destiny of Hélène Berr, a young Jewish Parisian girl. Expanding beyond the strict framework of a journal and the personality of Hélène Berr, this exhibit elaborates on the background of the Occupation and more broadly addresses the persecution of the Jews in France during World War II.

A student of English, Hélène Berr was 20 years old when she began writing her journal. The year was 1942, and the anti-Jewish laws of Vichy began, little by little, to radically change her life. Until March of 1944, the date of her arrest, she kept her journal on a daily basis.

François Delattre,
The Ambassador of France to the United States of America

Cordially invites you and a guest
To the opening reception of the exhibition

"Hélène Berr, A Stolen Life"
Designed, created, and circulated
by the Mémorial de la Shoah, Paris, France

In presence of
Jacques Fredj, General Director of the Mémorial de la Shoah,
Michael R. Marrus, Professor Emeritus of Holocaust Studies, University of Toronto
and
Mariette Job, Niece of Hélène Berr

On March 1, 2012 at 7:00 PM
At La Maison Française

RSVP at clement.villiers@ambafrance-us.org
Business Attire

La Maison Française
Embassy of France
4101 Reservoir Road, NW
Washington, D.C. 20007

This exhibition was made possible through the generous support of SNCF (France Railway Company)

Reply to Questions for Record Submitted by Senator Jeff Sessions
Professor Edward Swaine

1. *If the United States chose to allow suits to go forward against SNCF as an exception to the Foreign Sovereign Immunities Act (FSIA), could the United States government then be sued in France or other countries? Please explain your answer.*

My written testimony addressed the question of whether (and under what conditions) a decision to permit suit against SNCF might be deemed to violate international law. However, assuming France took the view that the United States had unlawfully infringed on its sovereign immunity, it would probably have limited opportunities for suit.

Because I am not expert in civil law, I cannot say whether existing French law would permit France (or SNCF) to sue the U.S. government. France might, in any event, change its law to permit suit, just as the United States might enact this exception to the FSIA. Neither prospect seems particularly likely. France respects principles of sovereign immunity, and the mere fact that the United States had permitted lawsuits to proceed under these circumstances would not necessarily warrant a French countermeasure enabling recovery against the United States for its purely sovereign legislative acts. Nor am I aware of any likely basis for suit against the U.S. government in a third country.

Although it is not directly addressed by the question, there is a related possibility – that France might, in principle, attempt to initiate proceedings against the United States before the International Court of Justice (ICJ). Such a suit might seek to capitalize on the principles stated in that Court's recent judgment in *Jurisdictional Immunities of the State (Germany v. Italy)*. However, ICJ jurisdiction is limited. Because the United States has withdrawn from the ICJ's so-called compulsory jurisdiction, and because the United States is unlikely to consent to jurisdiction by entering into a special agreement with France, France would have to invoke an international agreement that vests the ICJ with jurisdiction over a relevant class of disputes – and to which both the United States and France are parties.

To be clear, whether the United States could be sued in France or elsewhere does not bear on whether S. 634 violates international law in the first place – and whether the United States' legal reputation is at stake – or whether there may be other adverse consequences.

2. *In your view, how might other countries react if Congress chose to create an exception to the FSIA in this case?*

For the reasons expressed in my written testimony, other countries may object to various aspects of S. 634: for example, the exception it would forge to domestic and international principles of sovereign immunity and the lack of any traditional nexus between the contemplated suits and the United States.

In the past, foreign countries have sometimes adopted retaliatory legislation in reaction to what they perceive as U.S. jurisdictional excesses – for example, by adopting "claw-back" legislation

to enable foreign defendants to recover damages from successful U.S. plaintiffs. That kind of measure, however, seems highly inappropriate and unlikely in these circumstances.

A more likely reaction would be for France and any other concerned countries to engage the United States on a diplomatic level to express their objections. Moreover, while the drafting of S. 634, these hearings, and the continued interest expressed by individual members of Congress has probably encouraged further consideration of reparations for deportation victims, actually enacting legislation could have the opposite effect: once the option of litigation is established and suits are filed, the incentives for plaintiffs and defendants to cooperate with alternative mechanisms will be diminished, at least if France perceives that the risk of litigation can no longer be avoided.

As discussed in my written testimony, the most subtle, and potentially most serious, adverse reaction by other countries would be in the form of increased willingness to entertain comparable exceptions to the sovereign immunity of the United States – reasoning, for example, that some alleged participation by the U.S. government (or its agencies or instrumentalities) in serious wrongdoing might warrant a similarly tailored approach permitting a limited class of suits to proceed. The United States should be sensitive to the fact that its behavior may influence international legal practice, and consider whether the approach taken here is one that it would itself welcome – if administered by foreign governments and their courts.

3. *As you know, in 1944, France began an extensive reparations program to compensate all French citizens or residents who had been deported. These programs remain available to all eligible victims, even those who have subsequently become U.S. citizens. Courts in both Europe and the U.S. have ruled that these programs are sufficient. Moreover, the State Department's long-held position is that reparations programs are preferred over litigation, especially in the case of Holocaust survivors. Given that these programs are in place, is an exception to the FSIA unnecessary in light of the risk to reciprocal protections given to the U.S. by other countries?*

I have not had the opportunity to evaluate with sufficient care the extent of compensation available under existing French programs for all classes of deportees. Decisions by the Conseil d'État and the European Court of Human Rights have addressed this topic, but it is my understanding that their scope of inquiry was limited and that their factual premises have been challenged. The sufficiency of these programs was not resolved in the most relevant U.S. proceedings (in *Abrams v. SNCF*, referenced in the draft findings). Another case noted in my written testimony, *Freund v. SNCF*, instead addressed the adequacy of alternative mechanisms for spoliation claims, and it appears that the Statement of Interest submitted by the State Department in that case was limited to claims against the Caisse des Dépôts det Consignations (CDC). The scope of French programs may in any event evolve due to continuing efforts on behalf of deportees.

As a general proposition, however, well funded and competently administered reparations programs have distinct advantages over litigation. Such programs can reduce the expenses born by litigants and avoid problems of procedure and proof that can delay and frustrate recovery in civil proceedings. Moreover, the cooperative nature of such programs means that they do not

pose the same degree of risk to the reciprocal character of foreign sovereign immunity – on which the U.S. government depends and which would be threatened by the adoption of legislation that violated international law.

In any event, as indicated in my written testimony, it should be noted that – even if existing French programs are inadequate – that does not constitute a basis in international law for limiting the otherwise applicable scope of foreign sovereign immunity, even where the underlying offenses are heinous in character.

4. *Congress has enacted only one explicit exception to the longstanding U.S. policy and practice of according immunity to foreign governments from lawsuits based on their public acts and that is for acts of terrorism. By contrast, S. 634 would authorize lawsuits against a close ally of the United States based on historical acts that the Executive branch has already determined are entitled to immunity. Moreover, the French Government as acknowledged these acts publicly and has established reparations for the victims. Is there reason to be concerned that S. 634 would create a dangerous precedent, damaging the FSIA and potentially our relationship with France?*

The overall impact S. 634 would have on U.S.-French relations is speculative. However, it is my opinion that the bill would present serious issues of legal policy. As reflected in my written testimony, the FSIA was developed so as to be consistent with international law. Arguable departures from those principles have been rare, and drafted so as to reduce both legal objection (for example, by limiting the expropriations exception to property or commercial activities relating directly to the United States, and limiting the nature of the claimants under the acts of terrorism exception) and diplomatic objection (for example, by relying on a procedure to designate foreign states subject to the terrorism exception, and otherwise avoiding country-specific statutory exceptions).

As indicated in my written testimony, the United States has a compelling interest in avoiding breaches of international law, because our government and citizens frequently depend upon its observance. The area of sovereign immunity is no exception, even in circumstances in which gross violations of human rights are concerned, so long as international legal principles continue to afford foreign sovereigns rights against suit in the courts of other nations.

Legislating in favor of human rights generally sets a positive precedent. And narrowly tailored exceptions to the immunity recognized by the FSIA are appealing because they seem to limit any negative precedent – that is, they address immediate and compelling claims while avoiding broader inroads with less certain consequences. Nonetheless, this style of legislating likely sets a bad precedent, both in terms of U.S. decision-making and for foreign countries evaluating the immunity of the U.S. government in the context of particular events. The downside may be particularly clear where, as here, a proposed exception focuses on the immunity of an agency or instrumentality of a country that is not marginalized in the international community, and which may remain open to diplomatic resolution.

5. *At the hearing, you mentioned a "host of domestic issues connected with [S. 634]" that you did not address in your testimony, including the difficulty of recovery. Please take*

this opportunity to elaborate on those issues. **[N.B.: I changed the bracketed reference from S. 1994 to S. 634, per an exchange with staff.]**

S. 634 attempts a simple change in the law: it eliminates any immunity otherwise established by 28 U.S.C. § 1604, and deems inapplicable any statute of limitations, for certain types of cases in which money damages are sought against covered railroads. The apparent purpose is to enable a class action against SNCF of the kind dismissed in *Abrams v. SNCF*.

Nevertheless – putting aside issues already mentioned in my written testimony, such as a potential retroactivity objection and the uncertain application to other European railroads – plaintiffs would still face several obstacles to recovery. I will briefly mention several, without purporting to offer an opinion on how they would be resolved, in order to illustrate potential complications in any ensuing litigation. I will ignore others, such as any potential challenges to class certification.

Despite S. 634, a court may consider jurisdictional objections. For example, personal jurisdiction questions are normally sidestepped under the FSIA, because 28 U.S.C. § 1330(b) deems personal jurisdiction to exist for all actions for which an exception under §§ 1605-1607 applies. I assume S. 634 would be codified in such a way as be included among the referenced sections. Nevertheless, it is notable that the proposed exception dispenses with the nexus requirements of other FSIA exceptions, giving rise to at least a remote possibility that a covered railroad might invoke constitutional due process rights limiting a court's jurisdiction over it (see, for example, the recent decision by the D. Circuit in *GSS Group Ltd. v. National Port Authority*). Whether such an argument is colorable would depend on the degree of the railroad's connection to the United States, which I have not reviewed.

Assuming jurisdiction, proceedings on the merits may not be straightforward, even assuming that the facts support defendants' liability. Discovery can be challenging in cases against foreign sovereigns. The proper legal basis for the claims may also be disputed. (The FSIA itself does not establish a cause of action, and S. 634 does not appear to do so either; rather, it removes immunity for certain cases in which "money damages are sought . . . for personal injury or death." In the *Freund* litigation against SNCF, plaintiffs alleged violations of customary international law, presumably in part to assist in their argument against sovereign immunity, but that may no longer be necessary.) And nothing in S. 634 purports to resolve various defenses SNCF may invoke, such as *forum non conveniens* or abstention based on judicial comity.

Finally, there remains the problem of recovering any judgment plaintiffs may be awarded. The FSIA limits the postjudgment attachment of sovereign property to a defined set of exceptions, none of which is obviously relevant to the present circumstances. S. 634 addresses immunity from liability, but does not purport to remove this immunity from attachment; doing so may not assist plaintiffs in any event, depending on whether SNCF (or other potential defendants) have assets in the United States, and removing that immunity would potentially constitute a separate breach of international legal obligations. The result, in all likelihood, is that the plaintiffs will be forced to seek the enforcement overseas of any judgment in their favor, which can be an arduous task. Whether litigation would be likely to yield tangible and timely financial benefits for the plaintiffs obviously merits close consideration.

SUBMISSIONS FOR THE RECORD

Compensation for Holocaust Era Insurance Claims

The insurance industry seeks to ensure that all unclaimed and unpaid insurance policies from the Holocaust era are appropriately paid to Holocaust survivors and to the heirs of Nazi victims. After the International Commission on Holocaust Era Insurance Claims (ICHEIC) ceased formal operations in March 2007, its members committed to continuing to process subsequent Holocaust-era claims under ICHEIC's valuation guidelines and relaxed standards of proof, a commitment to which they closely adhere to today.

- To date the ICHEIC process has helped some tens of thousands of claimants recover hundreds of millions of dollars, even though most of those claimants had no documents about or records of the insurance policies for which they filed claims.
- **Even though ICHEIC has concluded its operations, Holocaust survivors and their heirs can still pursue claims for insurance policies to which they believe they are entitled.** Claimants on any unpaid Holocaust-era insurance policies should file their claims with the insurance companies or organizations listed below.
- Moreover, working with European insurance companies and other organizations, ICHEIC has prepared a comprehensive list of potential policyholders that can be accessed at http://www1.yadvashem.org/pheip/.

Claimants may also submit inquiries or claims regarding Holocaust-era insurance policies to the New York State Holocaust Claims Processing Office (HCPO) of the State of New York's Department of Financial Services. The HCPO will assist claimants and, where possible, work with the appropriate company or organization to resolve such claims.

This ad is paid for and approved by the American Insurance Association

Post-ICHEIC Statistics (AVHO)

as of 18 June 2012

I. NUMBER OF INQUIRIES (can include multiple names and policies) received since 20th March 2007*

	Total No. of inquiries for insurance policies of Holocaust victims	No. of inquiries closed	No. of inquiries pending
No. of company specific inquiries	163	152	11
No. of general inquiries for all companies	49	47	2
No. of company specific and general inquiries	7	7	0
TOTAL NUMBER OF INQUIRIES	219	206	13

II. NUMBER OF POLICIES

	No.
Total number of additional Policies identified out of new inquiries (see above I.) after the close of the comprehensive German insurance compensation between 1953 and 2007	102
No. of additional identified policies eligible for compensation	41
No. of additional identified policies not eligible for compensation…	61
… because previously paid by companies	39
… because of previous compensation by German state entities	11
… because of previous compensation via the ICHEIC process	11

III. AMOUNT OF ADDITIONAL COMPENSATION voluntarily paid by German companies after 20th March 2007

Amount paid in USD	plus amount paid in EUR
910557,00	**451797,24**

** As of 1st January 2008, the German Insurance Association has established a new supplementary process to*

June 24, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C.

Dear Chairman Leahy and Ranking Member Grassley:

I am responding to a letter submitted by Bet Tzedek with regard to the Holocaust Rail Justice bill that was heard before your committee on June 20, 2012 and Chaired by Senator Schumer. I would appreciate the inclusion of this letter in the official record and I would also like to express my personal opposition to the Holocaust Rail Justice bill.

There are two points I wish to address.

First, the letter from Bet Tzedek and from other submissions asserts that SNCF collaborated with the Nazis willingly as a matter of a business transaction. The historical record clearly and unambiguously indicates quite the opposite. At the time of the Armistice between the Nazis and a defeated Third French Republic, June 22, 1940, all French transport according to Article 13 was put at the disposal of and under the direction of Nazi authorities--no ambiguities, no equivocation and no wiggle-room.

Furthermore, harsh penalties, indeed, the harshest penalties were announced in further documents for disobeying German orders. Several thousand SNCF employees paid the highest price for resisting Nazi orders. Other German documents clearly delineate in excruciating detail what kind of train cars—freight cars--should be used to transport Jews, what Jews could carry with them, what kind of latrine would be provided, etc. German authorities left nothing to the imagination and provided for the littlest detail in carrying out their plans of horror, indignity and spirit-breaking humiliation during the transportation to death camps. These were not the orders or wishes of SNCF but of the Nazis. In 1940, to insure that Nazi orders were carried out fully without opposition including those regarding transport,

Adolf Eichmann left his henchman in Paris, S.S. Captain Danneger, to oversee all matters relating to Jewish Affairs.

There is much more documentation on this subject than I can cover in this short letter. Especially with regard to this subject, namely, the role of SNCF during the Shoah, it is untrue and unfair to speak of SNCF willingly collaborating with the Nazis. It is quite remarkable how historical inaccuracies on the scale of those relating to SNCF get started and are passed on among educated, enlightened people. It reminds me of those who doubt or deny that the Holocaust ever took place, disregarding the voluminous historical record first established at the Nuremberg Trials. The bigger the stories get, and they get bigger with the passage of time which tends to distort memory, the less we are able to deal reasonably with such momentous issues as legislation.

Should SNCF as a company and its personnel be held accountable for following the orders of their conquerors? In truth, everyone in that period of history shares in the shame and responsibility—what Hanna Arendt referred to in Eichmann and Jerusalem as the "moral collapse" of Europe during the Nazi era. But that thought needs to be tempered with another thought. In his essay on "The Case of the French Railways and the Deportation of Jews" by Michael Marrus, the outstanding historian of the Vichy regime, Marrus repeats the often reported statement by Arno Klarsfeld that "if the SNCF is guilty...then the guy who drove the bus is guilty, then the guy who provided the gas is guilty, the person who typed the lists is guilty."

Since the 1990s in particular, SNCF has admitted its role in the Shoah and sought to showcase that role by supporting an extensive program of Holocaust remembrance and education in France, with projects also in Israel and now in the United States. Perhaps late to the game, they should not be faulted for making up for lost time.

This brings me to my second point. As Chairman of the Foundation for California, I am particularly disturbed by the suggestion that SNCF is engaged in an effort to distort history and/or put a public relations spin on its activities in America for the sake of gaining contracts for high speed rail. So far as I can tell, high speed rail is a dead issue now and for the foreseeable future. It is for this and other reasons that I am disturbed by these demeaning accusations impacting those of us who are working in the area of Holocaust education and have been fortune enough to receive a grant from SNCF for work in the area of remembrance and Holocaust education.

SNCF provided a grant to the Foundation for California to take the well-known Holocaust exhibit, "The Courage to Remember," an exhibit created by the Museum of Tolerance, the educational arm of the Simon

Wiesenthal Center, to cities large and small, to libraries, to shopping malls, to schools, to synagogues, to churches and to other places where people gather. We are presently doing this in California—we have three exhibits touring the state, and in Florida and soon we will be taking it to other states.

The appetite for Holocaust education is enormous given the rising tide of anti-Semitism sweeting through Europe and elsewhere. The Foundation first took the exhibit on tour in California in the early 1990s for a period of two years. We have also taken the exhibit to Japan, where over two and a half million Japanese have seen it, and to Beijing, Shanghai, Hong Kong, Taipei, Bangkok, Delhi and Bangalore. Soon we will open the exhibit in Mumbai. In the past, we have shown the exhibit in the Cannon House Office Building and other venues on the East coast.

At the Foundation, we believe in the vital importance of our work. Anti-Semitism, which feeds Holocaust denial, nurtures terrorists and leads to violence against Jews, Israel and Western nations. Holocaust education today is no more just a module in a public school curriculum; rather, it is a national security priority. Sadly, the next wave of Survivors may not be far off. These thoughts give those of us engaged in Holocaust education new meaning to our work.

To demean the efforts of SNCF in this area by referring to them as public relations is disheartening. Two new panels have been added to our exhibit outlining the role of SNCF in the Shoah. I insisted on adding these but without any opposition from SNCF. SNCF has made Holocaust remembrance part of its corporate culture, and has made transparency with regard to its record during the Shoah a corporate hallmark. Other companies, such as Japanese companies that enslaved and tortured American POWs during the Second World War, have never offered even the slightest recognition of their terrible wartime deeds.

With reference to SNCF acknowledging its past and contributing to our common future, I would like to conclude with two recent quotes, the first by Rabbi Abraham Cooper, Associate Dean of the Simon Wiesenthal Center, the other by California State Senator Alan Lowenthal.

At the opening of the Courage to Remember exhibit at the Jewish Community Center in Broward County, May 16, 2012, Rabbi Cooper stated,

"I also want to commend SNCF for its commitment to learning and imparting the difficult lessons of the Shoah, including those related to their predecessors during World War II."

At the opening of the Courage to Remember exhibit, September 19, 2011 at the Library of California State University at Long Beach, Senator Lowenthal, now a candidate for the United States Congress, stated that

"I want to thank the Wiesenthal Center for Courage to Remember for this educational venture, I want to thank SNCF. It is interesting in the State Legislature, and I am going to talk about my experience this past few years. You know California is thinking about embarking on a high speed rail endeavor and there are numbers of companies that wish to apply for the resources to develop and wish to develop this. During the time I served on the transportation committee and during the hearings, SNCF was brought out and criticized because of their role during the second world war in the movement of Jews to the death camps. It was a horrible experience it was very difficult and painful just listening to this on the committee but I really want to applaud SNCF for acknowledging what took place, for saying that's not who we are, that for stepping forward to educate people on what the Holocaust was all about, for being here for this exhibit, it is really a wonderful tribute to a company and I think it really reflects what we are here about, to remember, to remember and to grow from it...."

Sincerely,

Alfred Balitzer, Ph.D.

June 18, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of Bet Tzedek, we write in support of S. 634, the Holocaust Rail Justice Act. Bet Tzedek is a 501(c)(3) organization whose mission is to relentlessly pursue justice – real justice and equal justice – for the poor, the disadvantaged, the sick and the elderly, and for Holocaust survivors who are so much in need of our services. Consistent with this mandate, Bet Tzedek provides free legal services to Holocaust survivors and puts Holocaust survivors in touch with available reparations programs. Bet Tzedek is widely recognized as an authority on issues related to Holocaust reparations.

Given Bet Tzedek's support of the Holocaust Rail Justice Act, Bet Tzedek's unqualified belief that this legislation will provide the just and appropriate opportunity for Holocaust survivors to finally have the day in court they so very much deserve, Bet Tzedek was gratified to learn that the Committee will be holding a hearing on the subject of Holocaust-Era Claims in the 21st Century. We respectfully request that this statement be included in the hearing record for the hearing scheduled for June 20, 2012.

Bet Tzedek strongly supports the efforts of Holocaust survivors and their families to seek justice from Société Nationale des Chemins de fer Français (SNCF), the French rail company responsible for deporting 76,000 Jews and other "undesirables" – including American pilots shot down over France – to Nazi death camps during World War II. SNCF operated the trains as a commercial venture in collaboration with the Nazis. The company was paid per head, per kilometer by the Nazis to deliver thousands to their ultimate deaths. And yet, SNCF has never paid so much as a penny to make amends for the atrocities it was complicit in facilitating.
The Holocaust Rail Justice Act, which now has eighteen bipartisan co-sponsors in the Senate and 55 in the House, represents the best – and only – remaining opportunity for SNCF's victims to pursue justice in their lifetimes.

In the 67 years since the end of World War II, SNCF has never been held accountable, it has never paid reparations to its victims, and its victims have never had their day in court. Hundreds of survivors and family members of those who perished have been engaged for over ten years in an effort to hold SNCF accountable in U.S. courts, but SNCF has unfortunately been successful in hiding behind the veil of foreign sovereign immunity.

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While many companies that participated in the Holocaust have taken responsibility for their actions by providing reparations, SNCF has steadfastly refused to provide any recompense to its victims and is a true outlier in this respect. SNCF's own representative perhaps said it most clearly, without the gloss of SNCF's corporate PR and spin campaign, when he plainly told California Assemblymember Bob Blumenfield, who has been a champion for these victims at the state level, that "SNCF will never pay the survivors anything" and that the company would rather not do business in California than take any such actions.[1] While SNCF has claimed that it is "covered" by existing French government-run restitution and reparations programs, SNCF is a separate corporation under both French and U.S. law, and existing French government programs do not specifically cover the deportations. It is inappropriate and wildly misleading for SNCF to advance such arguments and to give the survivors false hope.

SNCF earns millions of dollars from its commercial activities in the U.S. and is seeking to earn billions more in high-speed rail contracts in various states within the U.S. It is simply unconscionable for SNCF to enjoy the fruits of its purely commercial activities and then claim that it is entitled to foreign sovereign immunity to avoid liability for its contribution to the atrocities of the Holocaust. As SNCF has pursued lucrative high-speed rail contracts in the U.S. in recent years, and also as its related companies have pursued lucrative state rail contracts – all funded to some degree through the federal tax dollars of the very same innocent victims SNCF deported to the death camps – the story of the company's role in the Holocaust has become widely reported in the media. In response, rather than stepping up and doing the right thing, SNCF has embarked on a massive public relations campaign to spin the history of its role in the Holocaust and to confuse the reality of what existing French reparations programs cover. This has been shameful to observe.

As a result of the increasing public focus on SNCF's actions during the Holocaust, the company recently issued its first ever "apology," in an effort to assuage public outrage over its activities during World War II. The response to SNCF's transparent pretense was best articulated by the L.A. Times Editorial Board which noted that the apology, "[w]as apparently not prompted by regret. Rather, it seems to have been spurred by the company's desire to win multibillion-dollar high-speed rail contracts in California and Florida…" (Editorial, "Echoes of the Holocaust," Los Angeles Times, 11/20/10). To the California taxpayers who were deported on SNCF trains during the Holocaust, and to the families of such victims, such an apology rings hollow when SNCF continues to hide behind foreign sovereign immunity and adamantly refuses to pay any reparations.

Bet Tzedek strongly supports passage of the Holocaust Rail Justice Act, and we thank the Committee for holding this important hearing. These survivors, many of whom are in their 80s and 90s, unfortunately do not have much time left. The Holocaust Rail Justice Act may represent the last chance at justice for these survivors, and we urge you to keep this legislation moving forward with all deliberate speed so that it can become law in the survivors' lifetimes.

cc: Members of the Senate Committee on the Judiciary

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[1] See http://holocaustrailvictims.org/wp-content/uploads/2011/02/Blumenfield-Letter-2-2-11.pdf

Testimony of

The Honorable J.D. Bindenagel

Former U.S. Ambassador for Holocaust Issues

Vice President for Community, Government and International Affairs

DePaul University

Chicago, IL

Before The

Senate Committee on the Judiciary

Hearing on

"Holocaust-Era Claims in the 21st Century"

Wednesday, June 20, 2012

Testimony of
The Honorable J.D. Bindenagel
Former U.S. Ambassador for Holocaust Issues
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"Holocaust-Era Claims in the 21st Century"
Wednesday, June 20, 2012

Mr. Chairman, Members of the Committee,

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

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

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

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

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

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

The ICHEIC Process

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

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

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

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

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

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

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

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

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

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

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

Post-ICHEIC Claims Processing

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

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

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

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

Conclusion

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

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

Although these additional sums were small, in 2010, the German Government greatly increased funding to provide €110 million for "homecare" funding for 2011. Significantly, after difficult negotiations in 2011, a multiyear "home care" agreement for 2012, 2013 and 2014 for € 126.7 million, €136.7 million and €140 million, respectively, was finalized. These agreements,

which supplement the ICHEIC process and other Holocaust litigation settlements, will provide over €513 million (or $650 million) for "homecare" funding, which represent a dramatic increase in the services that can be received by needy Holocaust survivors. These agreements provide food, medicine, personal services and nursing care to those who suffered unbearable horror during the Holocaust. These services are the lifeline for tens of thousands of Holocaust survivors worldwide. It is clear that these bilateral agreements have resulted in tangible benefits to those that need it most – wherever they may live.

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

Thank you.

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

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June 22, 2012

The Honorable
Charles E. Schumer
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to expand on my June 20, 2012 testimony before the Senate Committee on the Judiciary's hearing on "Holocaust-Era Claims in the 21st Century". I would like to respond to your questions, and insert into the record the following comments and reports regarding my testimony. Let me note for the record three points regarding the ICHEIC settlement and Executive Agreement:

Whether victims would benefit more from a diplomatic settlement or from litigation was considered carefully by the U.S. government in deciding to get involved in shaping a resolution to the insurance cases. In fact we, as concerned parties, governments, and non-governmental organizations set out to resolve Holocaust-era insurance issues through dialogue, negotiation and cooperation rather than subject victims and their families to the prolonged uncertainty and delay that would accompany mass litigation against the industry. In thinking about this course of action, the U.S. government was deeply aware of the proof, discovery and other legal hurdles that claimants would have faced. Given how European insurers were organized before World War II, the small size of many European insurance policies, the destruction of records during the war, and after the war the bankruptcy, liquidation and/or nationalization of many insurers – which legally wiped out many insurance contracts along with a corresponding loss or dispersal of records relating to companies that no longer existed, there was little reason to believe that claimants would recover in a timely fashion or recover meaningful sums at all, if litigation were the only avenue open to them. Thus, rather than leave claimants to a litigation process that might well have left them with no remedy, the goal of ICHEIC was to provide a process that would make it more likely that some remedy would be available that could provide information, some sense of closure, and some form of monetary relief to survivors and heirs – that is, a process that would offer survivors and their families more dignity and respect than the litigation process.

With respect to your question about oversight of the claims process, ICHEIC did not leave the insurers to their own devices in gathering and producing information. There were systems in place to ensure that searches were conducted in good faith and indeed, the fact that so many

years later so many claims either could be paid or claimants receive some information about what had happened to the policies stands as proof that the system did work to a large extent – and indeed, continues to work. Although no system is or could be perfect – it is simply not correct to say that the companies were free to act or make decisions with little or no oversight. Oversight was also exercised by the Holocaust Claims Processing Office of the New York State Banking Department, which published reports in 2010 and 2011 containing information on insurance claims. Copies of these reports are attached in pdf format, and I would respectfully ask that these reports be included in the record.

The ICHEIC claims process was a transparent one in that it was known that there were a number of checks and balances on decisions made by the insurance companies. There was a multi-pronged approach to verify the correctness of the decisions of the companies. That system ensured that the ICHEIC rules and procedures (i.e., providing for relaxed standards of proof and setting a standard method for valuing claims) were correctly followed. In addition, each company had an independent auditor whose mandate included making sure that the systems in place at each company for the collection of material for the compilation of lists (to be used for both matching and publication purposes) was comprehensive and thorough and that each company had put in place a proper system for the processing of claims. The oversight included:

- The Executive Monitoring Group, chaired by Lord Peter Archer, which was also charged by Chairman Lawrence S. Eagleburger to review the systems established by the companies for the processing of claims (in particular for the matching of claims).
- Every individual claim decision was reviewed by the ICHEIC London Office Claims Team.
- Each of the independent auditors was mandated to conduct a "second stage audit" that reviewed the processing of randomly selected individual claims.

In addition, after claims were resolved, appeals were allowed. Each rejected claimant had the opportunity to file an appeal with either the Appeals Tribunal or Appeals Panel – which were run by independent prominent jurists including Judge Abraham Gafni, Sir Anthony Evans, Dr. Timothy Sullivan and Dr. Rainer Faupel. The decisions of the appeals bodies were detailed and comprehensive – as can be seen by a review of the redacted decisions, some of which can still be found at http://www.icheic.org/docs-appealspanel.htm.

Thus, the fact that some claimants did not get the answer they wanted or with which they are satisfied is unfortunate, but does not prove that the entire ICHEIC process has failed. Rather, it shows that some information simply may not exist – and under the ICHEIC process that remains in place, those types of claims could receive humanitarian awards of compensation that never would have been available in litigation.

In the end, the President of the United States concluded that it would be in the foreign policy interests of the United States for various classes of Holocaust-related claims to be resolved by settlements instead of by litigation – a decision that took into account the nature of the settlements and claims processes achieved. This included the German Foundation for Remembrance, Responsibility and Future (EVZ) which was the exclusive forum and remedy for the resolution of all asserted claims against German companies (including German insurers)

arising from their involvement in the National Socialist era and World War II, including without limitation claims relating to slave and forced labor, Aryanization, medical experimentation, children's homes/Kinderheim, other cases of personal injury, and damage to or loss of property, including banking assets and insurance policies.

Ultimately, the efficacy of the ICHEIC process also was tested in the U.S. courts, as Judge Mukasey (the Judge presiding over the consolidated insurance cases) had to agree to dismiss the claims in favor of the ICHEIC process. This court decision was an important confirmation of the decisions made by the U.S. government, especially because the settlement did not extinguish claims. Hence, the U.S. government had also to convince a court that continued litigation posed enough significant risks to recovery by Holocaust victims that a settlement was a better result for the class of Holocaust claimants.

Going forward, although ICHEIC as an organization formally ceased operations in March 2007, there is a continuing commitment of all the companies that participated in the ICHEIC process to process claims under a relaxed standard of proof. Anyone who believes that an ICHEIC insurance company has failed to pay a claim may send his application to the company or to the Holocaust Claims Processing Office of the New York State Banking Department and that claim will be analyzed. The U.S. Department of State has also posted the following notice entitled "Seeking Compensation for Unpaid Holocaust Era Insurance Claims" on the continuing claims process on its website: http://www.state.gov/r/pa/prs/ps/2011/11/177217.htm

With respect to your question concerning how the name lists were established, the answer is that the list of more than 519,000 names of potentially unpaid Holocaust-era policyholders published by ICHEIC originated from a variety of sources, including insurance companies, insurance associations, and various public archives. The combined efforts to make lists public yielded an unprecedented amount of information regarding insurance policies in effect prior to and during World War II.

For the German insurance market, the lists were a result of a matching process between a database of Holocaust-era insurance policyholders held by German insurance companies and the list of Jewish residents of Germany during the relevant period. An independent company matched these two lists, which resulted in a total of 360,000 names for publication. This matching process was outlined in the October 2002 agreement among ICHEIC, the German Insurance Association, and the German Foundation (EVZ).

With regard to other insurance markets, policyholder names were provided by ICHEIC insurance companies and through research commissioned by ICHEIC. ICHEIC companies provided approximately 123,000 names, with that list including names provided by Generali that had been matched against the Yad Vashem list of Holocaust victims. ICHEIC itself also undertook an extensive research project that was extremely productive and yielded names of more than 55,000 policyholders. ICHEIC conducted extensive research in hundreds of archival institutions and repositories in 15 countries, namely Austria, Bulgaria, the Czech Republic, Germany, Greece, Hungary, Israel, Lithuania, Poland, Romania, the Russian Federation, Slovakia, Switzerland, the United States, and Ukraine. Hundreds of thousands of documents were researched and those that

were relevant were included in ICHEIC's list. Reports on ICHEIC's archival research project can be found at the following URL: www.icheic.org/docs-research.html.

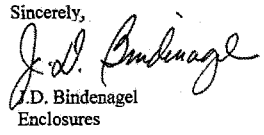
The methodology for creating the list of names was not a secret, but was widely and thoroughly known to the parties involved in the relevant agreements and settlements, including the lawyers for the claimants. The resulting list of over 519,000 names was widely published by ICHEIC and became an indispensable tool that has been of great assistance to potential claimants. The list was maintained and can be found on the following website: http://www1.yadvashem.org/pheip/.

Finally, as you noted Mr. Chairman, the story of the Holocaust must be retold until such horrors end forever. I was humbled by the stories told at the hearing. But in addition to retelling that history, we must incorporate the lessons learned from mechanisms like the ICHEIC process into how we address post-conflict justice for those who have suffered gross violations of human rights. For example, from 2003 to2008, I was involved in the DePaul University International Human Rights Law Institute publishing *The Chicago Principles on Post-Conflict Justice*. The book presents basic guidelines on policies that address past atrocities associated with authoritarian rule and armed conflict, including the Holocaust. This book grew out of a series of meetings and consultations over a seven-year period involving 180 distinguished scholars, jurists, journalists, religious leaders and others from 30 countries. The book presents guiding principles relating to seven key areas on post-conflict justice: prosecutions; truth-telling; reparations; vetting; memorialization and education; traditional, indigenous and religious approaches; and, institutional reform. Each principle is followed by a review of concrete recommendations regarding the design and implementation of specific strategies, policies and programs. It can be found at:
http://www.law.depaul.edu/centers_institutes/ihrli/pdf/chicago_principles.pdf.

The ICHEIC process stands as a concrete example of one way mass atrocities may be addressed, and is an important part, but only a part, of the process by which we can address the issues of justice owed to the survivors of the Holocaust.

Once again, Mr. Chairman, I want to thank you and the Committee for the opportunity to address the issues surrounding the ICHEIC process and the ongoing issues of justice and compensation for Holocaust victims. Please feel free to contact me should the Committee have additional questions or requests for information.

Sincerely,



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TRANSPORTATION
WATER, PARKS AND WILDLIFE

June 18, 2012

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

Distinguished Members of the Senate Judiciary Committee, I write to urge you to support the Holocaust Rail Justice Act (S. 634 / H.R. 1193) which would finally hold accountable the French rail company, SNCF, for its egregious role in the Holocaust. This legislation would grant SNCF's victims their long-awaited and much deserved day in court.

During World War II, SNCF deported more than 76,000 Jews and thousands of other 'undesirables," including American pilots shot down over France, toward Nazi death camps. The trains were operated by SNCF as a commercial venture and the company was paid to deliver thousands of innocent victims to their ultimate deaths. In the almost seven decades since the Holocaust, SNCF has never made any restitution or reparations to its victims and has never taken full responsibility for the company's actions that contributed so directly to the deaths of thousands.

I, my constituents, and the larger population have become victims of SNCF's recent pattern of stating one thing and doing another – and all the while avoiding accountability. In California, SNCF has expressed interest in entering the high-speed rail market and competing for billions of taxpayer funds, some of which would be paid by the very victims SNCF transported to Nazi death camps. In 2010, I introduced legislation, which passed both the Assembly and Senate with bipartisan support and by overwhelming margins, that would have required companies seeking state rail contracts to fully disclose their participation in the Holocaust.

Although this bill was vetoed, SNCF promised to voluntarily comply with the legislation – no doubt to improve its compromised, but well deserved, public image as it sought to compete for billions of dollars in taxpayer

funds. Unfortunately, in the end, SNCF provided nothing but half truths, excuses, and tired spin. SNCF's failure to honor a supposedly shared commitment to ensuring that the sacred record of the Holocaust is preserved makes all too evident the kind of morally corrupt company we are talking about.

Worse, an SNCF representative stated during a meeting with me that SNCF would never be willing to offer reparations to its many victims and that the company would rather forego high-speed rail contracts than provide survivors with any sort of payment. This came after roughly a year of conversations in which SNCF and its representatives led me and my staff to believe just the opposite. SNCF's victims, and California's taxpayers, deserve better.

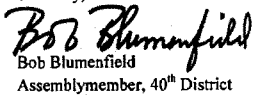
I am proud to report that, thanks to the efforts of legislators in Maryland, groundbreaking legislation, stemming from the measure introduced earlier in California, was signed into law last year. As a result, it is my hope that SNCF will soon make its Holocaust records available online, providing true transparency from the company for the first time in history. Although transparency is a necessary step in bringing justice to the victims of SNCF, it falls short of true accountability, which can only be provided by the Holocaust Rail Justice Act.

For over a decade, hundreds of Holocaust survivors who were transported by SNCF, and the family members of those who perished, have been attempting to hold SNCF accountable in U.S. courts; unfortunately, the company has so far been successful in hiding behind foreign sovereign immunity. The Holocaust Rail Justice Act simply precludes SNCF from raising the defense of foreign sovereign immunity in this limited instance and prevents the company from evading the jurisdiction of U.S. courts. This legislation will finally allow SNCF's victims to have their day in court and to complete their long battle for justice against the company that wronged them so horrifically. SNCF's victims deserve at least this.

After my ordeal with the company in California, I can only report that SNCF has no intention of voluntarily taking responsibility for its horrendous corporate history and its role in deporting so many innocent victims toward certain death. Passing the Holocaust Rail Justice Act is the best way forward for the many elderly SNCF victims who are still waiting for an opportunity for justice.

I am greatly encouraged by the growing number of bipartisan, bicameral cosponsors, as well as this Committee's decision to hold a hearing on this very important legislation. It is critical that this Committee continue to move this legislation forward as quickly as possible, as time is unfortunately running out for many of SNCF's elderly survivors. While SNCF continues to strategically drag its feet and "wait out" these survivors, the number of those who can speak out about its egregious actions during the Holocaust unfortunately grows smaller and smaller. Therefore, I respectfully urge you to support the Holocaust Rail Justice Act to grant SNCF's victims justice within their lifetimes.

Sincerely,



Bob Blumenfield
Assemblymember, 40th District

cc: Members of the Committee on Judiciary

Testimony of Leo Bretholz
Holocaust Survivor and SNCF Victim
On Behalf of the Coalition for Holocaust Rail Justice

Before the U.S. Senate Committee on the Judiciary

June 20, 2012

Chairman Leahy, Ranking Member Grassley, Senator Schumer and members of the Committee, my name is Leo Bretholz, and I am a Holocaust survivor. After World War II, I immigrated to the United States and settled in Baltimore where I still reside. I am 91 years old and retired, but I speak regularly to school groups and organizations about my experiences during the Holocaust, the darkest chapter of our history.

I first would like to thank the Committee for providing me with the opportunity to be here today to testify about the atrocities that I experienced personally at the hands of the French rail company, SNCF. I would also like to thank Senator Schumer, Senator Cardin, Senator Mikulski, the other members of the Maryland Congressional delegation, and the many legislators who have made certain that I, and SNCF's other victims, are not forgotten. Senator Schumer, thank you particularly for holding this hearing today and for your unwavering pursuit of justice for the survivors.

This year marks the 70th anniversary of the first SNCF transports from Drancy toward Nazi death camps, yet I still remember the haunting night I jumped from an SNCF train bound for Auschwitz as if it was yesterday.

I grew up in Vienna, where I lived until the German annexation of Austria in 1938. At that time, my mother's fear that the Nazis would come for me became too great and she forced me to leave her and my sisters behind and flee into Luxembourg. Across a

river and under cover of night, I started to run. I would continue to run for my life for the next seven years.

In October 1942, I ended up in the internment camp Drancy, outside of Paris. Drancy was the waiting room for trains bound for Auschwitz, later referred to as the antechamber of Auschwitz. I was there for only two weeks before the order came to gather our belongings for our deportation. The deportation train to Auschwitz was owned and operated by SNCF. They were paid by the Nazis per head and per kilometer to transport innocent victims across France and ultimately to death camps like Auschwitz and Buchenwald. They collaborated willingly with the Nazis. In the end, they transported 76,000 Jews, and thousands of others, with no regard for age, gender, or physical condition. Of the 76,000 Jews deported, only 2,000 would survive. Here I have, in my hand, a copy of an invoice sent by SNCF seeking to be paid for the services they provided. They pursued payment on this bill after the liberation of Paris, after the Nazis were gone. This was not coercion, this was business.

Famous Nazi hunter Serge Klarsfeld made a log of all the SNCF transports which contains the names of all 76,000 Jews on those trains, including over 11,000 children. The oldest person in the convoys was 94 and the youngest was not even a day old. The elderly were herded on like cattle and infants were thrown in the cars in crates, often without their mothers. And in this book appears my name, Leo Bretholz, on SNCF convoy number 42, containing 1,000 people, fifty to a cattle car, twenty cars.

SNCF carried out the transports with precision, efficiency, and deception. We were marched into the station where they would count us off – one, two, three … forty-eight, forty-nine, fifty – into a cattle car. There was no flexibility and no compromise. In

the car in front of me, a family counted off and the fifty-first person was the young son. The boy began to scream and the father pleaded to allow them to stay together, but with cold precision the boy was shoved into one car, his family into another. I believe that was the last time they saw each other.

Our belongings were taken from us in Drancy, and we were given a voucher. This is the deception – we were told to hold on to our vouchers, so we could get our belongings when we arrived where we were going. They knew we would not be getting our belongings back but created the deception of resettlement. We knew that no one returned from where we were headed.

For the entire trip of many days' duration, we were provided only one piece of triangle cheese, one stale piece of bread, and no water. There was hardly room to stand or sit or squat in the cattle car. And in that car, there was one bucket for us to relieve ourselves in. I'll leave it to your imagination as to how long that bucket actually served its purpose. Within that cattle car, people were sitting and standing and praying and weeping and fighting – the whole gamut of human emotions. And this was the situation in the cattle cars where buckets overflowed with human waste.

We sat the entire first night in that putrid cattle car. Finally, in the morning the train began to move, and we were provided with some relief as fresh air finally began to flow through the two barred-windows at either end of the car. My friend Manfred said that if they could do this to us in France, the land of Victor Hugo and Voltaire, then we definitely didn't want to test it where they were sending us. So, we immediately began to try to figure out a way to escape.

We figured that if we could just pry the bars on the windows apart a couple inches more, we could slip through. Many in the cattle car, fearing the guards would punish everyone if we were found out, urged us not even to try. I also was beginning to doubt our plan when an elderly woman on crutches spoke out. She wielded that crutch like a weapon and pointed it at me and said, "You must do it." "If you get out," she said, "maybe you can tell the story. Who else will tell the story?" I can still see her face and hear her voice today.

So Manfred and I set out to pry apart the bars on the windows. First, we tried belts, but they slipped off. We needed rope. Then someone suggested, take your sweaters off and dip them into that human waste on the bottom of the car, so we did and then we could twist the sweaters – like when you wring a wet towel, it gets tighter and tighter. We kept twisting and twisting like a tourniquet. The human waste from the sweaters dripped down on our arms and our rolled up shirt sleeves. We kept going for hours, alternating pulling on the bars.

We were about to give up when we noticed tiny red flakes starting to appear on our arms. It was the rust from the bars of the cattle car window. We were moving the bars. We kept alternating pulling the top bar up and the bottom bar down until finally there was enough room for us just to squeeze through.

It was night and time for us to attempt our escape. I went first and Manfred helped me climb out the tiny window and stand on the small ledge on the outside of the car. He followed me and I made room for him as he came out, moving around towards the coupling. We held on tight, so as not to slip and fall beneath the train, and waited for the train to take a curve and slow down, which would also provide more protection from

the spotlights the guards used to make sure no one escaped. We finally felt the train slow and head into a curve, and then Manfred and I jumped to our freedom. That night, Manfred and I were sheltered by a Righteous Gentile, a priest who fed us and hid us.

Of the 1,000 people with me on SNCF convoy number 42, only five survived the war. If I had not jumped from that train, I am certain I wouldn't be here with you today. As a survivor, it is my duty and responsibility to speak out on behalf of those who did not survive - for the old woman on the train who pushed us to escape, for my family, and for the millions of other innocent victims. Today I am here before you, seeking justice for those who were not as fortunate.

SNCF willingly collaborated with the Nazis. Had the company resisted, even to a small degree, the number of those killed from France would have been greatly reduced. Had SNCF not imposed those horrific conditions, many lives could have been saved. In the almost 70 years since the end of the war, SNCF has paid no reparations nor been held accountable. The company did not even publicly apologize for its role until two years ago, when SNCF was criticized for pursuing high-speed rail in the United States without fully accounting for its role in the Holocaust. As it was during the Holocaust for SNCF, so it is now – all about money.

SNCF uses every available legal and PR tactic to suppress the truth and avoid its responsibility to the victims of the deportations. For SNCF, this is a small price to pay if it means it can continue to escape accountability. While SNCF works to whitewash its image with its public relations spin campaign, my fellow survivors and I will continue to tell the story and fight for justice. The Holocaust Rail Justice Act is the last opportunity many of us will have to see justice within our lifetimes. The survivors seek only to have

an opportunity to have our day in court for the first time, to publicly hold SNCF accountable for its actions, and to finally allow justice to be done.

As my 92nd birthday approaches, I only hope that the many dedicated lawmakers who have worked so diligently to move this legislation forward will redouble their efforts to pass this legislation during this Congress. Seventy years is far too long to wait for a company to accept responsibility for the death and suffering it caused. I fear that I might not be able to wait much longer.

Sitting here before you today, I am as proud as I was the day I first set foot in this great country. I have the utmost faith in our country, in our legislators, and in you. I am greatly encouraged by the actions of this Committee, but I urge you, please pass the Holocaust Rail Justice Act this Congress – before it is too late.

Thank you very much for inviting me to share my story with you today. I would be happy to answer any questions you may have.

Congress of the United States
Washington, DC 20510

September 20, 2011

Commissioner Gerard Robinson
Florida Commissioner of Education
Florida Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399

Dear Commissioner Robinson:

We write today to share concerns brought to our attention by our state's Holocaust survivors and their families. As you know, SNCF America recently announced that it is underwriting a three-year partnership between your Task Force on Holocaust Education and the Shoah Memorial in Paris to "provide expanded Holocaust history instruction" in Florida's schools. SNCF America is a recently formed subsidiary of the French railroad company Société Nationale des Chemins de fer Français.

A class action lawsuit was filed by a group of Holocaust survivors against SNCF because of their wartime activities. SNCF transported more than 75,000 Jews and others innocent victims to Nazi concentration camps, and the plaintiffs, many of whom are our constituents, claim that SNCF has never contributed to post-war reparations. As a result, we joined our colleagues in introducing the Holocaust Rail Justice Act (H.R. 1193 and S. 634), which would allow SNCF's victims to seek justice in U.S. courts.

Because the task force provides Florida schools with most of the necessary training and resources to teach students about the Holocaust, its involvement with SNCF is especially upsetting. SNCF's recent pursuit of high-speed rail contracts in the United States has already drawn the outrage of Holocaust survivors and Jewish leaders across the country.

During the Holocaust, SNCF profited from the transport of Holocaust victims to forced labor and concentration camps, charging per person, per kilometer. Instead of attempting to engage in a public relations campaign, SNCF would be wise to resolve the claims of the Holocaust survivors as a consequence of their actions.

Thank you for your attention to this matter.

Sincerely,

Congress of the United States
Washington, DC 20510

Bill Nelson
United States Senator

Ileana Ros-Lehtinen
Member of Congress

Marco Rubio
United States Senator

Ted Deutch
Member of Congress

Dennis Ross
Member of Congress

Allen B. West
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Frederica Wilson
Member of Congress

Vern Buchanan
Member of Congress

David Rivera
Member of Congress

Thomas J. Rooney
Member of Congress

Gus Bilirakis
Member of Congress

Mario Diaz-Balart
Member of Congress

cc: The Honorable Governor Scott

crif
Conseil Représentatif des Institutions Juives de France

The Honorable Patrick Leahy
The Honorable Charles Grassley
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Paris, May 31st 2012

Dear Chairman Leahy and Ranking Member Grassley,

I am writing to you as President of the Conseil Représentatif des Institutions Juives de France (CRIF – French Jewish Institutions' Representative Board, www.crif.org), the organization that speaks for France's Jewish community in the political arena, to share my concerns about the "Holocaust Rail Justice Act" (S. 634). It is my understanding that S. 634 will be the subject of a hearing by the Senate Judiciary Committee on June 20, 2012.

I know you have always been willing to hear the concerns of the Jewish community and to seek justice by defending Holocaust survivors' rights. We appreciate your commitment to giving voice to the experience and pain of survivors, and to ensuring that the moral responsibility of governments, institutions and individuals to confront the past and learn its lessons will be ongoing.

The Nazis ordered, organized, and implemented the deportation of French Jews via railroad, as they did throughout Europe, and in the same conditions. Subjected to the authority of the occupying forces, the SNCF did indeed transport—in intolerable conditions—people who would go on to be deported to the camps of Auschwitz and Sobibor. The Jews of France were certainly victims of this poor treatment. Yet we oppose the "Holocaust Rail Justice Act" (S. 634), because in our opinion, it does not respect three basic principles:

1/ Fair treatment of victims.

Instituting a general exception to the Foreign Sovereign Immunities Act (FSIA) making it possible to prosecute the SNCF for the deportations calls into question the existing provisions relating to the compensation of Holocaust victims.

The right of deportees to receive German pensions, as negotiated by the Claims Conference, applies only to individuals interned in a concentration camp for six months. S. 634, however, opens the way to reparations for those who were transported to the German border on trips lasting less than 24 hours. We are concerned about the fair treatment of Holocaust victims. Regardless of the SNCF's terrible negligence during that period, it cannot be compared to internment in a concentration camp or likened to an act of genocide in a concentration camp.

Espace Rachi 39, rue Broca 75005 Paris

The same Claims Conference extends the right to receive reparations to the deportees themselves and not to their descendents. We worry that the establishment of an exception to the FSIA will not guarantee that the same rules apply in the case of individuals transported by the SNCF.

Similarly, there seems to be no cap on possible reparations, as they would be determined by a court decision. For the Jews of France, however, reparations payable to individuals transported under humanly unacceptable conditions should not be different for French survivors or survivors living in France who received compensation from the French State than from those residing in other countries, such as the United States.

2/ State responsibility

The SNCF was a public company in 1940, having been established through nationalization in 1937. The state controlled all of its activities. In article 13 of the armistice agreement of June 22, 1940, the railroads were placed at the disposal of the German occupiers. In July 1940, Colonel Goeritz, Commander of the WVD, sent a letter to the SNCF's director, noting, among other things, that "[...] All civil servants, SNCF employees and workers are subject to German wartime laws. German wartime laws are very harsh; in practically every case they stipulate the death penalty or forced labor, either for a given term or for life").

Today the SNCF is 100% state-owned. It would therefore be the French government that would be liable for reparations. Several reparations regimes have been established since 1948. France's Jewish community considers them to be satisfactory, which is also the position of the European Court.

3/ Fair treatment of companies

We are shocked by the fact that the SNCF appears to be the only rail company targeted by this bill. Many other European rail companies, not to mention the Reichsbahn, transported Jews to concentration and extermination camps in the same inhumane conditions, by order of the Nazis.

We must also not forget the role of the SNCF as a resistance organization. The acts carried out by railroad workers beginning in 1942, causing many of them to be shot and more than a thousand of them to be deported represented a crucial contribution to the Resistance, as all historians acknowledge. In 1944, their actions saved many Allied and notably American lives in Normandy, and made it possible to considerably slow the arrival of German troops. In the French collective memory, the organization is still considered glorious.

That is why the French people are quite offended by the stigmatization of the SNCF, which the CRIF considers a real injustice.

We admire the U.S. Congress's intention to establish the responsibility of the various actors and even more, the fact that it gives an important role to testimony from Holocaust victims.

We are also very grateful to you for listening to an organization that serves as the representative voice of the Jews of France.

Born in Poland, the former president of the French committee for Yad Vashem, vice president of Yahad in Unum which explores common graves in Eastern Europe and a member of the International Auschwitz Committee, I have long been seeking the historic truth and attribution of responsibilities in the tragedy that led millions of Jews to their deaths.

I am familiar with the work undertaken by the SNCF to promote Holocaust education and to shed light on its role during World War II, notably by making its entire archive available to the public. This effort must be expanded.

It is also necessary for the survivors to be on an equal footing when it comes to available reparations. We are in touch with institutions representing the American Jewish community to share this knowledge with them in order to help survivors, wherever they may currently be found.

Richard Prasquier
President of the CRIF

c.c.: Members of the Senate Judiciary Committee

About IHRLI
IHRLI in the News
Events
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Regions/Countries
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Find an International Legal Job or Internship
Publications
Get Involved

Projects

Post-Conflict Justice

- *The Chicago Principles on Post-Conflict Justice* (2001 – 2008)
- *Princeton Principles on Universal Jurisdiction* (2001)

The Chicago Principles on Post-Conflict Justice (2001 – 2008)

In 2008, IHRLI published The Chicago Principles on Post-Conflict Justice. The book presents basic guidelines on policies that address past atrocities associated with authoritarian rule and armed conflict. The document grew out of a series of meetings and consultations over a seven-year period involving 180 distinguished scholars, jurists, journalists, religious leaders and others from 30 countries. The book presents guiding principles related to seven key areas on post-conflict justice: prosecutions; truth-telling; reparations; vetting; memorialization and education; traditional, indigenous and religious approaches; and, institutional reform. Each principle is followed by a review of concrete recommendations regarding the design and implementation of specific strategies, policies and programs. The Chicago Principles was managed by an IHRLI team including M. Cherif Bassiouni, project director; Daniel Rothenberg, executive editor; and Etelle Higonnet and Michael Hanna, contributors.

Additional Information

Princeton Principles on Universal Jurisdiction (2001)

IHRLI staff contributed to the Princeton Principles on Universal Jurisdiction. The Princeton Principles addresses jurisdictional issues related to international crimes such as piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide and torture. The drafting committee was chaired by Professor M. Cherif Bassiouni with IHRLI Sullivan Fellow Steven Becker serving as Rapporteur. The Principles are intended to help guide national legislative bodies seeking to enact implementing legislation, to aid judges who may be requires to construe universal jurisdiction, and to otherwise assist in promoting international criminal accountability.

Additional Information

DOUGLAS DAVIDSON
Special Envoy for Holocaust Issues
Department of State
S. 466, The Restoration of Legal Rights for Claimants Under Holocaust-Era Insurance Policies Act of 2011

U.S. policy is first and foremost directed at helping Holocaust survivors and their heirs achieve a measure of justice for what was done to them. As a core element of this policy, the Department of State has for many years sought to ensure that Holocaust survivors and heirs of Nazi victims receive payment for insurance policies they have been unable to redeem. This continues to be one of our priorities. In our view, S. 466, The Restoration of Legal Rights for Claimants Under Holocaust-Era Insurance Policies Act of 2011, would set back these important goals by encouraging claimants to reject remedies currently available to them in favor of time-consuming and expensive litigation with dubious prospects for success.

If this bill were enacted, survivors who believe they still have uncompensated Holocaust-era claims against foreign insurers might be lured into lawsuits where they may face great difficulty both in meeting the standards of evidence required by U.S. courts and in overcoming myriad legal defenses, making it virtually impossible for them to receive the insurance benefits they seek in their lifetimes. Experience with Holocaust-related claims in the past has demonstrated that it is only through alternative dispute resolution mechanisms with evidentiary standards sensitive to the realities of the Holocaust that the vast majority of such claimants have any realistic prospect of receiving any payments.

This is why the United States government supported the establishment of the International Commission on Holocaust Era Insurance Claims (ICHEIC) in 1998. ICHEIC was chaired by a former Secretary of State, the late Lawrence Eagleburger, and was led by six persons designated jointly by U.S. insurance regulators, the World Jewish Restitution Organization, the Conference of Jewish Material Claims Against Germany and the State of Israel, and by another six persons designated by the more than 75 participating European insurance companies and regulators. It is important to remember that ICHEIC was not created at the initiative of European insurance companies to avoid litigation; rather American state insurance commissioners led the effort. Working together with major American Jewish organizations and Holocaust survivor organizations, state insurance commissioners conceived and created ICHEIC under the conviction that an alternative dispute resolution process would achieve results more swiftly and more comprehensively than would litigation, without cost to claimants and without the delay and strict evidentiary rules court proceedings would require.

S.466 is apparently based on the premise that there are many extant Holocaust era insurance claims for which ICHEIC failed to pay heirs of policyholders. All the evidence available to us, however, suggests that this premise is questionable at best. ICHEIC

engaged experts to investigate the incidence of life insurance policy ownership in pre-war Europe. These experts concluded that the number and value of policies issued prior to World War II was far less than previous estimates had suggested. Other evidence, too, supports the view that ICHEIC has paid virtually all remaining claimants for unpaid policies not previously covered by post-war compensation programs. Since the closure of ICHEIC very few claims have subsequently been sent either directly to the insurance companies involved in ICHEIC or to the State of New York's Holocaust Claims Processing Office, which handles such claims from any part of the world.

Another premise of the bill is that potential beneficiaries of policies could benefit from procedures available through litigation to obtain "discovery" from European insurers more reliably to locate their relatives' policies. But within ICHEIC both American state insurance commissioners and major Jewish organizations, acting as victims' advocates, established a process comparable to judicial discovery. This discovery-like process has resulted in audits of the claims process itself and in the publication of 500,000 names of Nazi-victims who could be possible policyholders.

ICHEIC also undertook the complex archival work necessary to find, value, and pay a large number of such insurance policies. It found matches for 8,000 claimants who could not name an insurer, and it paid 2,900 claims on behalf of now-defunct companies in Eastern Europe that could never have been sued in a U.S. court. ICHEIC even made $1,000 in humanitarian payments to claimants when it could not be established whether a policy ever existed, as long as the claim included a plausible story that relatives may have owned an insurance policy. It paid eligible policies on terms that converted them into hard currency values and took account of the passage of time to bring their value up to the present through the payment of interest. It made payments even where the issuing insurer had gone out of business. Independent auditors and victims' advocates monitored every step of the claims process to ensure it was thorough and generous.

In all, ICHEIC paid approximately $300 million to some 48,000 claimants, both beneficiaries and heirs of beneficiaries, on policies issued to Nazi victims during the period from 1920 to 1945. This sum does not include earlier payments on policies made from the 1950s to the 1980s by European insurance companies and foreign state compensation programs.

Moreover, when ICHEIC completed all pending claims and closed its doors in March 2007, the foreign insurance companies pledged to process any additional Holocaust-era insurance claims on the same liberal basis. They continue to fulfill that pledge today. Like other former ICHEIC members, the German Insurance Association (GDV), for instance, continues to accept claims under the same "relaxed standards of proof" employed by ICHEIC. Although it has received but 217 new inquiries since the closing

of ICHEIC in March 2007, GDV's member companies have paid out approximately $1,475,300 in additional compensation.[1]

The current, voluntary system thus remains open and accessible to those with claims, and it remains free of charge. As noted above, the New York Holocaust Claims Processing Office, a public service supplied gratis by New York State's Superintendent of Financial Services, also generously stands ready to assist claimants in pursuing their Holocaust-related restitution and compensation claims of whatever sort, including insurance.

None of this progress in compensating claimants would have been possible if the foreign governments and companies providing these payments had believed they would be subject to continuing litigation in U.S. courts over Holocaust-era claims. Such litigation might not only upset the voluntary arrangements still in place to review insurance claims, it might also put at risk other efforts to support improved welfare benefits for survivors, most notably those efforts of the Conference on Jewish Material Claims Against Germany, an organization recognized under German law as the negotiating body for survivor claims and benefits, to expand the German Government's annual contribution for homecare and other benefits. The amount pledged this year, roughly 127 million euros or nearly $150 million, is more than a ten percent increase over last year. The Federal Republic of Germany has already pledged a similar increase for next year as well.

In our judgment, then, S.466 would set back, rather than advance, the cause of bringing a measure of justice to Holocaust survivors and other victims of the Nazi era, as well as to their heirs, a cause for which the United States has been in the forefront for the past 60 years.

[1] Since the GDV pays claims in both dollars and euros, this statistic is based upon combining the two at current rates of exchange.

Seeking Compensation for Unpaid Holocaust Era Insurance Claims

Fact Sheet
Office of the Spokesperson
Washington, DC
November 15, 2011

The Department of State seeks to ensure that all insurance policies from the Holocaust era are paid to survivors of the Holocaust and to the heirs of Nazi victims to whom they are due. When the International Commission on Holocaust Era Insurance Claims (ICHEIC) closed its doors in March 2007, its member companies committed to continuing to process all Holocaust-era claims under ICHEIC's flexible evidentiary standards, which were lower than those that apply in American courts of law, a commitment to which they adhere today.

To date this process has helped some 48,000 claimants recover $300 million, even though most of those claimants had no documents about or records of the policies for which they filed claims; indeed, many did not even know if a policy had been issued to their forebears. The Department of State, recalling the insurers' continuing commitment to process and pay such claims, wishes to remind Holocaust survivors and their families that the opportunity still exists for them to pursue claims for any insurance policies to which they and their heirs believe they are entitled through these existing avenues.

Anyone who believes that he or she may be the beneficiary of an unpaid Holocaust-era insurance policy should therefore file a claim with the insurance companies listed below. Working with European insurance companies, ICHEIC has prepared and published a list of over 500,000 potential policyholders. This list may provide a starting point for claimants. It can be accessed at http://www1.yadvashem.org/pheip/.

Claimants may also submit inquiries or claims regarding Holocaust-era insurance policies to the New York State Holocaust Claims Processing Office (HCPO) of the State of New York's Department of Financial Services. The HCPO will assist individuals with potential claims for unpaid insurance policies and, when and where possible, work with the appropriate institution or company to resolve such claims. The Department of State has confirmed with Anna B. Rubin, Director of HCPO, that she welcomes any claims and will forward them to the appropriate insurance companies. The HCPO will keep the State Department informed of the progress of the claims it is processing.

This voluntary process, with evidentiary standards sensitive to the realities of the Holocaust and with a proven record of success, is a better and more efficient way to ensure payment of Holocaust-era policies than is litigation. Such litigation is unlikely to succeed in any case because of jurisdictional issues, higher evidentiary standards in court, and otherwise unavailable legal defenses that defendants could raise in a legal proceeding.

German Insurance Association (GDV)

http://www.gdv.de/English/index.html

Generali Group (Italy)

http://www.generali.com/Generali-Group/Sustainability/Holocaust-era-insurance-programs/

Holocaust Foundation for Individual Insurance Claims (Netherlands)

http://www.stichting-sjoa.nl/

CIVS Commission for the Compensation of Victims of Spoliation (France)

http://www.civs.gouv.fr/spip.php?rubrique22

Holocaust Claims Processing Office (State of New York)

http://www.dfs.ny.gov/consumer/holocaust/hcpoindex.htm

34 rue du Commandant Mouchotte - 75699 PARIS CEDEX 14
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June 25, 2012

The Honorable Patrick J. Leahy, Chairman
The Honorable Chuck Grassley, Ranking Member

The United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Grassley,

As the designated representative of Société Nationale des Chemins de Fer Français (SNCF), the French National Railway, I respectfully request that attached statement and appendices be made a part of the record of the Senate Judiciary hearing entitled "Holocaust-Era Claims in the 21st Century" which was held on Wednesday, June 20, 2012 at 2:30 p.m., in room S-115 of the Capitol.

Sincerely,

Bernard Emsellem
Senior Vice President
Corporate Social Responsibility
SNCF

SETTING THE RECORD STRAIGHT
FACTUAL INACCURACIES AT JUNE 20, 2012
HEARING OF THE U.S. SENATE JUDICIARY COMMITTEE

Submitted by
Bernard Emsellem
Senior Vice President, Corporate Social Responsibility
SNCF
Paris, France

On June 20, 2012, the Senate Judiciary Committee held a hearing on, among other pieces of legislation, the Holocaust Rail Justice Act. Many inaccurate statements were made during that hearing. It is important to set the record straight regarding those inaccuracies.

The pain and horror of the Holocaust is still alive, and it must remain so. The Holocaust is a disgrace in the history of mankind and still haunts us all. The memory of the Holocaust requires no exaggeration. It is not possible to 'unlive' the Holocaust, but we need not repeat it. Studying and sharing the history of the Holocaust helps educate younger generations against all forms of racism, anti-Semitism, intolerance and hatred of others.

In 1941, Nazi Germany began to implement "the Final Solution," and the regime's desire to exterminate Jews in Europe will forever mark the world we live in. The deportations of French Jews began in March 1942. As in the rest of Europe, the railways were used for transportation under the horrible specifications of the Nazis. Soon after France's defeat, SNCF was placed at the "full and complete disposal of the German Head of Transport."

As a state-owned company, SNCF was requisitioned and forced to transport French Jews to internment camps.

In 1942, the Germans and French Vichy government began to use SNCF to run deportation trains carrying French Jews to the then French-German border. Between 1942 and 1944, the Nazis deported one-quarter of the Jewish population in France to the death camps. It is difficult and

painful to imagine the horror and inhumanity of the Holocaust. But it is our duty to do so. Of the 75,721 individuals who were deported from France, less than 3,000 remained alive in 1945.

To this end, SNCF is confronting its history with honesty and transparency. It is our duty not only to Holocaust victims of World War II, but also to future generations. It is the responsibility of each of us to protect and advance the integrity of the memory of the Holocaust. Never forget!

To that end, this statement provides the facts regarding just a few of the key inaccurate claims that were made:

1. **Claim:** French reparation and restitution programs for Holocaust victims are "arguably" no longer available.

   Fact: All such programs are still fully open and available. Further information about these programs – including how to apply today – can be accessed at the website of the Shoah Memorial, the largest and oldest Holocaust museum in Europe, at http://holocaust-compensation-france.memorialdelashoah.org/en/index_engl.html.

   A summary of these programs, including application instructions, from the Shoah Memorial's website is presented as Appendix 1 at https://www.box.com/s/3e7a48eb34947771bfa4.

2. **Claim:** The French programs are closed, or at least highly inaccessible, to Americans.

   Fact: Individuals who are otherwise eligible for the French programs can still benefit, even if those individuals have subsequently acquired U.S. citizenship.

   For heirs, the French reparations program for orphans covers any French or foreign citizen at the time, who lost one or both parents in a camp in France or during deportation, or were assassinated, who was not more than 21 years old when the parent was arrested.

3. **Claim:** The French reparations and restitution programs "cannot" purport to cover activities SNCF engaged in during World War II.

   Fact: This is inaccurate. These programs were created by the French government on behalf of France, i.e. the people of France and all French entities, whatever the circumstances.

   The European Court of Human Rights has ruled with respect to France reparations programs:

"[T]he measures implemented by the State in order to compensate the losses suffered are not limited to financial compensation only, but that the French State has taken other solemn measures, both normative and political, aimed at acknowledging its role in the deportations and in the losses suffered by the petitioners.

The Court is conscious of the immensity of the loss suffered by the petitioners on account of the deportations and of the atrocities committed against their parents. However, it finds, as the domestic courts have done, that the series of measures set up by France include the moral damage which they suffered."

In the U.S., the Southern District of New York in Freund v. the Republic of France (2008) similarly found the French reparations program to be adequate and appropriate, again specifically taking into account the actions of SNCF, among others.

4. **Claim:** SNCF was an independent corporation during World War II.

   Fact: This is not true. SNCF was manifestly an instrumentality of the French State. It was 51% owned by the French Government, with the French Government appointing the President and all members of SNCF's governing board.

   U.S. courts have ruled that SNCF is an instrumentality of the French State.

5. **Claim:** In a Toulouse case, SNCF argued it was a private entity, but then argued it was a state entity in U.S. courts.

   Fact: This is wrong. SNCF has always argued it is a state entity, including in the Toulouse case. The issue in the Toulouse case was whether SNCF, in carrying out the deportations, was acting for the benefit of the French people – or acting under the compulsion of the Vichy State and the Nazi regime. In other words, the issue was not the nature of SNCF as an entity, but rather the nature of the activity.

   The court found that SNCF was acting under the compulsion of the Vichy and Nazi regimes. In other words, the case supports the fact that SNCF possessed no autonomy to resist Vichy and Nazi control, and was therefore not acting for the benefit of the French people.

6. **Claim:** SNCF willingly cooperated with the Nazis in the deportations.

   Fact: This is not true. When the Germans invaded France, the June 22, 1940 Armistice Agreement between Germany and Vichy in Article 13 stated baldly that all French railways "are placed at the full and entire disposal of the German transport chief". The deportations –

and their conditions – were mandated by very specific German order. On June 26, 1942, Nazi SS Office Theodor Dannecker, working under Adolf Eichmann, issued specific and detailed orders requiring that freight cars be used and specifying how many prisoners each convoy would carry, edicts that mandated overcrowded freight cars. Failure to comply meant severe punishment. An order from Colonel Werner Goeritz read: "All SNCF civil servants, staff and workers are therefore subject to German laws of war . . . In almost every case they stipulate the death penalty or forced labor for a fixed sentence for life. . . [Violations] can give rise to application of the severe penalties indicated above, of which not only the person in question but members of their family in particular would suffer." Contemporaneous historical documents supporting these facts are presented as Appendix 2 in the full submission at https://www.box.com/s/3e7a48eb34947771bfa4.

In fact, some 2,000 SNCF employees were executed. Over 800 were executed by firing squad or beheading, and the others were killed in deportations.

7. **Claim:** The Toulouse Invoice (Submitted for the record by Mr. Leo Bretholtz) proves that these were willful business transactions.

   Fact: The "Toulouse Invoice" placed in this record is mistranslated and has not been authenticated.

   Mr. Leo Bretholz placed the document into the hearing record and represented it to be an "invoice" from SNCF for the operation of deportation trains. This particular document has been offered several times on this issue, but has never been authenticated, never admitted into evidence by US courts, and the version in the record includes several critical and deceptive mistranslations.

   The English translation attached to the French version of this document placed in the hearing record omits critical text that actually demonstrates that SNCF was acting under forced requisition by the Vichy regime. The first paragraph in the translation submitted by Mr. Bretholz omits a phrase clearly legible in the French version of the document indicating that SNCF was acting under requisition order. The word "requisition" in the original French document is omitted from the proffered translation. A full and true translation of the first paragraph would read:

   > "To the Prefect,
   >
   > I have the honor of sending to you enclosed, ***with the requisitions in support thereof***, a report in duplicate for an amount totaling 210,385.90 concerning the transports carried

out for your department during the first quarter of 1944." [Omitted text from the translation in this record is in bold italics]

SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS

SERVICES FINANCIERS

DIVISION CENTRALE DE LA COMPTABILITE GENERALE

SUBDIVISION DU CONTROLE DES RECETTES VOYAGEURS

3e Bureau

N° F2.CRV.2017.9.

45813

PARIS, le 12 AOU 1944

212, rue de Bercy (12e)

Monsieur le Préfet de la Haute-Garonne

à Toulouse

Objet: Règlement de frais de transport.

Monsieur le Préfet,

J'ai l'honneur de vous adresser, ci-joint, avec les réquisitions à l'appui, un mémoire en double exemplaire, s'élevant à la somme de 210.885,1 concernant les transports effectués pour le compte de votre département pendant le 1er trimestre 1944. (Transports d'internement, etc. Intérieur, Ingénieur etc.)

159 Pièces jointes.

Je vous serais reconnaissant de vouloir bien faire effectuer le règlement de la somme précitée par mandats établis au profit

The addition of the phrase **"with the requisitions in support thereof..."** changes the entire meaning of what this document purports to be. Rather than a commercial invoice, the very first paragraph of this document reflects the actual Vichy and Nazi control of SNCF during the Nazi occupation: The Nazis occupied France, France owned SNCF, the Nazis demanded that the railroads be put at their disposition. (The two marks are added to assist the reader.)

In fact it appears, through another omission in the translations, that the requisition orders in question, amounted to 159 attachments, as stated in the margin at left: "159 attachments." The requisition attachments were not submitted, nor were the references to these requisition orders even translated. This document lacks any credibility.

Moreover, to the best of our knowledge at SNCF, there is no evidence that this document exists other than as an Internet document. The version put in the hearing record is partially

illegible and includes a number of hand-written comments and other marks not translated in Mr. Betholz's submission and obviously made long after the invoice was supposedly created. An original has never been produced making it difficult or impossible to authenticate, fully translate, or place in the context. It would almost certainly not be accepted as evidence by a U.S. court.

Still, a true translation of even this document demonstrates that the deportation trains were operated under requisition by Vichy government and/or German occupation forces in France, not provided voluntarily by SNCF. During German occupation, SNCF had no practical ability to resist the requisitions of German forces or the directions of the Vichy regime.

The importance of maneuverability is discussed by noted Holocaust historian Professor Michael Marrus in a recent article published by Yad Vashem in Jerusalem: "The crucial question ...concerned the railway company's 'margin of maneuver,' its capacity for independent action. ... 'One can scarcely speak any longer... of a real margin of maneuver for the SNCF after April and a fortiori November 1942, so true is it that every important question, even technical, relating to relations with the occupation authorities now operated at the level of the minister, or even the head of government, in order to fit into the policy of state-level collaboration....' Referring to what he calls the 'double subordination of the SNCF,' Margairaz's conclusion was clear: the margin of maneuver was weak from the summer of 1940, and became virtually nonexistent...after November 1942... Vichy had defined this system and Vichy alone had the capacity to do something about it. Responsibility, in brief, most properly belongs with the French state, and not with the SNCF."

A full discussion of this point and others by Professor Marrus can be found in Appendix 3 in the full presentation of this submission at https://www.box.com/s/3e7a48eb34947771bfa4.

Professor Marrus is the University of Toronto's Chancellor Rose and Ray Wolfe Professor Emeritus of Holocaust, and the author of six books on the Holocaust: *Vichy France and the Jews* (1981), with Robert O. Paxton of Columbia University, New York City; *The Unwanted: European Refugees in the Twentieth Century* (1985); *The Holocaust in History* (1987); and *The Nuremberg War Crimes Trial 1945-46: A Documentary History* (1997).

8. A number of other prominent historians and members of the French Jewish community agree that SNCF trains were requisitioned – forced to act -- by the Germans during WW II rather than entering into voluntary business transactions:

- *"SNCF was requisitioned. It could not escape from that force. It could not hide its trains any sooner than it could hide its railroad tracks or its workers."*

Serge Klarsfeld, internationally recognized Nazi hunter and attorney for Shoah victims, France 2 television, Nov. 12, 2010

(A statement from Mr. Klarsfeld follows, entitled: Analysis of Statements Made During the June 20, 2012 Hearing of the U.S. Senate Judiciary Committee, is attached.)

- *"It is my feeling that...it would be better to abstain from any court procedures rather than hold SNCF responsible given the political context of the era."*

  Grand Rabbi of France Joseph Haim Sitruk in an interview with the French Jewish radio program Radio J, and quoted in AFP wire service on March 27, 2007

- *"During the war, SNCF was requisitioned by the Germans. But the plaintiffs give the impression that the company enjoyed complete autonomy. This is ridiculous. The Occupation was not just some secondary problem as some people seem to believe today"*

  Henry Rousso, Holocaust Historian, author, and senior researcher at the French National Center for Scientific Research, in interview published June 8, 2006 in French publication La Croix

- *"SNCF is the wrong target. This entity was requisitioned and it trains placed at the disposition of the Germans."*

  Annette Wieviorka – Shoah Historian, from an interview in "France Today," Aug 31, 2006

- *"We consider that SNCF was under control of the State and that the State was under the control of the Nazi state... the responsibility of the French state was already recognized by the President of the Republic in 1995."*

  Then-Secretary General of the CRIF (Representative Counsel of the Jewish Institutions of France) quoted in AFP wire service on March 27, 2007

Additional reference materials for the record are presented as Appendices 4 through 7 in the full submission at https://www.box.com/s/3e7a48eb34947771bfa4.

As debate continues on this legislation, it is important that it be conducted with a true appreciation of the facts. The French government has established substantial and longstanding reparation and restitution programs to address the injustices of the entire French State, its entities, and its people during that era. These programs have stood the test of time and the scrutiny of French, European and U.S. courts. This legislation risks supplanting these well-established programs, creating inequities and substituting the U.S. Courts over established French programs. Any bill that endangers the reciprocity of state immunities should be argued on facts, not misrepresentation.

LES FILS ET FILLES DES DEPORTES JUIFS DE FRANCE
Militants de la Mémoire

F.F.D.J.F.
Association régie par la Loi de 1901
32, rue La Boétie – 75008 Paris
Président : Me Serge Klarsfeld
Téléphone : 01 45 61 18 78 /Fax 01 45 63 95 58 E.Mail : Klarsfeld.ffdjf@wanadoo.fr

June 26, 2012

The Honorable Patrick J. Leahy, Chairman
The Honorable Chuck Grassley, Ranking Member

The United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Grassley,

As President of the association "Sons and Daughters of deported French Jews", I respectfully request that attached statement be made a part of the record of the Senate Judiciary hearing entitled "Holocaust-Era Claims in the 21st Century" which was held on Wednesday, June 20, 2012 at 2:30 p.m., in room S-115 of the Capitol.

Sincerely,

Serge Klarsfeld
President

ANALYSIS OF STATEMENTS
MADE DURING THE JUNE 20, 2012 HEARING
OF THE U.S. SENATE COMMITTEE OF THE JUDICIARY

Submitted by
Serge Klarsfeld
President
Association "Sons and Daughters of deported French Jews"
Paris, France
June 26, 2012

In his opening statement before the Committee on the Judiciary last June 20th, Senator Chuck Schumer of the state of New York said:

" It has been important to hold accountable the perpetrators of this terrible crime (the Holocaust). It is also our moral obligation to make sure that those who were murdered are not forgotten... It is also important to give Holocaust survivors some means of well being"

I am president of the association "Sons and Daughters of deported French Jews". Those responsible for deporting French Jews were tried and sentenced in particular due to the action of the association "Fils et Filles des Déportés Juifs de France" (Sons and Daughters of deported French Jews): the Lischka, Hagen, Heinrichsohn cases, (Cologne 1980) the Leguay and Bousquet case, the trials against Paul Touvier (1994) and Maurice Papon (1998).

Over the last thirty years, the "Fils et Filles des Déportés Juifs de France" have prized the truth above all else. They have reconstructed the public records for every deportee and established the final number of deportees at 75,721 whereas until 1978 the official French statistics gave the figure as one hundred thousand and the German official statistics fifty to sixty five thousand; they have demonstrated and explained the decisive role of the French population and the clergy in saving Jewish families. The Sons and Daughters are opposed to put on trial the SNCF which never acted on criminal basis but was obligated by German and Vichy authorities to cooperate for military and civil trains on French territory.

We have obtained reparations from the French government: a life indemnity for orphans from Jews deported from France (more than a billion Euros already paid), a possibility for each who has material claim to bring that claim before a Commission (CIVS (more than 500 millions Euros already paid) and to obtain compensation and the creation of the Foundation for the Memory of the Shoah with a capital of 500 millions Euros. All that since 2000.

As to the SNCF role in the deportation of the Jews from France, several things were said last June 20th which were contrary to historical evidence.

- Senator Chuck Schumer said that the SNCF entered into an agreement with the German government
- Mr. Bretholz said that "the train to Auschwitz was owned and operated by SNCF" .
- Mr. Bretholz said "SNCF was paid to transport innocent victims ultimately to Auschwitz" and to prove this he submitted an invoice.
- Mr. Bretholz said: "SNCF willingly collaborated with the Nazis. Had the company resisted even to a small degree many lives would have been saved".

The SNCF was requisitioned for each transfer of Jewish internees, as were many individuals and companies from which the Prefect requisitioned vehicles, buses or the convoys required for transferring arrested Jews to departmental or regional camps, before leaving for Drancy in goods wagons as, for example, was the case during the summer of 1942 for 10,000 Jews from the free zone, or in passenger wagons as was most often the case in 1943 and 1944 for transporting Jews.

Requisition implies that the authority undertaking the operation, the Ministry of the Interior or the Prefect, pays compensation. A requisition order was an act of state authority from which the SNCF, the wagons, locomotive, drivers and mechanics could not escape.

Were the deportation trains French or German?

A memo dated 28 July 1942 from Röthke, responsible for Jewish Affairs in the Gestapo from July 1942 to August 1944 gives us the answer:

"...13 convoys of Jews will have to leave in August 1942. As the Wehrmacht Department of Transport confirmed yesterday, the rolling stock is available and ready to leave for all trains in the month of August; the evacuation can continue to be carried out using German goods wagons as has been the case until now. After having consulted the Wehrmacht Department of Transport I let Leguay know that the trains carrying Jews should first be directed to Drancy (it is impossible to move away from the precise transport plan agreed between the RSHA and the Reich Ministry of Transport). It is necessary to make the Jews from the unoccupied zone change trains because the Jews have to leave from Drancy in the German goods wagons held in readiness by the Wehrmacht Department of Transport."

According to the October 1940 WVD memorandum. BA – MA: RW 18/13:

"The wagons should be ordered by the sender from the appropriate SNCF department... The SNCF will make the necessary equipment available. For transport leaving France, in the first instance wagons from destination countries are used in accordance with the international regulations for the reciprocal use of wagons. If the wagons available are not enough, the SNCF will use its own."

In the numerous documents exchanged between the Gestapo's Jewish Affairs Department in Berlin (Eichmann) and the Jewish Affairs Department in Paris, in neither Berlin nor Paris is there ever any question of the SNCF. It is always the Reich's Ministry of Transport that makes the trains for deporting Jews available to the Gestapo in Paris.

As for example in this letter from Röthke dated 22 October 1943 to the Hauptverkehrdirektion CDJC XLIX – 540:

"On 28 October 1943, a transport of Jews will be sent to Auschwitz from the station in Bobigny. The Reich Central Security Office (RSHA) will contact the Reich Ministry of Transport about providing wagons. Please make this transport up with 23 goods wagons and 3 passenger carriages (one second class) so that they are ready on 27 October 1943 at 3pm to give time for cleaning and strengthening the wagons."

None of the surviving deportees that have related their departure have made any accusations against the SNCF or the railway workers. They were not responsible for embarkation either for transfers or for deportation. For transfers it was the gendarmes, the anti-riot police or the municipal police; for deportations it was the SS, soldiers or the German police in the escort.

Raoul Merlin, at the time the 1st class sub-station master at Compiègne, recounted the following (28 March 1966 AN: 72 AJ 498):

"Several days before the departure, the date was never given to us in advance, we received, empty covered wagons from different places among which we had to choose those best suited to these transports, based on the German railway worker's instructions. They systematically made us eliminate any vehicles with the least problem and in particular those with loose planks on the floor, the sides or the butts... After being marshalled, the train, usually made up of 20 to 25 wagons, was placed in two groups on rails IV and VI... Obviously the deployment of police prevented any attempts to intervene and that is why we could only watch impotently the departure of those unfortunate people. Some German railway workers were themselves distressed".

To maintain that searching the deportees was a task that fell to SNCF agents is false. Röthke's memo, quoted below, is clear:

"In addition all Jews should be subjected to a careful body search. Until now the French anti-Jewish police have carried out this inspection, which in many cases demonstrated that, despite a formal ban, Jews have still tried to take prohibited objects with them. It is therefore even more necessary that these Jews coming from the unoccupied zone are subjected to this inspection before departure."

In the accounts given by survivors, the railway workers are depicted as having given themselves the task of passing on deportees' messages. Messages did in fact reach the families in some unknown way, collected on the tracks and delivered by the railway workers to their recipients. Sometimes too, railway workers managed to intervene and save deportees (Rozan). This was the case for the children in Lille on 12 September 1942.

In August 1944, railway workers managed to avoid making the last large train that could have left the camp available to SS Captain Brunner, the Drancy camp commandant. Those liberated were well aware of it and many years later expressed their gratitude to those who in the exceptional circumstances at the end of the occupation managed to achieve something that was impossible when the German power was at its strongest. Can we reproach these railway workers for never having sabotaged the lines? Had they done so, they would have run the risk of disaster and if lives were to be deliberately sacrificed to save others, they would have had to have been absolutely certain that death awaited the deported Jews at the terminus. French railway workers never crossed the Franco-German border…

PAYMENT

The SNCF was not paid by the Germans for deportation. Already on 15 June 1942 in Berlin when it was decided by the Reich Central Security Office to deport French Jews, it was understood that, *"the French state will pay the costs of deportation"*, which is furthermore confirmed by the invoice sent for convoy no. 68 on 10 February 1944. This invoice concerns the special train (Judensondernzug) of Jews leaving from Bobigny-Auschwitz on 10 February 1944 and for the French section of the journey of 336 kilometres is addressed by the German travel agency, Mitteleuropaïsches Reisebüro (MER), to the Gestapo Jewish Affairs Department in Paris on the basis of the number of wagons X 18 francs per kilometre X 336 kilometres. The payment was to be made to the order of MER at the ReichKreditKasse in Paris. For the German section of the journey, the Reich Central Security Office paid the MER into its account in Vienna.

According to the historian Raul Hilberg:

"For the Germans the increasing number of deportations created a problem of a different kind: transporting so many Jews was going to cost a great deal. The financial division of the Reichsbahn made a gesture. A directive dated 14 July 1942 authorised – in the case of the special trains for Auschwitz from Holland, Belgium and France – the application of a group tariff, that is half the cost of a normal journey in third class for the distances covered on the Reich's territory, invoicing and payment being the responsibility of the official travel office (Mitteleuropäisches Reisebüro). The costs were nevertheless considerable.
On 17 August 1942, the budget specialist in the Security Police at the RSHA, Doctor Siegert, wrote to the Ministry of Finance that eighteen trains leaving France for Auschwitz had cost 76,000 Reichsmarks up to the German border and 439,000 from the border to Auschwitz. The possibility of creating a camp in the west of Germany was being looked at in order to reduce these costs. In the meantime, the military command in France stated that it was prepared to finance the transport to the border…"

For the second convoy on 5 June 1942, the WVD sent a copy of the schedule directive to the MER Paris office.

"Costs for the special train will be paid by the military command in France. Invoice in accordance with directive 15 Tpsg 268 of 26 June 1941. Special train ordered by: the representative of the Chief of the SIPO and SD for the military command in France (BdS), Paris 31 bis Av. Foch". (3 June 1942, GG, SB IV, T.VI, p 21)

In a letter from the SS Reichsführer and the German Chief of Police dated 17 August 1942, signed Dr Siegert, the following information was reported to the Ministry of Finance with a request for a decision:

"As part of the final solution to the Jewish question and in order to protect the occupation troops in French occupied territory, Jews are continually being transported to the Reich... the military command in France has agreed to provide the SIPO and SD commands in Paris, as part of advances on operating costs, with the means to cover the transport costs as far as the Reich border. Costs resulting from the evacuation of French Jews within the Reich are currently paid in advance by the SIPO in the Reich so that the evacuation is not interrupted. I would like you to decide which expenses should be charged to the extraordinary budget and which costs will be paid as occupation costs" (letter S II C 1 Nr. 869/42-238-10 from Dr Siegert of the RFSS to the Minister of Finance dated 17 August 1942. B.A: R2/12158, p 74 and 75

The answer from the Ministry of Finance dated 28 September 1942, signed Kallenbach, is as follows:

"The transport and accommodation costs resulting from the evacuation of French Jews to German territory should be charged as external occupation costs. They should be entered in the accounts in the extraordinary budget of the SIPO and paid with the operating funds made available to it by the Ministry. Any French francs that may be necessary should be procured from the Franco-German clearing house."(letter J 7130-25 from the Ministry of Finance to the SS Reichsführer dated 28 September 1942 BA: R2/12158 p 80 and 81)

According to Jochen Guckes, author of a study on "the role of the railways in the deportation of French Jews":

"All the costs of deporting French Jews were entered in the accounts in the extraordinary budget of the SIPO. The cost of the section of the journey within France was advanced by the military command and finally financed by the occupation costs paid by France (the same applied to the German police force accompanying the deportation convoys in France). The German section of the journey was covered in full by the SIPO budget. France therefore paid indirectly, through the occupation charges, for the deportation of French Jews on its own territory."

The SNCF was given compensation for internal transport but the example given by the plaintiffs of the Noé camp is false: it was a payment concerning the first quarter of the year 1944 and during the first quarter no Jew interned at Noé was transferred to Drancy directly or via Toulouse. It is made clear in the register of entries to Drancy and the date of transfers from Toulouse to Drancy.

The SNCF is accused of making a profit from the deportation. If that were the case, it would be natural, indeed legitimate, for the SNCF to return this profit. However, there was no profit. Take the example, put forward during the Papon court case, of the taxi driver who was requisitioned in August 1942 to take children to the prefecture and who sent the invoice to the Jewish Affairs Department. He had been requisitioned but the bill honoured by the Prefecture only takes account of the cost of petrol and the depreciation of the vehicle for a journey of XXX kilometres. The bill also takes account of the time

spent by the driver in taking the children that were to be transferred to Drancy as part of the convoy on 26 August 1942; he therefore made a profit. Should he be pursued for crimes against humanity and should his legal successors compensate the legal successors of the children for the prejudice suffered as a result of the loss?

In October 1943 the poet Isaac Katznelson described the role of the deportation trains in a superb piece of work, *The Song of the Murdered Jewish People,* written when his wife and two of his sons had just been deported from Warsaw to the gas chambers of Treblinka and where he and his last son would end their days in the same way some time afterwards:

"... The wagons are there, again, left yesterday evening and back today, they are there, there again on the platform... Empty wagons, you were full and now you are empty again. Where did you rid yourself of your Jews? What happened to them? There were 10,000, counted and registered, and here you are back again. Oh tell me, tell me empty wagons where have you been? You come from the other world – I know it cannot be far. Barely yesterday you left fully loaded and today you are already back. Why so much haste, wagons?... Tell me, oh wagons, where are you taking our people, these Jews led to their deaths? It is not your fault, you are loaded up, you are told "go", you are sent away full and brought back empty. Wagons returning from the other world, speak! Say one word, make your wheels speak, that I, that I mourn."

Serge Klarsfeld

Paris
(1935-)

Serge Klarsfeld, author and attorney, has published a dozen books on the fate of French Jewry during World War II and has been active in bringing Nazi and Vichy officials to trial for the crimes they committed. He is president of the organization, Sons and Daughters of the Jewish Deportees of France.

He was Serge Klarsfeld, a Romanian Jew, born in Bucharest in 1935, spent the war years in France. In 1943, the SS in Nice arrested his father during a roundup ordered by Alois Brunner, and he was deported to the Auschwitz concentration camp, where he was killed. Young Serge was cared for in a home for Jewish children operated by the OSE (Oeuvre de Secours aux Enfants) organization; his mother and sister also survived the war in Vichy France, helped by the underground French Resistance.

Serge Klarsfeld is Graduate of Superior Studies in History at the Sorbonne. He also is Graduate of the Institute of Political Science of Paris and Docteur es Lettres and lawyer at the Court of Appeal of Paris. He is one of the foremost historians on the fate of the Jews in France during the Second World War.

He has worked on many legal cases against several Nazi criminals that operated in France, namely Lischka, Barbie, and Brunner. He led and initiated the Bousquet, Leguay, Papon, and Touvier cases. He revealed to the French public the crimes of Vichy and is seen as the inspiration of President Jacques Chirac's declaration that officially recognizes the responsibility of France during World War II.

Klarsfeld has been arrested in Germany and Syria in his attempts to get Brunner extricated. He went to Tehran in 1979 to protest against the executions of the Lebanese Jews and he protested against Karazdic and Mladic in the Serb Republic of Bosnia in 1996.

Klarsfeld is an officer of the Fondation pour la Mémoire de la Shoah.

On July 7, 2010, Serge Klarsfeld was awarded the title of Commandeur de la Légion d'Honneur by Prime Minister François Fillon.

Klarsfeld and his wife, Beate, make their home in Paris.

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

June 20, 2012

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

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

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

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

The Search for Family Insurance Policies

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

My experience is similar to that of my late friend Si Frumkin, a survivor and giant in the history of human rights. Si was speaking for all survivors when he exposed the hypocrisy and disrespect that Congress, arrogant Jewish groups, and the Executive Branch of our government have shown in allowing the insurers to inherit the funds that should have been paid to victims' families decades ago. He wrote:

> I am angry. Angry with the SOBs in Germany. With our own SOBs in Washington. With the SOBs running the Jewish organizations that presume to speak and negotiate for me and others like me. With the criminals who run European insurance companies that stole hundreds of millions of dollars from people who died prematurely in gas chambers, and then hired stooges to make sure it's not given back.
>
> I am a law-abiding American citizen. I pay my taxes and my traffic tickets. I vote. I have served on a jury. I fly my flag on national holidays. In return, I expect my government to fulfill its constitutional obligations to me. One of them is my right to a trial by a jury of my peers. This has been denied me because, apparently, my government prefers to defend and uphold the rights of giant German corporations.
>
> * * *
>
> So far, Generali has been able to keep the money it stole. It, too, has the cooperation of the U.S. government and its judiciary in acknowledging ICHEIC—created, financed, and controlled by the insurance SOBs—as the only legitimate body to rule, decide, and control Holocaust-era insurance claims.
>
> Still, I want to see those lists. I am sure that my father's name appears on one of them. I am also sure that tens of thousands of other Jews whose parents or grandparents perished will find the names of their relatives.
>
> Hitler took away my father's name and gave him a number. The insurance companies took it away again by pretending that he never existed. I want them to acknowledge that he lived, that he died, and that the way he died matters to his son and to the grandchildren he never knew.

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

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

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

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

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

ICHEIC History

The International Commission for Holocaust Era Insurance Claims (ICHEIC) was the creation of the insurance industry, not state regulators as the legislation opponents contend. The companies instigated ICHEIC because of state laws passed after several insurance regulators held hearings that yielded damning evidence that the insurers had denied Holocaust victims' insurance claims with outrageous demands such as requiring death certificates or original policies. These statutes required the companies to disclose their customer names, and to give survivors and heirs a 10-year period of time to bring cases in state courts without regard to statutes of limitations.

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

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

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

It is true that several state insurance regulators joined ICHEIC. They supported a process to help resolve claims on a voluntary basis -- *if the claimant was satisfied with what was offered.* Many individuals did accept ICHIEC offers despite the lower-than-economic values that were agreed to by the Commission. That was the people's choices and I would not criticize any survivor, especially one who was elderly and in need of the funds, for making that decision.

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

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

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

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

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

ICHEIC Was Not A Fair Forum For Holocaust Survivors and Heirs

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

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

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

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

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

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

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

Relaxed Standards of Proof

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

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

According to the New York Legal Assistance Group: "ICHEIC's decision to allow the use of negative evidence belies the claim . . . that the organization's principal purpose was to find claimants and pay them." Yisroel Schulman, "Holocaust Era Claims: Mission Not Accomplished," *The New York Jewish Week*, May 4, 2007.

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

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

In 2003, Congress even passed a law -- the Foreign Affairs Authorization Act -- that required the State Department to collect information on ICHEIC companies' claims, practices, and results. However, ICHEIC *simply refused to comply with this Congressional mandate every single year*, without any consequence.

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

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

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

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

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

The United States Never Promised Insurers Immunity From Litigation.

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

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

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

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

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

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

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

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

In October 2007, the House Foreign Affairs Committee under Chairman Tom Lantos unanimously passed legislation similar to S. 466 to help survivors recover their policies. In response, the insurers, the State Department, the Claims Conference, and Eizenstat argued a law was unnecessary because the New York State Holocaust Claims Processing Office (HCPO) would "continue to" pay claims under ICHEIC's "liberal" rules. Although survivors rejected this "voluntary" ICHEIC model, the House Financial

Services Committee acquiesced to the insurers' position and gutted Chairman Lantos's bill. However, according to its published reports, in over 4 years the New York State Holocaust Claims Processing Office has succeeded in helping recover a grand total of 6 policies, worth only $70,000. That's $70 thousand out of the $20 billion remaining unpaid.

HCPO's miniscule success rate is no surprise. It lacks subpoena power, exercises no compulsory authority over the insurers, and accepts all of ICHEIC's previous compromises and practices that yielded such poor results. This is how the *New York Jewish Week* described the HCPO in a recent article (December 2011): "Just one month after the U.S. State Department and several major Jewish organizations told a congressional committee that New York State's Holocaust Claims Processing Office (HCPO) could be relied upon to handle all Holocaust-era insurance claims, New York State has admitted the system doesn't always work." This article is one of my exhibits.

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

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

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

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

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

Germany perpetrated the worst crime in human history and for that country or anyone serving as its mouthpiece to suggest that it will intentionally inflict any kind of

suffering on impoverished Holocaust survivors in their final years is beyond the pale. Have they forgotten that after World War II, German Chancellor Adenauer promised that Germany would provide a dignified level of care and support for all Holocaust survivors throughout their lives?

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

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

Under the scheme Germany and the Claims Conference have engineered for the past 15 years, half of all survivors in this country have been allowed to slip into or near poverty, while the insurers alone have absconded with some $20 billion. The industry's self-serving position, inexplicably endorsed by the State Department, would excuse the destruction of Holocaust survivors' legal rights to enforce private contracts, and it should be obvious to all that these contracts have nothing to do with Germany's failed obligation to assist survivors in need.[1]

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

This condescension must stop once and for all. Neither the State Department, the ADL, AJC, Claims Conference, B'nai B'rith, World Jewish Congress, nor even Mr. Eizenstat has the right to patronize us by pontificating about what is and isn't right for Holocaust survivors. These insurance policies were sold to our families and we have every right to decide for ourselves how to enforce our contractual rights. We survived in spite of the abandonment of European Jews by the State Department and the so-called Jewish "defense" organizations supporting the insurance companies. Many survivors even served in the U.S. military after moving here and in the Korean and Vietnam Wars. It is long past time for Congress finally to pass legislation to restore our basic rights as American citizens, and for President Obama to sign the measure into law. Mister Chairman, thank you for allowing me to testify, and to include the attached exhibits in the Hearing Record.

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

Let survivors go to court

By JTA Mailman · April 4, 2012

To the Editor:

The American Insurance Association ran an ad last week asserting that the "insurance industry seeks to ensure that all unclaimed and unpaid insurance policy from the Holocaust era are appropriately paid." The AIA ad is not only cynically timed, it is highly misleading.

The insurers' ad was launched nine days after the House Foreign Affairs Committee unanimously passed the Tom Lantos Justice for Holocaust Survivors' Act, which restores survivors' rights to go to court to enforce private contracts and recover our families' legacies against global insurers such as Generali, Allianz, AXA and others.

The "voluntary" honor system endorsed by AIA, The International Commission on Holocaust Era Insurance Claims, or ICHEIC, paid only 14,000 policies -- not "tens of thousands" as AIA contends. This represents only 2 percent of the 800,000 policies owned by European Jewish before the Holocaust. Accepting ICHEIC's claim that it paid $500 million including humanitarian payments, this is less than 3 percent of the $20 billion insurers still owe.

While some claimants learned about family policies from a list of names published by ICHEIC, such disclosures already were mandated by several state statutes. ICHEIC actually allowed the companies to publish hundreds of thousands fewer names than would have been required by those state laws.

It is also not true that ICHEIC used "relaxed standards of proof." ICHEIC allowed Generali to reject claims in which the company said a policy was paid or lapsed but would not provide documentation. It also employed "phantom rules" placing the burden on survivors to produce documents to support claims, which in most cases was impossible for Holocaust survivors. Yet instead of publicly accounting for its actions, ICHEIC disobeyed an act of Congress requiring it to disclose claims data, destroyed batches of records and sealed others for 50 years.

The suggestion that the companies will still process claims "voluntarily" is a familiar charade. In 2007-08, after the House Foreign Affairs Committee passed a similar bill, the insurers promised that the New York State Holocaust Claims Processing Office would "continue to" pay claims under ICHEIC rules. Congress relented. But ICHEIC standards favor the insurers and not surprisingly, between 2008 and now, the New York claims processing office succeeded in helping recover only six policies worth $70,000.

The best way to encourage insurers to "voluntarily" pay their debts is for Congress to restore Holocaust survivors' legal rights to obtain information within the companies' control and to hold them accountable in the courts if they refuse to settle fairly. With most survivors in our 80s and 90s, this tragedy for survivors must end now before it is too late.

David Schaecter
President
Holocaust Survivors Foundation USA

Groups Supporting Holocaust Insurance Legislation – HR 890 and S. 466 – 2012

Holocaust Survivors Foundation, USA, Inc.

National Association of Jewish Holocaust Survivors (NAHOS) (New York based, with members throughout the U.S.)

Southern California Council for Soviet Jews

The Shaarit Haplaytah – Holocaust Survivors of Greater Detroit

Florida Holocaust Survivors Coalition

Holocaust Survivors of Greater Boston

Holocaust Survivors of Greater Miami

American Gathering of Holocaust Survivors and their Descendants

Associates of Descendants of the Shoah – Illinois, Inc.

Holocaust Survivors of Southern Nevada

Survivors of the Holocaust Asset Recovery Project, Washington State

The Jewish Holocaust Survivors & Friends of Greater Washington (D.C.)

CANDLES Holocaust Museum, Terre Haute, Indiana

Holocaust Survivors Club of Boca Raton

The New American Social Club

Holocaust Council, United Jewish Communities (UJC) of Metro West, New Jersey

Houston Council of Jewish Holocaust Survivors

Generations of the Shoah International

Second Generation Holocaust Survivor Association of Silicon Valley, CA

Second Generation Los Angeles

The Generation After in the Washington, DC area (VA & MD)

CHAIM (Children of Holocaust Survivors Assoc. in Minnesota)

Generation After Milwaukee, WI

Generations of the Shoah/SW (Florida)

Generations of the Shoah-New Jersey

Holocaust Remembrance Committee, Baltimore, MD

Phoenix Holocaust Survivors' Association

Habonim Cultural Club, Miami

Holocaust Resource Center-Temple Judea, Manhasset, NY

Holocaust Council of MetroWest, UJCNJ, New Jersey

Generations After at the Florida Holocaust Museum, St. Petersburg, FL

Second Generation of Jewish Holocaust Survivors in Houston

Child Survivors/Hidden Children of the Holocaust

St. Louis Descendants of Holocaust Survivors and Victims

Generations of the Shoah -- Nevada

3G NY (New York Group of grandchildren of survivors)

Boston 3G, Inc.

Generation to Generation, San Francisco Bay Area

New York Legal Assistance Group (Legal Aid Group)

The Blue Card, Inc. (New York City Holocaust survivor social service delivery group)

Jewish Community Relations Council of Boca Raton

Jewish Community Relations Council of Minneapolis-St. Paul

3G, DC (Grandchildren of Holocaust survivors, including Washington D.C., Maryland, and Virginia)

Washington State Holocaust Education Resource Center, Seattle WA

Grandchildren of Holocaust Survivors International (Washington, D.C., with affiliates in New York, Illinois, Michican, Massachusetts, and California)

Second and Third Generation Programs of Silicon Valley Holocaust Survivors Associations, San Jose, CA

From: Labaton, Edward [ELabaton@labaton.com]
Sent: Sunday, January 01, 2012 8:29 PM
To: Andrew Baker
Cc: David Harris; Lilli Platt
Subject: RE: THANK YOU AND HAPPY NEW YEAR)

Dear Rabbi Baker,

Thank you for offering to discuss the matter. I find it unnecessary to do so because the written record of AJC's position is more than sufficient: It is crystal clear that the AJC/ADL position is adverse to the interest of Holocaust survivors with valid insurance claims and if that position were to be adopted by the Congress a wholly unwarranted benefit would be conferred upon Allianz, Generali and other insurers who have failed to pay on the life insurance policies of persons who perished in the Holocaust.

I have reviewed the Congressional lobbying materials you sent me containing the arguments of the AJC and other Jewish "defense" organizations. Although I had read news articles generally describing the groups' opposition to the corrective legislation now before Congress, I have to say that upon reading these materials in full, I continue to be disturbed at the actions of organizations purporting to act in the name of the Jewish community.

What initially troubled me about AJC's public position was the argument that this legislation is "driven more by the agendas of class-action lawyers than by legitimate grievances," and questioning "who are the individuals with unmet claims. My guess is you could probably count them on your fingers and toes. There may be enough for a class action suit, but the notion that there are hundreds of people with legitimate unmet claims is unfounded." The canard of greedy lawyers has been used by corporate wrongdoers and their acolytes to try discredit me and other of securities class action lawyers who have succeeded in recovering billions of dollars for defrauded investors. It is even more outrageous to see this crass argument made to deprive Holocaust survivors of the same rights as every other American citizen to pursue an effective remedy against insurance companies that have profited by their failure to pay to beneficiaries amounts due to the survivors of holocaust victims The materials you forwarded me are troubling. As a threshold matter, I find the opposition by AJC to effective legal relief sought by the overwhelming majority of Holoust survivors to be shocking and indefensible.

The insurance policies at issue were sold to individuals, paid for by men and women who tried to protect their families. Our legal system provides remedies to those injured by predatory practices of insurance companies and others who exploit their financial power to cheat consumers. Holocaust survivors, and the legal heirs of other victims, should have the sole right to decide for themselves how to reclaim their family legacies. Does AJC really believe the trauma of the Holocaust gives self-appointed NGOs the right to step in and deny the actual victims their full rights as American citizens to control these legacies ?

As for the actual arguments contained in AJC's lobbying materials, I will not endeavor to go through them all except insofar as I know enough from the public record to understand they are all either inaccurate, misleading, or so flawed in logic and morality as to defy belief.

For example, it is absurd for AJC or anyone, much less a Jewish "defense" agency, to argue that Holocaust survivors should have to give up their rights as U.S. citizens to enforce legal contracts in the American justice system, to induce Germany to provide financial assistance for indigent Holocaust survivors, whose families were annihilated by Germany and who suffered incomprehensible injuries at the hands of the German Reich. One thing has nothing whatsoever to do with the other, and for a Jewish "defense" organization to attempt to justify curtailment of survivors' property rights on that basis is allows both Germany and the profiteering Holocaust insurers an excuse to avoid their true responsibility.

It is also incorrect to argue that the U.S. government promised these insurance companies immunity from litigation. Even Stuart Eizenstat and Julius Berman acknowledged this in a recent article, and Berman substituted the incredible proposition that the "promise" was actually made by the same non-survivor Jewish organizations circulating this "testimony" – the Claims Conference, the ADL, the AJC and other affiliated groups.

The ridiculous premise that such groups have the standing to make promises to deprive Holocaust survivors of their legal rights was restated again in the New York Jewish Week this week by Abe Foxman. More importantly, this article also exposed the fundamental flaw in the approach of the New York State Holocaust Claims Processing Office – the "alternative forum" recommended by AJC, Eizenstat, the State Department, ADL, and the other insurance industry supporters: "Just one month after the U.S. State Department and several major Jewish organizations told a congressional committee that New York State's

Holocaust Claims Processing Office (HCPO) could be relied upon to handle all Holocaust-era insurance claims, New York State has admitted the system doesn't always work."

What Mr. Ain's article shows is what every survivor and survivor advocate knows – that without direct and serious administrative enforcement of insurance laws and the right of access to the full panoply of rights afforded by the American legal system, insurance companies will not honestly account for their unpaid debts to consumers. You don't have to be a class action lawyer to understand this. And in the case of the Holocaust survivors and heirs of Holocaust victims, the interference for the insurers being run by AJC and other "defense" agencies seems to have allowed thousands of deserving claimants to be denied their due, with many dying – and in need – without the financial justice they deserve.

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From: Andrew Baker [mailto:bakera@aic.org]
Sent: Friday, December 30, 2011 7:51 PM
To: Labaton, Edward
Cc: David Harris; Lilli Platt
Subject: RE: THANK YOU AND HAPPY NEW YEAR)

Dear Mr. Labaton,

Your email (below) concerning AJC's position on proposed Holocaust-era insurance legislation (HR 890) was shared with me. By way of explanation, you will find attached a copy of the written, joint testimony that was submitted last month to the House Foreign Affairs Committee on behalf of AJC and other major Jewish organizations (ADL, B'nai B'rith, the Claims Conference, the World Jewish Congress and the World Jewish Restitution Organization). This broad

opposition to this legislation is in fact predicated on the shared belief that doing so serves the interest of needy Holocaust survivors.

If you would like to discuss this subject directly, please feel free to call me. You will find my office and mobile numbers below.

Let me also thank you for your continued support of AJC and offer you best wishes for the New Year.

Yours sincerely,

Andrew Baker

Rabbi Andrew Baker
Director of International Jewish Affairs
American Jewish Committee
Washington, DC

Office (direct) 202-785-5495
Mobile 202-345-3793

From: Labaton, Edward [mailto:ELabaton@labaton.com]
Sent: Friday, December 30, 2011 2:56 PM
To: Lilli Platt
Subject: FW: THANK YOU AND HAPPY NEW YEAR)

Hi Lili

I've with some hesitation arranged to send $2,000 through my Jewish Communal Fund account to AJC for the the Long Island Chapter.

I hesitate because I am disturbed by public statements by AJC opposing legislation that would permit Holocaust victims to sue insurance companies that illegally confiscated Jewish life insurance policies and have refused to pay billions of dollars to the heirs of those covered by the policies. AJC, through Andrew Baker, has issued a number of statements echoing bogus arguments of the insurance companies

(Allianz, Genarali and others) that the legislation is designed to benefit "lawyers" and "class action lawyers".

The proposed legislation includes a provision that when the insurance company has wrongfully withheld payment, it is liable for the reasonable attorneys fees of the claimant. This provision is the law in the vast majority of States in the US and is intended to deter insurance companies with vast resources from stonewalling claimants with valid claims. In this particular instance the holocaust survivors most of whom are over the age of 75 have been victimized in unparalleled ways. The failure to pass this kind of law would further punish the victims while rewarding those who profited from the Holocaust.

I note that I have no personal interest in this legislation. My firm specializes in securities and anti-trust class action litigation and I personally appeared, on a pro-bono basis in connection with litigation related to the Swiss Bank litigation. In that case I supported the position that American Holocaust survivors should have received a larger share of the settlement than that allocated to them. In addition I would note that the legislation is designed to give access to the courts to individual claimants as opposed to class action claims.

The current issue of Jewish Week has a good discussion of the issues.

My best wishes for the New Year.

Ed

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Survivors of Atlantic City, NJ

Survivors of the Holocaust Asset Recovery Project, Seattle

Survivors of the Holocaust of New Mexico

Tikvah Acharay Hashoah, San Francisco

June 26, 2012

Senator Charles Schumer
322 Hart Senate Office Building
Washington, D.C. 20510

Senator Charles Grassley
135 Hart Senate Office Building
Washington, D.C., 20510

Subject: S. 466 and Jewish Groups Opposition to Holocaust Survivors

Dear Senator Schumer and Senator Grassley:

We understand that certain non-survivor Jewish organizations submitted a memorandum to the Judiciary Committee in opposition to S. 466. Holocaust survivors are disgusted and outraged that these groups have the arrogance to presume to interfere with our rights, and we therefore are submitting this letter and exhibits for the hearing record.

We are making this submission for two reasons. First, is to make sure that no Member of the Judiciary Committee, or the Senate, or the public, becomes confused or influenced by the contemptible behavior of these groups. Simply put, we resent their interfering with our families' private contract rights. The Jewish groups' latest meddling in our affairs is a terrible but familiar example to us. For decades, we Holocaust survivors have had to endure the syndrome of various organizations presuming to act **"about us, without us."** It is beyond cynical for groups who have absolutely no right to speak about our legal rights, and our family legacies, to give the false impression that they have any legitimate role in the debate over this legislation. They don't.

We are attaching a list of the Holocaust survivor and Second-generation groups that support S. 466. There is virtual unanimity among the surviving generation and our families in support of this legislation, as demonstrated on the attached list of supporting organizations.

PHONE (305) 231-0221 Ext. 243 4200 BISCAYNE BLVD MIAMI, FL. 33137-3279 FAX (305) 231-4242

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Tikvah Acharay Hashoah, San Francisco

Senator Charles Schumer
Senator Charles Grassley
June 26, 2012
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In this connection, we wish to include the exchange of correspondence between distinguished attorney Edward Labaton of New York with the American Jewish Committee representative defending the insurance companies' immunity, as well as the incisive Congressional testimony of University of Maryland Law Professor Michael Van Alstine, http://judiciary.house.gov/hearings/pdf/VanAlstine100922.pdf.

Second, we are determined not to allow the misrepresentations and morally bankrupt arguments being made by these groups to gain traction with the Members of the Committee. The written testimony of Holocaust survivor Renee Firestone thoroughly addresses and repudiates the claims and arguments that the Jewish groups – parroting the insurance companies and the State Department – are making. However, we are also including the letter that the survivor leadership sent to the American Jewish Committee and the Anti Defamation League many months ago outlining the reasons their lobbying points are inaccurate, such as the argument that the U.S. government previously promised the insurers they would not be subject to litigation if they participated in ICHEIC. Therefore, not only is the Jewish groups' submission the height of condescension and treachery, for reasons we cannot understand they continue to advance arguments documented to be untrue.

There is one other point to emphasize in this letter. We are appalled by the organizations' pompous diversion of the discussion about our families' insurance policies by invoking "our community's . . . struggle to obtain the maximum amount of funds for the most victims in need as quickly as possible." To suggest that we must relinquish our legal rights against insurance companies who profited from the Holocaust, for some notion of the greater good, is nonsense. These insurance policies were sold to our families and we have every right to decide for ourselves how to enforce our contractual rights. We survived in spite of the abandonment of European Jews by the State Department and the groups now daring to cause us terrible harm. Many of us even served in the U.S. military after moving here and in the Korean and Vietnam Wars. No one, especially Jewish "defense" organizations, has the right to patronize us by pontificating about what is and isn't right for Holocaust survivors.

This condescension must stop once and for all. We survivors are dying at an alarming rate. Thousands have died, many in need and desperate, without the benefits they are entitled to, due to Congress's unconscionable delays. Please, move quickly and pass S. 466.

"JUSTICE AND DIGNITY FOR SURVIVORS"

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Survivors of the Holocaust of New Mexico

Tikvah Acharay Hashoah, San Francisco

Senator Charles Schumer
Senator Charles Grassley
June 26, 2012
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Sincerely,

David Schaecter

JOINED BY HSF EXECUTIVE COMMITTEE:

Israel Arbeiter, Boston MA
Dena Axelrod, Ft. Lauderdale, FL
Renee Firestone, Los Angeles, CA
Sello Fisch, Bronx NY
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Holocaust Insurance Legislation -- 2012

In the years leading up to the Holocaust, victims of Nazi persecution tried to protect their assets, and their families' futures, by buying property and life insurance from companies such as Generali, Allianz, AXA, Munich Re, Swiss Re, and others. Before, during, and after WWII, these companies operated globally including in the United States, and remain among the wealthiest corporations in the world.

After World War II, the companies stonewalled survivors and heirs by demanding death certificates and original policy documents, denying that policies existed, claiming that the policy had been surrendered or voided, etc. Of course, in many cases heirs had no idea their parents or grandparents, who died in the Holocaust, even had a policy.

When the issue surfaced in the 1990s, the insurers created a commission to supposedly resolve claims in a "non-adversarial" fashion. The commission was non-binding unless a claimant accepted a settlement. After 9 years, it paid only 3% ($250 million) of the outstanding insurance policies owned by European Jews before the Holocaust, leaving over $20 billion unpaid. The failures and scandals of the commission were widely documented in media including the *New York Times, Baltimore Sun, Los Angeles Times, Miami Herald, Palm Beach Post, The Economist,* and the Jewish media.

However, the federal courts have recently held that survivors and heirs cannot sue these insurance companies in U.S. courts, because "Executive branch foreign policy" supports the commission. Due to these court rulings, survivors' access to courts is barred by "Executive preemption" even though there is no applicable Federal Treaty, Act of Congress, or even Executive Agreement preempting state law or creating a conflict.

This decision is obviously catastrophic for survivors, and allows global insurers to retain billions of dollars in unjust enrichment. Further, the holding that *any* citizen's state law contract and property rights can be preempted by mere statements of executive branch officials in press releases and court briefs encroaches on Congress's authority to regulate interstate commerce and determine access to courts. It also erodes states' role of regulating basic rights such as contracts and property rights.

There are bills in the House and Senate (HR 890 and S 466) with bi-partisan co-sponsorship, including Reps. Ileana Ros-Lehtinen, Debbie Wasserman Schultz, Ted Deutch, John Garamendi (who as California Insurance Commissioner served on the commission and fought the insurers all the way to the Supreme Court), and Senators Bill Nelson, Marco Rubio, Diane Feinstein, and Barbara Boxer, that would overrule these court decisions. They (1) validate state laws requiring insurers to publish policy holder information and providing survivors the right to sue insurers; (2) establish a new federal cause of action for national uniformity and to ensure all survivors and heirs court access if their cases were dismissed under the previous rulings, and (3) provide a 10 year window of time for cases to be brought.

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It is unconscionable that Holocaust survivors should be second class citizens in the United States in the year 2012, but that is the case today. Time is of the essence because survivors and in their 80s and 90s, and survivors should not be denied their basic rights any longer. Unfortunately, the insurers, the State Department, and a number of non-survivor Jewish NGOs are making grossly inaccurate arguments to defeat HR 890 and S. 466 – and continue to deny Holocaust survivors our rights. Here is a brief synopsis of the arguments and the reasons they are flawed.

"Legal Peace." The major argument is that legislation will violate U.S. government promises of immunity to insurers who participated in ICHEIC. This is not true. The U.S. government never made such a promise. Only claimants who accepted offers would have to sign releases – and only 14,000 claimants received offers while some 800,000 policies remain unpaid.

-- ICHEIC was always understood and advertised to be voluntary unless a claimant accepted a payment. This is also clear from the minutes of the meetings, and the positions taken by participating State Insurance Commissioners including Deborah Senn, Bill Nelson, John Garamendi, the late Neil Levin of N.Y, and others.

-- ICHEIC supporters regularly inflate the commission's success, stating that it paid "48,000 claimants a total of $300 million." This is untrue; only 14,000 policies were paid. ICHEIC gave 34,000 applicants what was called a "humanitarian award" of $1000 each, giving rise to the supposed 48,000 total. Of course, neither survivors nor ICHEIC considered the "humanitarian awards" to be payments on claims; survivors believed they were insults designed to cultivate support for the process. Instead, they caused greater disdain among survivors.

-- The only relevant U.S. government agreements (with Germany and Austria) state that explicitly that they do not provide immunity, and do not justify dismissal of lawsuits against insurers because a company participated in ICHEIC.

-- The Justice Department produced documents to the Holocaust Survivors Foundation USA (HSF) under the Freedom of Information Act which admitted that the government never promised immunity to the insurers. After Cong. Adam Schiff referenced them in his Judiciary Committee testimony (September 2010), DOJ demanded the documents be returned and said they were "inadvertently" produced! This was reported by the Center for Public Integrity.

-- When confronted by *The New York Jewish Week* with these facts (June 2011), Claims Conference Chairman Julius Berman and Stuart Eizenstat both admitted that the government never promised the insurers "legal peace." Berman said that it was "the Jewish groups," i.e. the Claims Conference, et al. who promised the insurers that ICHEIC would be the last word. Of course, these groups have no moral or legal authority to make such a commitment on behalf of survivors.

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Legislation will harm survivors. The opponents say that passage of legislation will harm other "voluntary" assistance provided by Germany for indigent survivors. This argument is irresponsible in principle and incorrect as a matter of fact.

-- After the Claims Conference, AJC, and ADL first raised this argument in 2008, the German Ambassador informed Members of Congress in private conversations, and Holocaust Survivors Foundation USA leaders in writing, that Germany would *not* retaliate by reducing funding for indigent survivors if insurance legislation becomes law.

-- It is outrageous in principle to say Holocaust survivors should have to give up their legal rights to enforce private contracts breached by Generali, Allianz, AXA, et al., to induce *Germany* to provide funding for the needs of impoverished survivors. One thing has nothing to do with the other -- insurance companies should pay their debts and survivors and heirs should be able to sue them if they breach their contracts. At the same time, Germany has an independent moral obligation to assist Holocaust survivors in need, which it has never fulfilled. When Germany and the groups now opposing the survivors have allowed half of the Holocaust survivors in the U. S. to be living in or near poverty over the past decade, it is unconscionable for the same groups presume to use their influence to defeat survivors' legal rights against private insurance companies who have dishonored private contracts they owe families.

Raising False Hopes. One of the groups' arguments is that passage of insurance legislation will "raise false hopes" among survivors. This is nonsense. What right do these groups have to tell Holocaust survivors what is best for them? Moreover, how can U.S. policy tolerate immunizing insurance companies that profited from atrocity and mass murder?

The courts have extinguished survivors' rights to go to U.S. courts to claim insurance policies purchased by their' mothers, fathers, grandparents, aunts and uncles. These policies were purchased by individuals to protect their families. They were not issued to "organizations" and they certainly didn't become the collective property of "the Jewish community" because of Hitler's lunacy and mass murder.

To quote Senator Arlen Specter's comment on this point when he introduced the bill that became Bill Nelson's S. 466: "Holocaust survivors and their descendants should be allowed to decide for themselves whether to file suit. Neither the executive branch nor the federal courts should make that decision for them." The same goes for the AJC, ADL, Claims Conference, B'nai B'rith, and the World Jewish Congress.

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New York Holocaust Claims Processing Office. The groups (and the State Department) say legislation is unnecessary because the New York State Holocaust Claims Processing Office (HCPO) will help claimants recover unpaid policies for free, now that ICHEIC is closed. Survivors reject any "voluntary" process that and insist on having their legal rights restored, and the facts show this office is ineffective in practice.

However, according to the Office's own published statistics, the HCPO has only successfully recovered payments on **six policies** in the 4 years since Stuart Eizenstat announced in 2008 that it would replace ICHEIC to provide "voluntary" assistance for claimants. Now, even the NY Department of Financial Services has admitted the HCPO approach is seriously flawed. The total amount this office generated since 2008 from insurance policies was about $70,000. That is $70,000 out of a total of more than $20 billion owed today!

According to a recent article in the *New York Jewish Week*: "Just one month after the U.S. State Department and several major Jewish organizations told a congressional committee that New York State's Holocaust Claims Processing Office (HCPO) could be relied upon to handle all Holocaust-era insurance claims, New York State has admitted the system doesn't always work." That is an understatement.

Conflicts of Interest. It is also relevant, though it should be unnecessary, to bear in mind that the Claims Conference, and the AJC and ADL, have been the recipients of money from ICHEIC, Allianz, and Generali, respectively.

These relationships create clear conflicts of interest, and taint the groups' credibility on the subject of whether these same insurance companies should be held accountable for the billions of dollars they still owe Holocaust victims' families.

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Tikvah Acharay Hashoah, San Francisco

November 30, 2011

David Harris, President
American Jewish Committee
National Office
165 East 56th Street
New York, NY 10022
Fax (212) 891-1450

Dear Mr. Harris:

We are writing to ask the American Jewish Committee (AJC) to reverse its opposition to and withdraw its lobbying campaign against HR 890, the Holocaust Insurance Accountability Act of 2011 (and its Senate counterpart S. 466). If AJC is not willing to change its position, we would like an opportunity to address AJC's lay leadership directly at the next Board of Governors Meeting.

The Holocaust Survivors Foundation USA, Inc. (HSF) a national coalition of survivors and survivor groups, representing twenty states and encompassing the vast majority of survivor communities in the U.S. We came together in the year 2000 because we witnessed first-hand the failures of the "restitution" enterprise. With only a fraction of the funds looted actually recovered by individual owners or heirs, and no one demanding a comprehensive approach to funding the needs of impoverished survivors around the world, survivors needed an authentic voice.

Today, Holocaust survivors are the only American citizens who are barred from U.S. courts for the purpose of recovering insurance policies sold to our families but dishonored by the insurance companies. Bills pending in the House and Senate that would rectify this problem, HR 890 and S. 466, have broad bi-partisan support, and the universal support of Holocaust survivors and survivor groups. Independent estimates of the insurers' unpaid debts to survivors exceed $20 billion in today's dollars, on hundreds of thousands of policies.

Unfortunately, the AJC and a few other non-survivor organizations are aggressively opposing Holocaust survivors and taking the side of the German Government and the insurance industry. We are hurt and anguished to see AJC using its prominence to fight against Holocaust survivors. Why in the world would you lend AJC's prestige – and the good names of thousands of community leaders and rabbis – to protect the secrets and the pocketbooks of Germany and large insurers who have cheated our families out of billions of dollars? Local AJC leaders who we have approached seem equally confused

HOLOCAUST SURVIVORS' FOUNDATION – USA

Member Organizations
(Partial List)

Amer. Assn. of Jewish Holocaust Survivors of Greater Boston

Assn. of Holocaust Survivors from Former USSR, Los Angeles

C.A.N.D.L.E.S., Terre Haute, IN

Child Survivors of Arizona

Child Survivors/Hidden Children of The Holocaust

Coalition of Holocaust Survivor Clubs in South Florida

Council of Nazi Holocaust Survivor Organizations of So. California

Habonim Cultural Club, Miami

Holocaust Child Survivors & Friends of Greater Hartford

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Holocaust Survivors of Greater Detroit

Holocaust Survivors of Greater Pittsburgh

Holocaust Survivors of South Florida

Holocaust Survivors Group of Southern Nevada

Houston Council of Jewish Holocaust Survivors

The Jewish Holocaust Survivors & Friends of Greater Washington

Jewish Survivors of Latvia, Inc. New York

National Assn. of Jewish Child Holocaust Survivors, Inc.

New American Jewish Social Club, Miami

New Cracow Friendship Society, New York

Survivors of Atlantic City, NJ

Survivors of the Holocaust Asset Recovery Project, Seattle

Survivors of the Holocaust of New Mexico

Tikvah Acharay Hashoah, San Francisco

and upset. They have no idea that their good name is being used to thwart the will of Holocaust survivors in Washington.

Survivors have always supported the good work of AJC but are deeply hurt and offended by your inexplicable crusade to oppose us. To be clear, AJC has no legal or moral standing to interfere with our individual rights. These policies were purchased by our mothers and fathers, grandparents, aunts, and uncles. They represent our families' histories. They are our families' property. These are not "communal assets" to be siphoned away by organizations like AJC who are too willing to bargain away what you do not own.

By opposing what survivors universally endorse in Washington, AJC dishonors our experiences and the deaths of our loved ones. Your organizational forbearers were largely silent during the darkest days of history, when they could have saved millions of human lives by speaking out. How dare you use your voices today to defeat the interests of living survivors who are only seeking the right to speak and act for ourselves?

We are also troubled by AJC's reliance on arguments that have been thoroughly discredited by the public record.

First, it is incorrect that HR 890 and S. 466 would violate promises of immunity to insurance companies made by the U.S. government. The International Commission for Holocaust Era Insurance Claims (ICHEIC) was always understood to be voluntary unless a claimant accepted a payment. This was repeatedly acknowledged by the Clinton Administration in court filings and correspondence with Members of Congress. Even Stuart Eizenstat conceded in his 2003 book that while German companies "insisted on a definitive commitment by the United States to support some legal ground for the dismissal of future suits," President Clinton refused: "The Germans and their lawyers knew full well from months of explanations that we would not take a formal legal position barring U.S. citizens from their own courts."

Recently, the Justice Department produced documents under the Freedom of Information Act once again admitting that no President promised insurers immunity from lawsuits. How can AJC justify continuing to make this argument in Congressional lobbying documents? If such tactics are not illegal, they are certainly not ethical in our view.

"JUSTICE AND DIGNITY FOR SURVIVORS"

PHONE (305) 231-0221 Ext. 243 4200 BISCAYNE BLVD MIAMI, FL. 33137-3279 FAX (305) 231-4242

HOLOCAUST SURVIVORS' FOUNDATION – USA

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Second, it is deeply troubling for AJC to argue that restoring survivors' rights as American citizens would threaten funding from Germany to assist indigent survivors. The German Embassy has repeatedly denied any such linkage in statements to individual members of Congress, and the Ambassador himself wrote in a letter to the HSF that Germany would not reduce funding for indigent survivors if insurance legislation were enacted.

More importantly, it is outrageous in principle for AJC to say that Holocaust survivors should have to give up our legal rights against Generali, Allianz, AXA, and other insurance companies to induce Germany to provide funding for the needs of impoverished survivors. What does one thing have to do with the other? Insurance companies should pay their debts and we should be able to sue them if they breach their contracts. This has nothing to do with Germany's long overdue moral obligation to provide adequate funding for the needs of survivors, who suffer far greater physical and emotional maladies than the typical elderly population, due to the torture and deprivations suffered at the hands of the Nazis.

AJC's sudden concern for survivors' welfare rings hollow in light of recent history, when AJC did not speak out about the plight of survivors when the Claims Conference assured everyone that the problems were not so bad, and that the only thing survivors needed was for local Jewish Federations to dig deeper into their pockets to provide more assistance. Yet, for the past decade, half of the Holocaust survivors in the United States have been living below or near poverty. Tens of thousands of tortured souls have been suffering without the food, medicine, home care, dental care, shelter, and other vital assistance they desperately need. During these painful years, while we in the HSF have been advocating and pressing everyone who will listen to secure adequate funding for survivors from Germany, guilty European companies, and the Claims Conference, AJC was silent.

During this period of communal indifference, AJC has sat as a board member of the Claims Conference, ratifying the obscene distribution of over $250 million in "research, documentation, and education" grants for non-survivor purposes, grants that more often than not were given to Claims Conference board members or their affiliates. To the desperate and poor survivors denied help, this was a quarter-billion dollars of "community" sanctioned suffering that AJC and other Claims Conference board members deemed acceptable, despite the horrific shortfalls in funding for poor survivors,

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and the well-known protests of survivors like ourselves who raised our voices in opposition to such abdication of moral responsibility. You can understand why we survivors view AJC's unexplained new interest in the plight of poor survivors with skepticism.

The third argument offered against HR 890 is that it would "raise expectations and false hopes" among survivors. Little needs to be said in response – the argument defeats itself. All this legislation would do is enable survivors and family members to decide for themselves, working with lawyers of our own choosing, whether or not to pursue a court case against the insurance companies who stole from us. We have the ability -- and certainly the right – to make those decisions for ourselves. We survived hell on earth, and lost everything dear to us, while AJC and others of your ilk failed to rally the moral compass of the world in defense of Jewish innocents. How dare you patronize us about "raising false hopes?"

Finally, we are compelled to note that AJC is saddled with severe conflicts of interest when it comes to European insurance companies that profited from the Holocaust. In addition to AJC's membership on the board of the Claims Conference, an avowed opponent of survivors' individual rights, AJC was an ICHEIC participant who never raised any concerns despite the scandals, rampant mismanagement, deviations from "rules" that were supposedly in place to assist claimants, its repudiation of a Congressional mandate to report on companies' claims handling policies, the shredding of unspecified memoranda including those concerning the "phantom rule" reported by ICHEIC arbitrator Albert Lewis, and CEO Mara Rudman's decision to "seal" the ICHEIC records that weren't destroyed for 50 years.

AJC's financial relationship with Allianz, one of the most culpable Holocaust era insurers, is also problematic. Allianz has never been denied that the company was closely allied with the Nazi Reich. It insured Auschwitz and other death camps while selling policies to European Jews and turning over customer files to the Nazis. In 1933, Alljanz chairman Kurt Schmitt was an early Nazi party member and became Hitler's Minister of Economics.

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Mr. David Harris
November 30, 2011
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Although Allianz has refused to honor $2 billion worth of unpaid Jewish policies, it was willing to pay $300 million of naming rights to the NY Jets/Giants Meadowlands stadium. Thanks to righteous citizens' outcry against this shameful act, the deal was cancelled. Unlike the good people of New York and New Jersey, the AJC is perfectly happy to take money from Allianz – survivors' money – to pay for trips by "young American professionals" to Germany.

Mr. Harris, with increasing attention being paid to the substance of the issues raised by HR 890 and S. 466, the survivors' position is gaining important bipartisan support. HR 890 has nearly sixty (60) co-sponsors who have joined original and lead sponsor Foreign Affairs Committee Chairman Ileana Ros-Lehtinen, including prominent Jewish members and members of both political parties. In the Senate, S. 466 is now co-sponsored by Senators Diane Feinstein and Barbara Boxer of California, along with Senators Bill Nelson and Marco Rubio of Florida.

Our colleagues have suffered incalculable tragedies and unspeakable crimes, most losing most if not all of their loved ones. To have no understanding or willingness to help in regard to Nazi stolen assets like paid up insurance contracts which are not given back is intolerable. Having built huge organizations by invoking the horrors of the Holocaust to raise money and engender sympathy for their "human rights" programs, AJC now abuses its sacred obligations to those of us who endured the ultimate horror by opposing what we survivors unanimously support.

We believe the time has come for AJC and its sister organizations to inform the sponsors of HR 890 and S. 466 that they have changed their position and now support passage of a robust law to enable survivors to recover their families' unpaid insurance policies, and that time is of the essence in the need for Congressional action and Presidential approval of the measure.

If AJC will not agree to this change, we request an opportunity to have this discussion with the lay leadership of the organization at AJC's next Board of Governors meeting. At this juncture in history, it is appropriate and long overdue for every board member to personally be on record as supporting or opposing Holocaust survivors' rights.

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November 30, 2011
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I welcome the opportunity to discuss this with you personally, and I can be reached at (305) 231-0221.

Sincerely,

David Schaecter

JOINED BY HSF EXECUTIVE COMMITTEE:

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Dena Axelrod, Ft. Lauderdale, FL
Renee Firestone, Los Angeles, CA
Sello Fisch, Bronx NY
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"JUSTICE AND DIGNITY FOR SURVIVORS"

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TESTIMONY OF
AGUDATH ISRAEL WORLD ORGANIZATION
AMERICAN JEWISH COMMITTEE
ANTI-DEFAMATION LEAGUE
B'NAI B'RITH INTERNATIONAL
CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY
WORLD JEWISH CONGRESS
WORLD JEWISH RESTITUTION ORGANIZATION

TO THE
SENATE COMMITTEE ON THE JUDICIARY

JUNE 20, 2012
WASHINGTON, DC

As Jewish community organizations engaged in advocating for justice for victims of the Holocaust, we appreciate the careful consideration of the Senate Committee on Foreign Relations of the issues raised by S. 466, the Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2011. Congress has played a vital role over the years in seeking ways to help mitigate the suffering endured by survivors of the Holocaust including helping address the mass theft of their property, as well as ensuring that the Holocaust is not forgotten.

Our community, like the U.S. Government, continues to struggle to develop solutions – in the face of nearly insurmountable obstacles – which obtain the maximum amount of funds, for the most victims in need, as quickly as possible. These efforts have resulted in a number of agreements and claims mechanisms, such as the Swiss Banks Settlement, the German Foundation "Remembrance, Responsibility and Future" and the International Commission on Holocaust Era Insurance Claims ("ICHEIC").

With respect to insurance, during and for decades after World War II, except for Germany, a virtual vacuum existed in insurance restitution efforts. The absence of relevant documentation, the prohibitive costs and time involved in litigation and the nationalization or disappearance of many European insurance companies meant there was no effective way for survivors to obtain payment for their Holocaust-era insurance claims. Such circumstances are precisely why ICHEIC was established – to provide a device which enabled claimants to receive some measure of justice which, up to that point, had not existed. Specifically, ICHEIC built a process to pay Holocaust-era insurance claims issued by five main European insurers, their subsidiaries, and German insurance companies. Representatives of Jewish organizations, major survivor organizations, and entities such as the National Association of Insurance Commissioners joined in a years-long effort to develop a claims process and meaningful guidelines, as well as to identify policy holders. Notwithstanding the impediments which challenged such an effort, in

the end, ICHEIC paid out over $300 million in insurance-related payments to tens of thousands of survivors and heirs of Holocaust victims, and an additional $200 million for assistance programs, including homecare, for survivors in need.

Any consideration of remedies for the damage perpetrated during the Holocaust – including the issue of unpaid Holocaust-era insurance policies – begins with the painful knowledge that nothing can erase the murder of the millions of Holocaust victims and the loss and suffering of those who survived and their families. At the same time, imperfect as they are, negotiated agreements have provided critical assistance to many who waited far too long for some measure of justice, in their lifelong effort to cope with unimaginable horrors they were forced to endure.

Without question, lawsuits, including those brought in U.S. courts, played a meaningful role in placing these issues on the public's agenda, highlighting the gross injustices survivors faced, and pressuring governments and institutions to face this most reprehensible chapter in history. At the same time, there can be no doubt that the promise of legal peace for those who participated in these negotiations was critical to achieving the agreements which were reached. And, as a result, hundreds of thousands of victims of the Holocaust have been helped to live with some measure of improved comfort, care and dignity as they age.

Despite the admirable goals of S. 466, we have serious concerns that the proposed bill is not only unwarranted, but that its enactment could be detrimental to the interests of survivors, delaying and/or jeopardizing tangible efforts to provide support for them. Attached is a Memorandum on the draft legislation and the concerns it raises (Appendix A), as well as a document that walks through the "Catch 22" this legislation poses for survivors (Appendix B). In sum, advancing the proposed legislation would:

- ***Raise false expectations for survivors.*** Encouraging lawsuits based on insurance policies issued in Europe, over 70 years ago, does not ensure that a single Holocaust victim will benefit. Not many claimants are in a position to begin long and costly litigation and the few that might be will face significant legal obstacles related, among other matters, to burdens of proof and evidence. In addition, even were insurers able to overcome the strict European data privacy laws, the release of unfiltered information, on potentially millions of insurance policies, would raise hopes, but yield little new information.

- ***Compromise the ability of the U.S. to advocate for survivor benefits and issues.*** This legislation effectively repudiates or reopens prior agreements. The U.S. plays an essential role in ongoing negotiations with a number of countries and the enactment of S. 466 will call into question the U.S. ability to abide by its commitments.

- ***Potentially hinder ongoing negotiations which have provided crucial funding for Holocaust survivors in need.*** Last year, negotiations between the Conference on Jewish Material Clams Against Germany and the German Finance Ministry resulted in considerable additional and new support for, among other matters, survivor home care needs, amounting to over $500 million over the next four years. This will mean immediate, significant and tangible assistance for needy survivors throughout the United States and abroad. Trust and good faith between the negotiating parties have been key

components of what have been constructive efforts to expand voluntary funding for, among other critical services, home health care for ill and aging survivors.

Hundreds of thousands of Holocaust survivors in the United States and around the world continue to be in urgent need of a wide range of assistance. The undersigned organizations have come together to jointly raise these concerns with the Committee as S. 466 is unlikely to yield results, by any significant measure, comparable to the tangible benefits survivors already – and, hopefully, will continue to – receive from foreign governments. Its passage could, in fact, hamper those ongoing and future efforts.

Congress has played a dynamic role in defending the rights of Holocaust survivors and raising the awareness of Americans about the moral imperative to seek every possible measure of justice for victims of Nazi persecution.

Embarking on lengthy legal action takes time – time survivors in need simply do not have. We would therefore urgently ask Congress to take action to provide critical assistance to survivors of the Holocaust who need them now:

- Support ongoing negotiations with Eastern European countries pressing them to pass legislation and/or establish claims processes for the restitution of or compensation for private and communal property seized during the Holocaust; and

- Support the Terezin Declaration of July 2009, endorsed by 47 governments, which addresses outstanding restitution issues and which seeks the creation of a fund for the social welfare needs of survivors. Congress can help build on this declaration to urge European governments, the European Union, and private companies – including insurance companies – to step forward and meet these needs.

We are painfully mindful that no agreement, legislation, or hearing can ever provide closure on the moral responsibility of governments, institutions and individuals to confront the past and to learn the lessons of the Holocaust. This hearing demonstrates the enduring quest of Americans and the Members of Congress who represent them to seek justice and never to forget what can happen when anti-Semitism, when hatred in any disguise, goes unchecked. In this effort, we urge the Committee to prioritize the urgent and particular needs of the survivor community and to work to ensure that the most number of survivors, receive the maximum amount of support, as soon as possible.

Appendix A:

MEMORANDUM ON S. 466:
RESTORATION OF LEGAL RIGHTS FOR CLAIMANTS UNDER HOLOCAUST-ERA INSURANCE POLICIES ACT OF 2011

THE PROPOSED LEGISLATION WOULD:

(a) **Establish a Federal State Cause of Action and Encourage the Establishment of State Causes of Action:** S. 466 seeks to establish a federal-based cause of action against any insurer or related company with respect to insurance policies in effect between 1933-1945 and issued to a policy holder residing in any area occupied or controlled by Nazi Germany. The bill also provides that any state law creating a cause of action against an insurer based on an insurance policy in effect between 1933-1945 and issued to a policy holder residing in any area occupied or controlled by Nazi Germany will not be "invalid or preempted" by any executive foreign policy or executive agreement entered into by the U.S. The bill also prevents any court from dismissing such a claim on statute of limitations grounds, if brought within 10 years of the passage of the proposed legislation.

(b) **Mandate Disclosure of Insurance Information:** The bill provides that any state law, enacted on or after March 1, 1998, which requires an insurer doing business in the state to disclose information regarding Holocaust era policies, "shall not be invalid or preempted," notwithstanding any Executive Agreement involving the U.S.

In sum, S. 466 seeks to compel insurers to disclose information to facilitate lawsuits based on Holocaust era insurance policies issued in Europe between 1933-1945 by establishing a federal cause of action and by validating certain existing, or encouraging the passage of new, state laws.[1]

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[1] H.R. 1746, the Holocaust Insurance Accountability Act of 2008, unsuccessfully sought, during a previous congressional term, to establish a federally-based cause of action and disclosure requirement related to Holocaust era policies. Both S. 4033, the Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2010, and H.R. 4596, the Holocaust Insurance Accountability Act of 2010, unsuccessfully sought to protect state laws creating causes of action related to Holocaust-era insurance policies and state laws requiring insurers doing business in a state to disclose information related to such insurance policies from being undermined by any executive agreement. Proponents of the three bills have criticized the International Commission on Holocaust Era Insurance Claims ("ICHEIC"), which established a process to pay individual Holocaust-era insurance claims issued by its five participating insurers and their subsidiaries – that is, Generali, Allianz, Zurich, Winterthur and AXA – as well as by German insurance companies (and defunct companies which were nationalized or whose assets were nationalized by communist regimes). Established in 1998, ICHEIC consisted of representatives from these insurance companies, the National Association of Insurance Commissioners, the World Jewish Restitution Organization, the Claims Conference (including the American Gathering of Holocaust Survivors and the Centre of Organization of Holocaust Survivors in Israel) and the State of Israel. Lawrence Eagleburger, former U.S. Secretary of State, served as Chairman of ICHEIC and the Insurance Commissioners of Florida, New York and California also played a major role in the work of ICHEIC.

Issues of Concern

(a) ***Survivors Can Already Make Claims Today***

Although ICHEIC has concluded, insurers which participated in ICHEIC committed to continue to process claims based on Holocaust era policies. This negates the need, with respect to ICHEIC companies, to establish federal or state causes of action. Assistance is available to help survivors file such post-ICHEIC claims and there is oversight of whether insurers are responding to applicant inquiries appropriately and in a timely manner.

(b) ***Congressional Support Raises False Hopes for Survivors***

While well-intentioned, S. 466 will generate unrealistic hopes and false expectations among survivors. Simply creating a cause of action is far from ensuring a success in court. The cost and complexity of pursuing litigation will be prohibitive, even for the few able to sue. Claimants will still have to surmount a range of legal obstacles in federal or state court, including issues related to burdens of proof and evidence, as well as formidable defenses which would be raised.[2] The reality is that, at best, a handful of survivors and heirs have any chance of realizing a benefit. Sadly, this will do little to bridge the gap between Holocaust era insurance policies which remain unpaid and claimants that should be paid.[3]

(c) ***Damaging U.S. Credibility in Ongoing and Future Negotiations***

Passage of S. 466 would amount to the specific disregard and violation of previous agreements, including Executive agreements which contain undertakings by the U.S. to provide "legal peace" to certain insurance companies. Such Executive agreements with Germany and Austria helped to generate over $200 million in compensation and social welfare assistance to survivors.[4] Repudiating the very commitments which induced insurance companies and countries to participate in international agreements in the first place – but not until after the distribution of the monies they contributed pursuant to these

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[2] Claimants would also have to identify and locate the company (or its modern-day successor) which issued a given policy, as well as establish jurisdiction where the insurer now does business.

[3] While mindful of the criticisms of ICHEIC, ICHEIC did pay over $300 million to eligible claimants, while distributing about another $200 million for assistance programs, including for homecare, to survivors in need. ICHEIC was able to pay tens of thousands of survivors and heirs of victims because it applied an extremely liberal evidentiary approach – that no federal or state court would adopt – in processing claims. A federal or state court, for instance, would not deem claimants without documentary support or with policies issued by defunct insurers eligible for payment (both of which ICHEIC did). ICHEIC also handled claims at no cost to claimants and ignored statutes of limitations.

[4] This funding was obtained from insurance companies, industry and countries participating in the German Foundation "Remembrance, Responsibility and Future" and the Austrian Foundation "Reconciliation, Peace and Co-operation," in return for, among other matters, the U.S. commitment to issue a statement of interest encouraging courts in this country to dismiss claims brought to recover compensation based on Holocaust-era insurance policies. S. 466 seeks to prevent the U.S. from taking the very action it promised by, among other actions, establishing a federal cause of action related to Holocaust era insurance policies and by blocking the government from issuing such a statement of interest. [S. 466, secs. 6(a) and (b)]

international agreements – would compromise the U.S. role and undermine confidence in the ability of the U.S. to keep its promises with respect to future commitments.

(d) ***Critical Survivor Assistance Could Be Undermined***

S. 466 also may jeopardize ongoing negotiations with Germany and others on vital current and future funding for the benefit of Holocaust survivors in the U.S. and abroad. These negotiations affect far more survivors and involve much more in compensation than will ever be realized through S. 466.[5] S. 466 potentially hinders these and other negotiations on open issues around continuation and expansion of urgent funding for the neediest survivors.[6]

(e) ***Disclosure would unleash a trove of largely unhelpful and misleading information***

S. 466 endorses state laws obliging insurers, or (most likely) their European affiliates, to divulge data regarding Holocaust era policies, without any system to determine if the policy holders and/or beneficiaries are Holocaust victims. There are real obstacles to obtaining the information: a) many Holocaust-era insurance companies, especially those which did business in Central and Eastern Europe, no longer exist; and b) insurers still in business would have to overcome the stringent European data privacy laws binding them.

Even absent these obstacles, while the information ultimately produced may very well reflect millions of policies, the overwhelming number of the policies will not have been purchased by victims of the Holocaust and many of those that were may already have been paid or otherwise compensated. Given the significant effort by ICHEIC regarding policy holder lists, compelling publication of "information" regarding Holocaust-era insurance policies will yield little new, useful data regarding unpaid Jewish policy holders who were victims of Nazi persecution.[7]

Recommendations for Action to Help Needy Survivors Today:

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[5] In 2011, for example, Claims Conference negotiations with Germany have secured approximately $500 million for use over the next four years for, among other matters, homecare funding for Jewish victims of Nazi persecution – the most urgently needed and effective form of assistance – increased pension payments to survivors, and the inclusion of additional survivors in pension and one-time payment programs.

[6] These open issues, which involve tens of millions of dollars and require further negotiations, include increasing the payments made through the Article 2, Central and Eastern European and Hardship Funds; lowering the time period required for survivors to be eligible for certain pensions; raising the stipulated income level below which survivors are eligible for pensions; making survivors who were in open ghettos eligible for payments; and obtaining payments for child survivors.

[7] ICHEIC researched millions of policies and published the names of over 550,000 (most likely to be Jewish) Holocaust era insurance policy holders. That list was widely advertised and led to tens of thousands of survivors and heirs of Nazi victims being paid over $300 million by ICHEIC.

At this late stage in the lives of survivors, instead of the proposed legislation which risks undermining significant funding for tens of thousands of survivors in need, while providing compensation for a few claimants at most, Congressional action addressing the following issues would most effectively assist Holocaust survivors and their heirs:

- Supporting ongoing negotiations with Central and Eastern European countries focusing on establishing claims processes and/or laws which would enable former property owners and communities to recover or receive fair compensation for assets – private and communal – seized during the Holocaust and/or subsequently nationalized by communist regimes.

- Supporting and implementing the Terezin Declaration of July 2009, signed by 47 governments, and the related European Shoah Legacy Institute, through which projects are being developed, including the following: "Guidelines and Best Practices for Restitution and Compensation of Immovable (Real) Property Confiscated... during the Holocaust," which countries will be urged to follow; and the creation of a fund which would address the social welfare needs of survivors worldwide most in need.

Appendix B:

1. **Can a Holocaust survivor who is a policyholder or beneficiary of a Holocaust era insurance policy file a claim with the relevant insurance companies, even though the formal process established by the International Commission on Holocaust Era Insurance Claims ("ICHEIC") has concluded?**

   Although the claims and appeals processes of ICHEIC have formally ended, the insurance companies which participated in ICHEIC committed to continue to accept and process remaining Holocaust-era insurance claims – applying the ICHEIC standards in their decisions – at no cost to claimants. In addition, the Holocaust Claims Processing Office ("HCPO"), of New York State, assists survivors in preparing and filing such claims with insurance companies. The important work of the HCPO greatly helps claimants, nationwide, pursue their claims and is provided at no charge.

   Thus, today, anyone who believes he or she is the beneficiary of a Holocaust-era insurance policy and can identify the issuing company is still able to file a new claim with any of the companies that participated in or cooperated with ICHEIC, despite ICHEIC's closure. These include some of the largest insurance companies operating today in Western Europe. While the companies will not consider claims that have already been decided under the ICHEIC process, they have agreed to continue to process new claims against Holocaust-era policies underwritten by a specific company, and they will do so using relaxed standards of proof.

2. **In light of World War II, subsequent communist nationalizations, and the time that has passed since the insurance policies in question were issued, how did ICHEIC determine whether to provide payments to claimants that lacked critical evidence?**

   No process could ever, with anywhere near perfect accuracy, compensate and pay the claims of each survivor who may have had a Holocaust-era insurance claim. Nonetheless, ICHEIC considered the many significant hurdles the survivors faced and did not impose the normative rules of evidence or standards of proof.

   For example, it would be rare, if not impossible, for claimants to provide definitive proof of the number of premium payments made by a policyholder. If such payments were not made, the beneficiary would be entitled to receive less than the full face value of the policy. To address this issue, ICHEIC decided, as part of its guidelines, that all premiums were deemed to have been paid if they had been paid as of the start of the war in each country. Moreover, there are instances in which ICHEIC paid on claims where the company was not named or the insurance policy was not produced – based, for example, on anecdotal evidence – as well as paid on policies which could be produced, but which had been issued by Central and East European companies which had been nationalized or whose assets had been nationalized. Thus, to address the many

challenges – indeed, the virtual guarantee of failure – claimants had faced and would continue to confront by bringing lawsuits in court, ICHEIC was established as the first (and the only) organization ever to offer Holocaust victims and their heirs a mechanism to pursue claims against insurance companies, at no cost, with no regard for any statue of limitations, even if neither the claimant nor the insurance company cold produce the policy in issue.

3. Given the leniency built into the ICHEIC process, how could claimants, even were S. 466 to be enacted, achieve better results in court?

The higher standard of proof applied in courts than used by ICHEIC would make it significantly more demanding to establish claims. Even if not impeded by statutes of limitations, claimants would still face a number of serious obstacles, including those related to rules of evidence, burdens of proof and other formidable defenses. Moreover, even if claimants could afford the considerable costs of litigation – and many will not – any such lawsuits will take time that survivors, on the whole, do not have.

4. How many claimants can hope to benefit from S. 466?

It is difficult, without a full-scale investigation, to provide a reasonable estimate of the number of individuals there are who might have a Holocaust-era insurance policy not yet produced or disclosed by insurance companies doing business in the U.S.

ICHEIC, as a result of its research, which involved the review of millions of insurance policies, was able to develop and publish the names of over 550,000 (most likely to be Jewish) Holocaust-era insurance policy holders. S. 466, in contrast, would require a substantial work and time investment for what likely would be a very small return. While the legislation may very well lead to the disclosure of information which reflects millions of policies, the overwhelming number of such policies will not have been purchased by victims of the Holocaust, nor by Jewish individuals. In other words, compelling publication of information regarding Holocaust-era insurance policies, pursuant to S. 466, will yield little new, useful data with respect to unpaid Jewish policyholders who were victims of Nazi persecution.

Moreover, S. 466 is not likely to yield anything comparable to the tangible benefits survivors already are receiving based on agreements with foreign governments. Indeed, S. 466 may jeopardize the continuation of such existing agreements and may compromise this country's role with respect to future negotiations, raising real questions about the ability of the U.S. to abide by its promises.

5. What is the likely impact of S. 466 on the survivor community in the U.S.?

The proposed insurance legislation may well raise the expectations of Holocaust survivors only, in the end, to disappoint them. The costs, time and effort required to engage in the litigation provided for in the legislation will be excessive, if not prohibitive, even if the insurance companies can overcome the strict European data privacy laws. The burden of proof confronting claimants will still pose an immense obstacle to surmount, in light of the death certificates, as well as policies and other official documents that were lost or destroyed during World War II and subsequently. In addition, the mandatory publication by the insurance companies which participated in the process established by ICHEIC of all Holocaust-era insurance policy holder names – facilitated by S. 466 – will, at this point, yield little new information regarding policy holders who were victims of Nazi persecution. Further, even assuming that European data protection hurdles could be overcome, most of the policies which would be disclosed would not have been purchased by victims of Nazi persecution; many of the policies would have already been paid out; and many of those not paid would have been otherwise compensated. Thus, the huge expectations that the legislation will generate on the part of survivors will simply not be met – leading to upset, disappointment and frustration.

6. Apart from existing agreement and ongoing negotiations, especially with Germany, what might be sources of additional funding to assist Holocaust survivors in need?

In June 2009, the Prague Conference on Holocaust Era Assets concluded with 46 countries approving the Terezin Declaration, a joint statement including, among other matters, language which focuses on the need to help survivors in their last years, through home care and other health and medical-related assistance. The intention is that the Terezin Declaration and follow-up will motivate signatory countries to step forward and help meet these needs of survivors, whether by contributing to a fund or by returning certain property seized during the Holocaust. Such an approach, and efforts related to it, will bring far more funding to assist more survivors in need, and will do so much sooner, than the legal actions encouraged by S. 466.

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Holocaust Claims Going Unpaid, Investigation Says

New York State's 'passive approach' leaving money in German insurance company's coffers, advocates argue.

Tuesday, December 27, 2011
Stewart Ain
Staff Writer

Just one month after the U.S. State Department and several major Jewish organizations told a congressional committee that New York State's Holocaust Claims Processing Office (HCPO) could be relied upon to handle all Holocaust-era insurance claims, New York State has admitted the system doesn't always work.

The state's newly created Department of Financial Services (which combines the Departments of Insurance and Banking) released this month the results of a preliminary investigation that found that millions of dollars remains in the coffers of life insurance companies because tens of thousands of death benefits were never paid. The HCPO is a division of the department.

As part of its investigation, the department in August directed the 172 life insurance companies and fraternal societies licensed in the state to use the Social Security death database or something comparable to identify their deceased life insurance policyholders, holders of annuity contracts and retained asset accounts whose beneficiaries never filed a claim. In just three months of searches, insurers have already paid nearly 8,000 people the more than $52 million due them. Another 28,000 claims are being processed and one million more matches are being researched.

Those findings have prompted two organizations that represent Holocaust survivors to write to Department of Financial Services Superintendent Benjamin Lawsky and Gov. Andrew Cuomo requesting that three European insurance companies doing business here — Generali, Allianz and AXA — be required to check the databases of Holocaust victims against their lists of Holocaust-era policyholders. Failure to issue such a directive, they said, would result in a "double standard" that would mean the "state's efforts to secure payment of Holocaust victims' and survivors' policies is far less rigorous" than that pursued for all other beneficiaries.

Officials of the two groups, the National Association of Jewish Holocaust Survivors (NAHOS) and the Holocaust Survivors Foundation USA, pointed out that the HCPO takes the "passive

approach" (relying on people to file claims) that the department's investigation found doesn't always work. They noted that this same approach was used by the c (ICHIEC) between 1998 and 2007 and that as a result it succeeded in recovering "less than 3 percent of more than 550,000 outstanding policies sold to Holocaust victims, leaving over $20 billion unpaid (in today's value)."

In the nearly five years since ICHEIC ended, the HCPO's "passive approach" has "secured a grand total of payment on six policies for three individuals," the survivors wrote. They suggested that the European insurance companies be directed to make use of the automated files of Yad Vashem, the Holocaust memorial and research center in Israel, as well as records from the Swiss banks' $1.2 billion class action settlement with survivors and their heirs, and other databases.

A spokesman for Lawsky said his office has "received the letter and is reviewing it." A spokesman for Cuomo's office did not respond by press time.

Leo Recter, president of NAHOS, said he is aware that ICHEIC officials said they had cross-referenced the names of unclaimed Holocaust-era policies with the database of Holocaust victims maintained by Yad Vashem. But ICHEIC, he said, was "not overseen by a governmental body like New York State."

The ICHEIC website said ICHEIC had gathered the names of more than 500,000 policyholders or policyholder-related names from participating insurance companies and, with the help of the German Insurance Association (GDV), published on the Internet the names of more than 360,000 German Jewish policyholders.

"This information was made available to ICHEIC claimants during the claims filing period, potentially providing them with additional evidence to support their claims," according to the website.

But Harry Rose of Miami told The Jewish Week Sunday that he only learned of the ICHEIC process earlier this year. He said he then checked the ICHEIC website and found the names of his mother and her parents on the list of Jewish policyholders. He then wrote to the HCPO to file a claim, and several months later was told that his claim had been referred to the GDV. The GDV later sent a letter saying that a thorough search had failed to find policies for any of his three family members.

"I told them I was not the one who added their names to the list," Rose, 60, said. "I was just following up. I would like to find out where they got those names for their list."

He said his mother is 91, but clearly remembers that her parents took out a dowry insurance policy for her in the 1930s.

"She remembers that her parents left a collection box on the counter of their store with a sign saying it was for a dowry for their daughter and asking for contributions," he said. "After the war, my mother remembers going back to Germany, inquiring about the dowry and being told by a clerk that her father cashed in that policy during the war. If it was cashed in, they would have a

record of it. They still have detailed records of the fact that my father's mother and uncle were machine gunned to death by the Nazis in 1939 or 1940, so you would think they still have insurance records."

Rose said that when he wrote an appeal letter to the HCPO, he received a letter Dec. 15 saying: "There is no appeals process. ..." He said neither the HCPO nor the GDV addressed the fact that his family's names were on the ICHEIC list.

One of the ICHEIC commissioners, Bobby Brown, said he favors "anything that pays the legitimate claims of additional survivors and their heirs."

"I believe there should be no end to the ability of legitimate claimants to claim, and that there has to be a company policy of examining each request," Brown said Sunday by phone from Jerusalem. "I have heard stories that not all of them are fulfilling their pledges to continue to check all claims. And I would love to see an appeals process because if someone feels they have a legitimate claim that has not been met, they need unbiased people to oversee the companies. ... ICHEIC was recognized by governments but was not answerable to any government."

Asked about those who insist insurance companies cannot be expected to track down relatives of families who were murdered by the Nazis, Brown said new technology and documents are available today that ICHEIC officials did not have. For instance, he said that Project HEART, a new Israeli government program he oversees to document and pursue Jewish assets lost in the Holocaust, compared a list of synagogue members with recently obtained city tax records.

"That gave us their addresses, their businesses and the names of their family members, and so we now have a very valuable list," Brown said. "The ICHEIC process started years ago when technology was much different and when the Yad Vashem list of Holocaust victims was much smaller. In addition, new archives have been opened."

Brown added that the insurance companies should search the records not only of those murdered in the Holocaust but other death records to find the names of those who died in later years and for whom a claim was never filed.

Also supporting the survivors' request for New York State's help is Elan Steinberg, vice president of the American Gathering of Holocaust Survivors and their Descendants, who said simply: "Common sense and decency dictates that this is the path to take."

"There shouldn't be any controversy here," he said, adding that just as insurance companies are being asked to assist beneficiaries in contemporary America, they should extend that help to the families of Holocaust victims.

"We now have empirical evidence that the system is broke, and our organization is on record as favoring legislation that would enable Holocaust survivors to pursue their rights in court," Steinberg added.

He was referring to legislation sponsored by Rep. Ileana Ros-Lehtinen (R-Fla.) but opposed by the U.S. State Department and major Jewish organizations that would permit survivors and their heirs to sue insurance companies they believe are deliberately concealing information that would allow them to collect their relatives' Holocaust-era life insurance.

Speaking to about 500 survivors last week in North Miami Beach, Ros-Lehtinen pointed out that the ICHEIC process rejected 74,000 out of the 90,000 claims submitted and that survivors were told this was the only forum in which they could make their claim.

"Now the insurance companies are trying to cover their tracks with advertising campaigns," she said. "Most recently, Allianz Insurance, which not only failed to honor Holocaust-era policies but also insured facilities for the Nazis, began pursuing advertising with American media companies. I wrote letters to the media companies to make sure they knew about Allianz's past and asked them to think through their decisions to advertise with Allianz. The media companies said they are reviewing their relationship with Allianz ..."

A spokesperson for Allianz Life, said, "While we can't undo the past, we have been extremely transparent and open about our history. We have made restitution to those who lost their properties during the Nazi period. ... Allianz did not keep any money from Jewish policies; any Jewish assets/life insurance policies were confiscated by the Nazi government."

The company began its efforts in the 1950s by working in close cooperation with the German government to try to make certain that restitution was made to those who lost their property during the Nazi period, the spokesperson said, adding: "The company also engages in many venues to promote understanding among Jewish organizations and German companies."

Abraham Foxman, national director of the Anti-Defamation League, which is among the major Jewish groups opposing Ros-Lehtinen's bill, said the reason for their opposition is that they promised the insurance companies closure if they voluntarily participated in the ICHEIC process.

"None of us ever believed we would obtain full justice," he said. "We were looking for a measure of justice — some accountability. We wanted to bring closure and some money to survivors who were still alive. Maybe it wasn't smart ... but the organized Jewish community as a whole stood with the organized Holocaust community and for better or for worse asked for this deal."

Foxman said "our word was a bond," and that they cannot now support this new approach.

"What was done was done in good faith and if they now want to take another approach, fine," he added. "I have no problem if they have creative approaches, but don't force me to support it."

Assemblyman Joseph Morelle (D-Irondequoit) said he supports the efforts of the survivors. He said he has been to Yad Vashem and "would be very open to working with people" about tapping into Holocaust victim archives to help settle insurance claims.

"If it requires additional legislation, that is what my committee does," he said.

Statement of Roman Kent

United States Senate
Committee on the Judiciary

Hearing on:

"Holocaust-Era Claims in the 21st Century"

June 20, 2011

At the outset, I want to thank the Judiciary Committee for inviting me to be a witness at this hearing on "Holocaust-Era Claims in the 21st Century." Please accept my regrets for not being able to testify in person due to a very serious illness in the family that requires my presence. In lieu of my appearing, I submit my statement in writing.

The goal of S. 466, entitled "The Restoration of Legal rights for Claimants Under the Holocaust Era Insurance Policies Act of 2011," seems admirable. The bill seeks to enable survivors and heirs of Holocaust victims to bring actions in federal and state courts on their unpaid Holocaust era insurance policies issued by insurance companies, sixty-seven to seventy-nine years ago, in countries throughout Europe.

If there were nothing else to consider, I could easily support this effort to resurrect the right of survivors to sue for what is justifiably theirs. But there are other, serious factors to consider. These factors – especially the urgent and growing needs of poor and disabled survivors in this country and abroad, and the negative impact this legislation will likely have on other, proven efforts which assist survivors – must be assessed in evaluating the bill.

Put simply, there are tens thousands of survivors in need and this bill will not help them at all. At this stage in the lives of Holocaust survivors, many experience, and almost all can anticipate, the need for supportive services – including long-term care, health care and especially home care. Survivors in need require such services today. I do not mean to minimize the importance of the issue of unpaid Holocaust era insurance policies or a survivor's insurance claim, but my focus is on the well-being of all survivors.

In this light, my concern is that S. 466 would actually prove detrimental to the interests of survivors: it promises much more than it can deliver and it may very well undermine existing agreements and mechanisms which clearly and effectively help survivors now.

I am a survivor of the Lodz Ghetto, Auschwitz, Flossenburg and other concentration camps. Currently, I serve as Treasurer of the Conference on Jewish Material Claims Against Germany, known as the Claims Conference, Chairman of the American Gathering of Jewish Holocaust Survivors and Their Descendants, President of The Jewish Foundation for the Righteous, and President of the International Auschwitz Committee.

I am also a Council member of the United States Holocaust Memorial Museum and have served as a member of the Presidential Advisory Commission on Holocaust Assets in the United States, as well as a member of the Presidential delegation to Poland for the Commemoration of the 65th Anniversary of the Liberation of Auschwitz.

What, perhaps, is most pertinent for this Committee and hearing, is that I participated in negotiations leading to the establishment – and was a Commissioner – of ICHEIC, the International Commission on Holocaust Era Insurance Claims.

However, my testimony today is not being presented in any official capacity. I am here as a survivor who has specific knowledge of all major negotiations that have touched upon justice for and the welfare of Jewish Holocaust survivors. I know that there are tens of thousands of survivors, all of whom are old and most of whom are poor and sick, in desperate need of financial and medical assistance to enable them to spend their last years with some comfort and dignity.

Over the years, I have been a vigorous advocate, and have struggled to find ways, to achieve what is in the best interest of **all survivors**, not just the few who are fortunate enough to not need such help. To that end, for over two decades, I have actively participated in Holocaust-related compensation negotiations with various governments, including Switzerland and Austria, and especially with the German government. In contrast to agreements with the Swiss, for example, which basically provided only a one-time payment to survivors, ongoing negotiations with Germany have resulted in hundreds of millions of dollars, annually, for the benefit of Holocaust survivors worldwide.

These funds have been used to help survivors, particularly those desperately in need of home care, medical assistance and other services in the twilight of their lives. In many instances, such services have been the only available source of assistance for the survivors. These survivors in desperate need require assistance right now, not five or ten years from now, as any court proceeding would result in.

For these reasons, I believe that I have a unique perspective from which to comment on the issues which are the subject of this hearing. However, before proceeding, I want to express my gratitude to Chairman Leahy, as well as to the other members of the Senate Judiciary Committee for dealing with these critical matters. The U.S. Congress has played – and I hope will continue to play – a historic role in the just and moral effort to address Holocaust era compensation and restitution, an effort for which we have little time remaining.

With respect to the proposed legislation, I want to highlight several pertinent concerns:

- First, S. 466 will raise unreasonable hopes, setting up false expectations for survivors only, in the end, to disappoint them. Litigation of the sort envisioned by the bill will be lengthy and costly, especially since the issue of attorneys' fees are not addressed by the proposed legislation. As a result, unless the bill is really intended as a class action tool to benefit certain

attorneys, few claimants will be able to sue individually. Moreover, even those claimants will still have to overcome significant legal obstacles in federal and state courts, including issues related to burdens of proof and evidence, as well as formidable defenses – even in the absence of statute of limitations and laches defenses – which still would be raised. The reality is that S. 466 is unlikely to provide relief for many survivors or heirs of Holocaust victims with unpaid policies. At best, maybe a handful of survivors and heirs of Holocaust victims might benefit, and not in the near future. In the end, the bill will not, in any significant way, bridge the gap between Holocaust era insurance policies which remain unpaid and claimants that should be paid.

- Second, government-mandated disclosure of insurance information – encouraged by the bill – will, at this point, yield little new information regarding policy holders who were victims of Nazi persecution. S. 466 endorses state laws requiring that insurers, or (most likely) their European affiliates, to disclose data regarding Holocaust era insurance policies. Such an approach will not necessarily yield much useful information. First, many Holocaust era insurance companies which did business in Central and East Europe no longer exist. The bill can do absolutely nothing with respect to providing relevant insurance information or payments for those many survivors and heirs of Holocaust victims that purchased policies from such companies. In addition, even if the existing companies in question are initially able to overcome stringent European data privacy laws protecting information about such insurance policies from disclosure – no easy task, since European confidentiality laws in this respect are much stricter than those of the U.S. – the overwhelming majority of what may very well be millions of policies which might be ultimately divulged will not have been purchased by victims of the Holocaust. The legislation does not provide, nor even hint at, any reasonable system to determine if the policy holders and/or beneficiaries of such disclosed policies are Holocaust victims. Finally, many, if not most, of the policies disclosed that were purchased by Holocaust victims may already have been paid, or otherwise compensated. Thus, state-compelled publication of "information" regarding Holocaust era insurance policies will yield little new, useful data regarding unpaid Jewish policy holders who were victims of Nazi persecution.

  It also should be noted that, despite the stringent European privacy laws, ICHEIC accomplished what I consider the impossible. ICHEIC researched millions of policies and published the names of over 550,000 (most likely to be Jewish) Holocaust era insurance policy holders. That list was widely advertised in the U.S. and elsewhere and led to tens of thousand of survivors and heirs of Nazi victims being paid over $300 million in insurance-related payments by ICHEIC.

- Third, I am concerned that the bill is likely to seriously damage critical ongoing negotiations with Germany and others for the continuation and expansion of hundreds of millions of dollars in crucial funding required by survivors most in need in the U.S. and abroad. For example, for home care alone, Germany is providing approximately $180 million annually; such funding is irreplaceable. The proposed legislation threatens such funding by undermining or reopening previous agreements and other commitments. These negotiations have led to, and offer the real prospect of continued, substantial benefits for many survivors immediately, as compared to the doubtful likelihood of insurance recoveries for more than a few survivors or heirs of Holocaust victims offered by the enactment of S. 466. Passage of the proposed legislation could very well disrupt such negotiations while significant open issues remain relating to funding urgently required for the neediest survivors.

- Fourth, enactment of S. 466 would represent the specific disregard and violation of previous agreements, including Executive agreements, which contain undertakings by the U.S. government to seek "legal peace" for certain insurance companies. Executive agreements with Germany and Austria, for example, helped to generate over $200 million in compensation and social welfare assistance to survivors.[1] Yet, S. 466, by its very terms, seeks to protect (and/or encourage the passage of) federal and state laws which permit legal actions in court based on Holocaust era insurance policies, which would undermine or preempt the Executive agreements in question. Indeed, the bill specifically provides that any state law cause of action based on a Holocaust era insurance policy will not be made "invalid or preempted" by any executive agreement or foreign policy entered into by the U.S. And, yet, these very executive agreements induced insurance companies and countries to participate in certain international agreements and provided hundreds of millions of dollars in funding which has already been distributed. Enactment of S. 466, put mildly, would cause a massive loss of confidence in the ability of the U.S. to keep its promises with respect to future commitments. Such loss of faith, in turn, would weaken support the U.S. could provide going forward in dealing with foreign countries.

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[1] This funding was obtained from insurance companies, industry and countries participating in the German Foundation "Remembrance, Responsibility and Future" and the Austrian Foundation "Reconciliation, Peace and Co-operation." The funding was secured for, among other things, the U.S. commitment to issue a statement of interest encouraging courts in this country to dismiss claims brought to recover compensation based on Holocaust era insurance policies. S. 466 seeks to have federal and state courts ignore the very action the U.S. promised, by blocking the government from issuing, or seeking to block implementation of, such a statement of interest.

- Fifth, individual claimants will find it difficult, if not impossible, to procure the necessary information and resources to take effective legal action in the courts. I suspect that the bill's major, practical effect will be to open the door to class action lawsuits. Even if successful, such actions would prove to be time-consuming and, I suspect, benefit lawyers far more than any Holocaust victims.

- Sixth, the various assertions which have been made over the years by some regarding the percentage of unpaid Jewish Holocaust era policies which have been paid through ICHEIC, makes at least one thing clear: there is no universal agreement on the relevant figures. There have been wide-ranging, sometimes completely unrealistic, estimates offered regarding the total value of Jewish Holocaust era insurance policies which remain unpaid, and unsubstantiated allegations regarding what portion of that amount was paid by companies which participated in ICHEIC (without any determination having been made of how much of the relevant market can be attributed to policies actually sold by ICHEIC companies). The state insurance commissioners who were intimately involved in the ICHEIC process and thoroughly studied and addressed this issue have repeatedly rejected these extremely exaggerated estimates.

Finally, a process remains available for survivors with remaining Holocaust era insurance claims against companies that participated in the ICHEIC process. Indeed, the ICHEIC insurance companies continue to accept and process Holocaust era insurance claims received after the close of the ICHEIC process – still applying the liberal ICHEIC evidentiary standards in their decisions, including not applying statutes of limitations – at no cost to claimants. In addition, the Holocaust Claims Processing Office ("HCPO") of New York State assists survivors in this regard nationwide, filing such claims with insurance companies, at no charge. In recent months, advertisements were published throughout the U.S. – in such newspapers as the *Washington Post*, *The Forward* and *Jewish Week* – notifying potential claimants of this available mechanism.

THE INTERNATIONAL COMMISSION ON ON HOLOCAUST ERA INSURANCE CLAIMS

A. HOLOCAUST ERA INSURANCE CLAIMS PRIOR TO ICHEIC

During and for almost sixty years after the end of World War II, few Holocaust survivors were able to recover the proceeds of their unpaid Holocaust-era insurance policies. They faced enormous obstacles in seeking to obtain payment on such policies and few attorneys stepped forward willing to help with their plight.

In that period, insurance companies were averse to paying, even to giving a fair hearing regarding, such claims. Indeed, there are chilling examples of companies insisting that claimants produce death certificates, including from Auschwitz, of deceased policy-holders. The absence of relevant documentation – much of which had been destroyed or lost – legal defenses forwarded by the insurance companies, and the prohibitive costs and time involved in pursuing legal actions against the companies proved insurmountable obstacles to successful recovery for virtually all potential claimants. In addition, the nationalization or disappearance of many companies which had sold insurance in pre-war Europe prevented insurance recoveries in a substantial number of cases as well.

A vacuum existed in post-war insurance restitution efforts. No effective way existed for survivors to obtain payment for their pre-war insurance claims. As a result, few survivors or members of their families, ultimately, were able to convert the policies they had purchased into the compensation they were owed.

Such circumstances are precisely why the ICHEIC agreement was reached. The ICHEIC process was established to fill this void and enable claimants to attain some measure of justice which, up to that point, did not exist.

The agreement to establish ICHEIC, known as the Memorandum of Understanding, was signed in 1998 by the following parties: the World Jewish Restitution Organization and the Claims Conference – both of these organizations included representatives from the American Gathering of Jewish Holocaust Survivors and the Centre of Organizations of Holocaust Survivors in Israel, which are organizations that, for years, have represented and worked on behalf of survivors' rights; the National Association of Insurance Commissioners, which represented the state insurance commissioners of all 50 states; six (which later became five) large European insurance companies; and the State of Israel. In addition, as part of the negotiations with the German government and industry, which ultimately led to the establishment of a DM 10 billion fund, primarily for former slave and forced laborers, German insurance companies also became part of the ICHEIC process.

B. THE ICHEIC PROCESS

1. ICHEIC Sought to Resolve All Claims Submitted Regardless of the Company Identified in the Claim

ICHEIC served as a forum – at no cost to survivors and without regard to statutes of limitations – to identify, process and compensate previously unpaid claims based on Jewish Holocaust era insurance policies. However, only the five European companies which signed the Memorandum of Understanding, together with the German companies which were part of the German Foundation agreement (collectively,

"ICHEIC companies"), provided funding for ICHEIC. These companies represented a portion of the vast European insurance market. However, insurance companies representing the larger part of the market did not help fund or otherwise participate in the ICHEIC process, or no longer existed.

Further, even though the Memorandum of Understanding establishing ICHEIC called for the resolution of claims against Holocaust era insurance policies issued by the companies participating in the ICHEIC process, ICHEIC's efforts went well beyond that.

First, only a small percentage of all claim forms submitted to ICHEIC named a specific company, and few claims included any documents linking the policy in issue to the specific company named in the claim. In addition, some claims that did identify the policy-issuing companies turned out to be against companies which were neither signatories to the Memorandum of Understanding nor German insurance companies. To ensure that these claims would be treated properly, ICHEIC entered into agreements with other agencies and transferred such claims as appropriate.

Second, to ensure the broadest possible reach, when ICHEIC received anecdotal claims which did not identify a specific insurance company, it nonetheless circulated such claims to all member companies that did business in the policy-holder's country of residence.

Finally, there were a number of claims submitted based on policies written by Central and East European companies which were defunct after the war and without any present day successor. Such claims were not only reviewed by ICHEIC but, in many instances paid. Indeed, over $24 million was paid to policy holders of such companies through an in-house process it developed. Regrettably, when we attempted to obtain repayment of these funds from East European governments which in most instances nationalized the companies in issue, as of today, we have been unable to recover even a penny because we cannot provide the governments with proper files and evidentiary support for the individuals in question due to stringent privacy laws. Many insurance companies – which, for example, had been located in the former Czechoslovakia, Hungary, Poland, Romania, and the former Yugoslavia, among other Central and East European countries – issued tens of thousands of Jewish Holocaust era insurance policies prior to the war. Such companies, however, had been nationalized, liquidated, gone bankrupt, or otherwise went out of business. Neither the governments which nationalized these companies or seized their assets, nor their successors, have paid survivors for their insurance claims, nor did they provide any funding for the ICHEIC process. Nonetheless, in addition to processing claims involving the ICHEIC member companies, ICHEIC took on the immense challenge of processing and making payments to claimants – even though neither ICHEIC nor any other organization was repaid for this -- even for policies issued by such bankrupt or

nationalized companies, according to ICHEIC rules and guidelines, including ICHEIC valuation standards.

2. ICHEIC Guidelines

During negotiations with the insurance companies participating in the ICHEIC process, an endless series of obstacles had to be resolved. One issue related to the differing and prohibitive data protection and privacy laws of each country – Germany, Italy, France and Switzerland – in which the member insurance companies are located. In an effort to have as many relevant names of policy-holders as possible who were thought likely to have suffered any form of Nazi persecution identified and disclosed, each country's laws needed to be addressed individually. Publication of large numbers of names, where the overwhelming majority of the individuals were neither Jewish nor Holocaust victims, was of paramount concern to European governments. Nonetheless, as previously noted, ICHEIC succeeded in publishing the names of over 550,000 Holocaust-era insurance policy holders which were most likely to have been Jewish victims of Nazi persecution.

Another problem related to the issue of proof. Even if statutes of limitations were to be ignored – which S. 466 seeks to achieve – no court of law, for example, would or could rule in favor of an individual making a claim based on an insurance policy not presented in court. However, many Holocaust era insurance policies have been destroyed, lost or otherwise cannot be produced. ICHEIC developed and implemented a liberal evidentiary approach to deal with such documentary gaps. For example, ICHEIC agreed to pay claimants who could not produce an insurance policy document. This is no small matter. Without an insurance policy, how is the identity of the policy holder, the face value of the policy and, most importantly, the beneficiary ascertained, so many years later? How can a court rule in favor of any claimant when such information is unavailable? Yet, ICHEIC decided, as a matter of principle, how to address such circumstances in a way that allowed the pertinent family to receive compensation for the policy.

In addition, definitive proof was rare concerning the premium payments made by a policy holder in Holocaust era insurance policy cases. This is critical information – if premium payments were not made, for example, the beneficiary would receive less than the full face value of the policy – and ICHEIC also addressed this issue in a liberal manner.

Another significant obstacle related to how much to pay on any given policy. Not surprisingly, the value of a Holocaust era insurance policy, issued in a particular currency (many of which no longer exist), almost seven decades after the outbreak of World War II, required complicated determinations that necessarily varied broadly depending on available documentation and on which values and methods – out of a broad range of possibilities – were used for the calculations. Nonetheless, ICHEIC

developed a method for appraising claims. This was no easy task and made especially difficult in the face of the profound differences between the Jewish side and the insurance companies. Nonetheless, a methodology was developed and accepted by the parties, which led to the negotiated settlements and compromises essential to moving the process forward.

In sum, the ICHEIC process was a response to the ineffectiveness of lawsuits in dealing with issues raised by Holocaust victims and heirs of victims related to their Holocaust era insurance policies. ICHEIC paid on claims in circumstances where the company was not named, the insurance policy was not produced, and no information was provided with respect to whether premiums were paid. It paid on policies which were produced, but which had been issued by insurance companies which had been nationalized or whose assets had been nationalized. It also developed an acceptable system of appraising policies. ICHEIC became the first – and, indeed, has been the only – mechanism ever to offer Holocaust victims and their heirs a place to pursue claims against insurance companies, at no cost, with no regard for any statute of limitations, even if neither the claimant nor the insurance company could produce the policy in issue. At the same time, because many European insurance companies refused to participate, the ICHEIC process did not represent the entire, nor even the majority of the, Holocaust era European insurance market.

CONCLUSION

The most that can be achieved by any effort to address the damage inflicted relating to the Holocaust is an imperfect justice. Nothing can truly remedy the wrongs that were perpetrated. Yet, ICHEIC achieved some measure of success. Indeed, what it accomplished was without precedent:

- Prior to the ICHIEC process, there was, practically speaking, nowhere to go to recover the proceeds of unpaid Holocaust era policies. ICHEIC filled that void. It established a mechanism to identify and process Holocaust era insurance claims even when, as was typical, claimants had no documentation;

- The ICHEIC process was at no cost to survivors and without regard to any statutes of limitations;

- ICHEIC paid claims on policies issued by insurance companies which no longer existed, whether due to nationalization, bankruptcy or other reasons;

- An archive consisting of the over 550,000 most likely Jewish insurance policy holders is now available to survivors, historians and other researchers;

- In total, over a half-billion dollars in payments to Holocaust era insurance policy-holders and heirs, as well as to programs benefiting Holocaust survivors was distributed as a result of ICHEIC. The payments included providing critically needed home care funding for elderly and ailing Holocaust survivors in the U.S. and elsewhere; and

- The insurance companies which participated in the ICHEIC process continue to accept and process claims: again, at no cost to the claimants and regardless of any statutes of limitations. In addition, claimants, at no charge, may obtain the assistance of the Holocaust Claims Processing Office in preparing and filing such claims.

On the other hand, I fear S. 466 will not achieve its goal of providing an effective avenue to successfully compensate Holocaust victims and their heirs for unpaid insurance policies. The proposed legislation mandates that insurance companies, notwithstanding the strict, European data privacy laws, disclose the names of all policyholders during the entire relevant period. This extraordinarily costly effort, however, will yield little new information regarding Jewish policyholders. Moreover, the insurance companies which participated in ICHEIC already have disclosed most, if not all, of their Jewish-purchased, Holocaust era insurance policies. As a result, almost all policies which would be disclosed by such companies pursuant to S. 466 will not have been purchased by individuals who suffered Nazi persecution; many of the policies at issue may already have been paid; and many of those not paid, will have been previously compensated.

In addition, litigation of such claims will be lengthy, and the associated costs, time and effort required will prove excessive and unreasonable, certainly for elderly survivors. Most survivors will, most likely, not be alive to see the results of any of the lawsuits the proposed legislation authorizes.

While maybe a handful of survivors and their heirs, at most, will benefit from S. 466, I am also concerned that the bill's enactment will unjustifiably generate huge expectations that, in the end, will not be met, which will have a profoundly negative impact on survivors.

Finally, I am extremely concerned that the proposed legislation will severely damage the common goal of those looking to help survivors. It may jeopardize ongoing negotiations with governments for the continuation and expansion of critical funding to meet the vast, immediate needs of Holocaust survivors, both in the United States and worldwide. Moreover, I also worry that the support the U.S. government

provides Holocaust survivors will be undermined as the German government and others lose faith in the ability of the U.S. government to keep its promises.

RECOMMENDATIONS

The proposed legislation, in addition to the problems it will create, is likely to provide few claimants, at most, with insurance-related payments. Thus, I respectfully suggest that, instead, Congressional action address the following issues, which would provide critical assistance to survivors of the Holocaust and their heirs.

First, support and help implement the Terezin Declaration of July 2009 and the related "Guidelines and Best Practices for Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945," of June 2010. Each of these documents was endorsed by over 40 governments. Through these undertakings, a number of efforts are under way, including to develop a fund to address the social welfare needs of survivors most in need worldwide, through the restitution and/or compensation of confiscated property, including heirless Jewish property.

Second, as a related matter, support ongoing negotiations with various East European countries focusing on establishing laws and/or claims processes which would enable former property owners and communities to recover, or receive fair compensation, for real property – private and communal – seized during the Holocaust and/or subsequently nationalized by communist regimes.

Third, reimbursement is still being sought from certain East European governments for claims paid by ICHEIC to claimants who held policies issued by European insurance companies that were nationalized or had their assets nationalized. Congressional assistance in the efforts to recover such funds would be extremely helpful.

Fourth, the insurance companies which participated in ICHEIC continue to process claims they received after the close of ICHEIC. In order to ensure that this undertaking continues to be properly implemented, Congress may want to consider ways to enhance the process and help develop a mechanism to monitor the processing of such new insurance claims.

Over the years, the U.S. Congress has played a major role in attempting to secure Holocaust-era compensation and restitution, as well as to ensure that the Holocaust is not forgotten. You have the gratitude of the survivor community for such support and we hope that, in the future, you will continue to provide such assistance.

Thank you.

June 20, 2010

Annette Lantos

228 Justice Court, NE #B Washington, DC 20002

Sometimes in life, even well-meaning organizations can lose their way and in the process lose sight of the simple yet profound distinction between right and wrong. Sadly this seems to have happened on the fundamental question of restoring the basic rights of Holocaust survivors and their heirs to seek justice in American courts against the mega- Insurance companies which intentionally compounded the unimaginable tragedy of the Holocaust by refusing to honor policies purchased in good faith by Holocaust victims.

I have been deeply disappointed to learn that a number of highly respected Jewish organizations have come out in opposition to HR 890 and S. 466 –legislation that would merely give Holocaust survivors and their heirs the same rights as every other American to pursue justice in our Courts. My late husband Congressman Tom Lantos was the only Holocaust survivor ever elected to the United States Congress. He strongly supported this legislation and rejected the arguments of those who lobbied to close the courtroom door to Holocaust survivors. He believed that various efforts to negotiate comprehensive settlements for those who had been cheated by the insurance companies had failed to adequately meet the test of fairness and success- and he was right.

It is widely known that half of the Holocaust survivors in this country live in poverty and cannot afford sufficient health care, nutrition, shelter, dental care, home care and other basic necessities. Many have died in desperation, robbed of the insurance proceeds they should have received decades ago.

This is a scandal and our only concern should be to ensure that such individuals and their families have every conceivable opportunity to right the wrong that was done to them. Our concern should not be to ensure "legal peace" or "closure" for the behemoth German, Swiss, Italian and French insurance companies who refused to honor billions of dollars of unpaid Jewish policies. They are most assuredly not deserving of our sympathy. It is closure and justice for their victims that should be our goal. Neither should any Jewish organizations paternalistically tell these survivors that vindication of their legal rights will be too daunting and difficult. They should have the same rights as any other American citizen to make that determination for themselves.

My late husband Tom Lantos spent his entire Congressional career fighting for the rights of victims of injustice. He knew all too well what it meant for human beings to have their rights stripped away by the arbitrary acts of government and he fought against such indignities throughout his public career. That is why, were he still alive he would be leading the charge to protect the rights of Holocaust survivors and their families. I call on his colleagues in the Congress to follow Tom's lead and support this important legislation. It is a simple matter of standing up for what is right.

Mrs. Annette Lantos is a Holocaust survivor who worked side by side with her husband, Chairman Tom Lantos, for nearly 3 decades as the unpaid Director of the Congressional Human Rights Caucus. She currently serves as the Chairman of the Lantos Foundation for Human Rights and Justice.

http://www.latimes.com/news/opinion/editorials/la-ed-holocaust-insurance-lawsuits-20120615,0,2164844,print.story

Los Angeles Times

Friday, June 15, 2012
6:39 a.m. PDT

Editorial

Help for Holocaust victims

Two bills in Congress could remove roadblocks faced by those who bought insurance to protect themselves and their families against the Nazis.

June 15, 2012

In Europe, as the Nazis rose to power, many Jews tried to protect themselves and their families financially by purchasing life insurance policies, annuities, even dowry policies. For decades after World War II, getting payment on those policies — particularly difficult when survivors and heirs had been stripped of all their possessions, including family records — became part of the larger challenge of how to compensate those who suffered at the hands of the Nazis. Two bills in Congress would help families recover money long denied them. They deserve approval.

With the support of the U.S. government, the insurance industry set up an international commission in 1998 through which European insurers agreed to pay out thousands of claims, using relaxed standards of proof. Not all survivors chose to go through the International Commission on Holocaust Era Insurance Claims or to accept the payments they were offered. Many criticized the insurers for underpaying or unfairly denying claims. Instead, some filed lawsuits in the U.S. against European insurers doing business here as well. But federal courts rebuffed their attempts, saying they interfered with U.S. foreign policy, which was geared toward securing the European insurance companies' cooperation with the commission and promoting it as the exclusive arena for survivors' claims.

The bills in the House and the Senate would overrule those court decisions and allow survivors to sue. The legislation would also allow states to enact laws (as California once tried to do) to compel European insurers doing business in the state to disclose the names of policyholders from the Holocaust era.

Both the George W. Bush and the Obama administrations have urged courts to disallow individual lawsuits. And the current administration says the legislation would harm the processing of any Holocaust-era claims still underway and cripple relations with countries the U.S. has entered into agreements with regarding a variety of reparation and restitution issues from that period.

Those objections are overblown. The U.S. never guaranteed European insurers that they would be immune from litigation in return for settling claims through the commission. United States officials promised only to file statements in lawsuits arguing that the cases be dismissed in the interest of foreign policy. And they've done that.

Simply allowing survivors to sue is no guarantee of legal success, and many might face arduous battles in court. But that is their risk to take. The U.S. government should not stand in their way.

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NEW YORK STATE BANKING DEPARTMENT HOLOCAUST CLAIMS PROCESSING REPORT

As Required by Section 37-a of the Banking Law

Report to the Governor and the Legislature

January 15, 2011

Richard H. Neiman
Superintendent of Banks
New York State Banking Department

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I. Background

For over 13 years the State of New York has played an integral role in helping individuals of all backgrounds obtain a measure of just resolution for the theft of property during the reign of the Nazi regime. Though banks, insurance companies, and private and public art collectors are now more willing to consider claims from Holocaust victims and/or their heirs whose property was looted, the processes for filing such claims, however, can be difficult to navigate.

The Holocaust Claims Processing Office ("HCPO") of the New York State Banking Department was created on June 25, 1997 to provide institutional assistance to individuals seeking to recover assets lost due to Nazi persecution. The mission of the HCPO is threefold:

1. recover assets deposited in banks;
2. recover proceeds of unpaid insurance policies issued by European insurers;
3. recover art lost, looted, or sold under duress between 1933 and 1945.

The HCPO's highly trained staff work with claimants to collect the most detailed and accurate information possible. Using unique investigative skills staff members corroborate information provided by claimants with research in archives, libraries and other resources. The documentation which the HCPO secures on behalf of claimants has proven instrumental in substantiating their claims.

The HCPO then submits claim information to the appropriate companies, authorities, museums or organizations with the request that a complete and thorough search be made for the specified asset(s) and when applicable that the lost asset be restituted to the claimant. To ensure rigorous review of these inquiries, the HCPO maintains frequent contact with entities to which it submits claims. Claimants contact the HCPO with questions at any time knowing that they have a committed advocate who will be responsive to their concerns. Because the HCPO is highly respected for its service and sensitivity to the issues, claimants and other agencies often refer individuals to the HCPO for assistance.

Once an agency has completed its review of a claim and reaches a determination, the HCPO reviews the decision to ensure that it adheres to that agency's published processing guidelines. Since claimants may lose track of the many claims they submitted and as each agency has unique and often complex guidelines, the HCPO helps claimants understand these guidelines in order to interpret decisions.

In the event that a claimant wishes to appeal a decision, the HCPO guides claimants through this process as well and performs additional research when possible. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various forms and by following up with the claims agency to confirm payment.

The HCPO's experience has been that the knowledge and expertise of its staff alleviates burdens and costs often incurred when individuals pursue claims on their own. Successes are a direct result of the importance attached to and attention paid by the HCPO to individualized analysis. Indeed it is fair to say that, that since 1997 the HCPO has worked directly with almost all restitution and compensation processes in existence today. (*See* Figure 1).

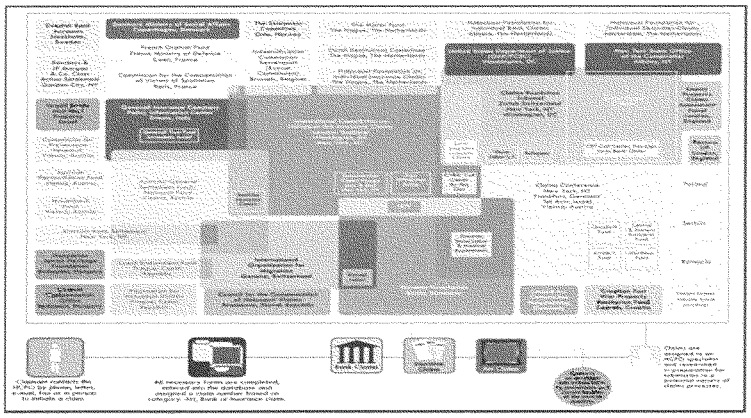


Figure 1 - Compensation Organizations and the HCPO

II. Overview of Operations and Accomplishments

From its inception through December 2010, the HCPO has responded to more than 13,000 inquiries and received claims from 4,855 individuals from 45 states, the District of Columbia, and 38 countries. (*See* Figures 2 and 3).

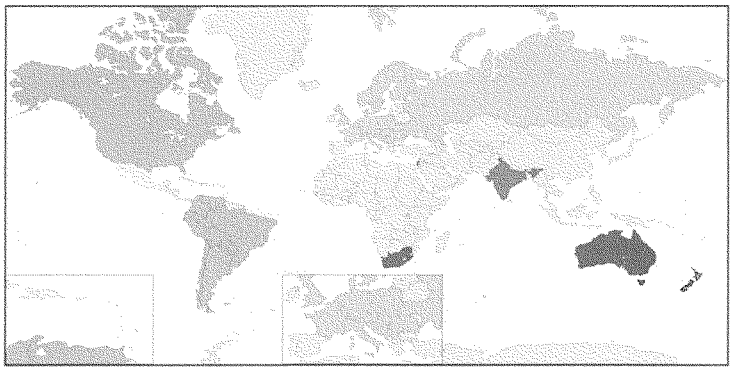


Figure 2 – International Geographic Distribution of HCPO Claimants
(Areas appearing in color represent countries where HCPO claimants reside.)

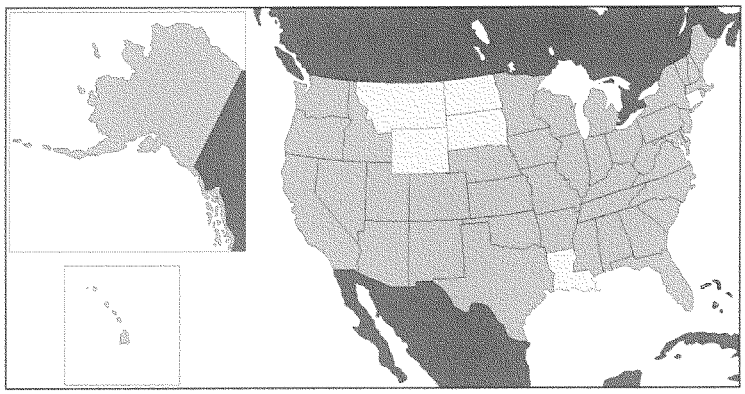


Figure 3 - Domestic Geographic Distribution of HCPO Claimants
(Areas shaded green represent states where HCPO claimants reside.)

In total, the HCPO has successfully closed the cases of 1,725 individuals in which either an offer was accepted, the claims process to which the claim was submitted issued a final determination, the assets claimed had been previously compensated via a post-war restitution or compensation proceeding, or otherwise handled appropriately (i.e. in accordance with the original accountholders' wishes); the claims of 3,084 individuals remain open.

The combined total of offers extended to HCPO claimants for bank, insurance, and other asset losses amounts to $158,679,367, this represents an increase in offers of $5,648,376 from the previous year. (*See* Figure 4).

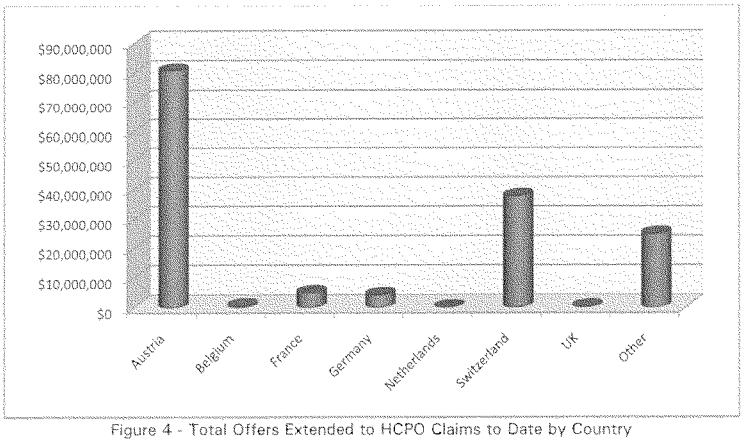


Figure 4 - Total Offers Extended to HCPO Claims to Date by Country

Of the claims filed with the HCPO to date, 2,371 individuals (from 42 states, the District of Columbia, and 37 countries) submitted claims for assets deposited in banks referencing 3,698 individual account-holders. The HCPO has closed the claims of 456 individuals; 1,915 individuals currently have open bank claims which have been submitted to a number of parallel claims processes.

To date, offers extended to HCPO claimants seeking the return of bank assets total $75,490,787[1], this represents an increase in offers of $4,430,562 from the previous year. (*See* Figure 5).

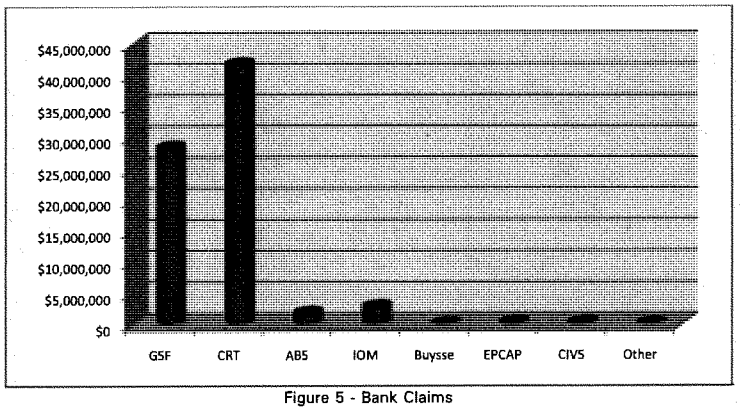


Figure 5 - Bank Claims

Furthermore, 2,327 individuals (from 42 states, the District of Columbia, and 25 countries) submitted insurance claims referencing 3,426 individual policy-holders. The HCPO has closed the insurance claims of 1,638 individuals; 689 individuals currently have open insurance claims most of which are under review for closure. Claims for unpaid insurance policies have been submitted into a number of parallel claims processes for consideration.

To date, offers extended to HCPO claimants seeking the proceeds of insurance policies total $31,566,263, this represents an increase in offers of $89,539 from the previous year. (*See* Figure 6).

[1] This sum includes two dormant Lithuanian Holocaust era bank accounts, previously held by

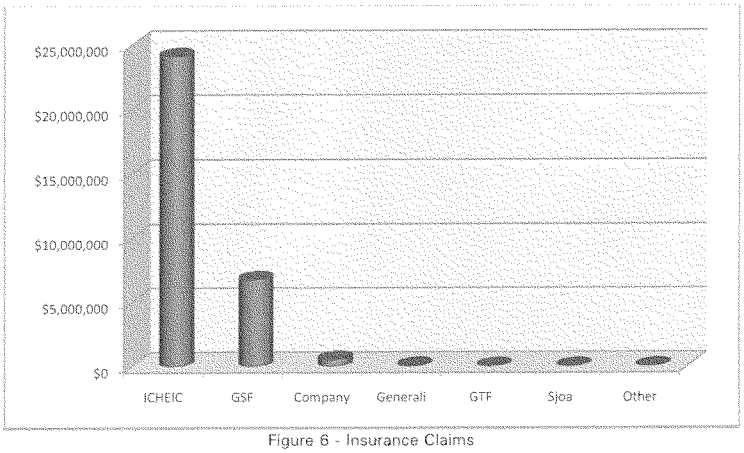


Figure 6 - Insurance Claims

The HCPO has accepted 157 art claims (from 18 states, the District of Columbia, and 12 countries) referencing thousands of items, approximately 8,000 of these in sufficient detail to permit additional research. The office has closed the claims of 28 individuals, 129 individuals currently have open art claims. To date, 50 cultural objects have been restituted to HCPO claimants. (*See* Figure 7).

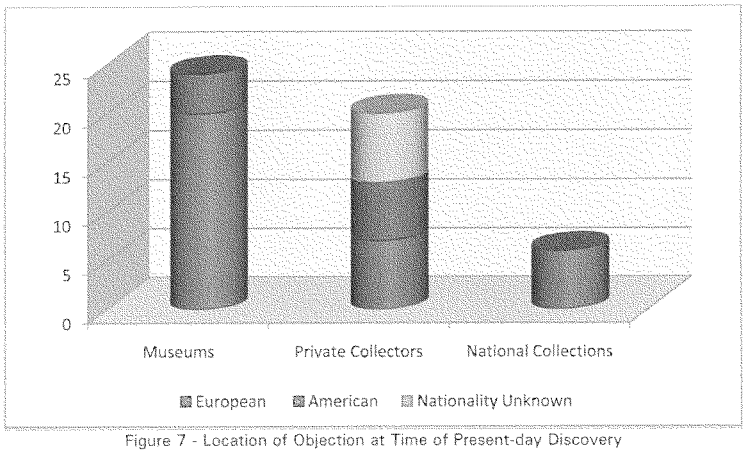


Figure 7 - Location of Objection at Time of Present-day Discovery

Several compensation agencies administering programs covering bank account and/or insurance policy losses also assess claims for material and/or other losses

resulting from Nazi persecution. Of the 4,809 individuals who filed claims with the HCPO 615 of them were found eligible for compensation under material asset, real property loss or other schemes. To date, offers extended to HCPO claimants seeking other material losses total $51,622,317, this represents an increase in offers of $1,128,275 from the previous year. (*See* Figure 8).

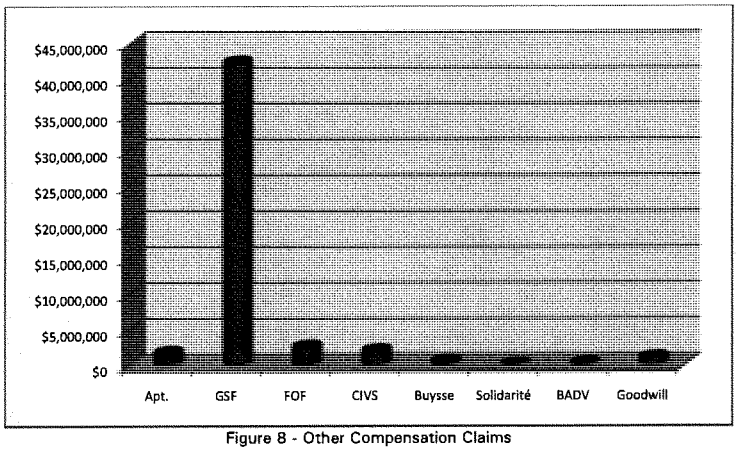


Figure 8 - Other Compensation Claims

The HCPO anticipates that claims will require monitoring through the end of 2011 and beyond given that: the claims processing entities in France, Israel, the Netherlands, and the United Kingdom are still accepting and handling claims; members of Congress continue to express an interest in adopting legislation to address unresolved claims for Holocaust-era insurance policies; insurance companies continue to review and process claims submitted directly to them; and the Federal Government is considering established a US Art Commission to mediate claims regarding Holocaust-era looted art and the proposal currently in circulation requests that the HCPO assist with such a process. Ultimately, therefore, the time required for submitting and processing claims is determined by circumstances beyond the HCPO's control.

Holocaust Survivors Fight Insurers and White House

Claims Run Counter to U.S. Foreign Policy

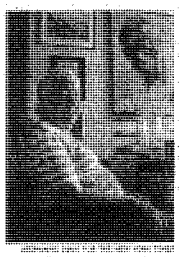
By ERIC LICHTBLAU

WASHINGTON — Sixty-six years after she survived the Nazi death camp at Auschwitz, Renee Firestone is still trying to find out what became of an insurance policy that she suspects her father, who died in the Holocaust, took out from an Italian insurer before the war.

Ms. Firestone, 87, a naturalized American citizen from the former Czechoslovakia who became a fashion designer in Los Angeles, expected resistance from the insurance companies that fielded claims from many thousands of Holocaust survivors and their heirs. What she did not foresee, she said, was the opposition from her own government — including the State Department and Congress — to her getting her day in court.

"What's so painful is that we can see they're just waiting for all of us to die," she said.

The legal claims by hundreds of American survivors like Ms. Firestone have set off an intense lobbying campaign in Washington on their behalf. But opposition from the government and even from leading Jewish groups has created an uncomfortable rift between groups that are normally in alliance and has created a potential minefield for President Obama.



Renee Firestone in her living room last week in California.

"The whole thing saddens me," Elie Wiesel, the Nobel laureate who is perhaps the most well-known Holocaust survivor, said of the rift over the insurance benefits. "I don't know how or why this has happened, but the survivors should be helped however we can."

"This is about giving the survivors their day in court. We've already waited too long."

One group of survivors, known as the Holocaust Survivors Foundation USA, has been ratcheting up its efforts in recent weeks to bring pressure on the Obama administration and on leading Jewish groups to change their stance on the volatile insurance issue.

The survivors group took out full-page advertisements in Jewish and mainstream newspapers this month accusing leading Jewish groups, like the American Jewish Committee of "dishonoring" the memories of the Holocaust.

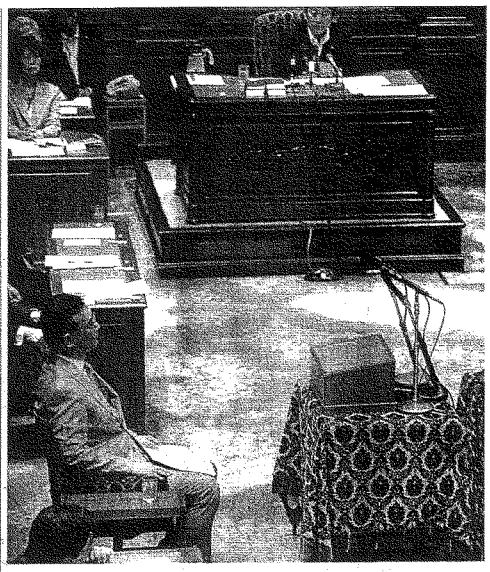
The ads accused Jewish groups of "protecting" European insurers like Allianz because the insurers gave money to American-Jewish causes. (Allianz, based in Germany, had committed in 2008 to buying naming rights to the New Meadowlands Stadium for $25 million a year, but the Jets and the Giants pulled out of talks after publicity over the company's role in insuring Nazi facilities, including Auschwitz, and of blocking payment of survivors' claims after the Holocaust.)

Eighteen survivors also sent Secretary of State Hillary Rodham Clinton a nine-page letter last week expressing their anger and disappointment over the treatment of their claims.

"It is beyond the pale that we should be perceived as the adversary of our government, to be gamed and denied what was ours and was stolen from us by companies with the protection of the most vicious regime in history," they wrote. A copy of the letter was provided to the New York Times.

Sam Dubbin, a Miami lawyer who works with a number of Holocaust survivors, said the current proposal in Congress was "the last, best hope" for correcting what he said was a historical injustice. He said that the claims process set in place by the 2000 agreement with Germany was rife with abuse and that money paid out from it represented only a small fraction of the $20 billion in current dollars that was owed on Holocaust-era insurance policies.

The bulk of the claims have gone unpaid, Mr. Dubbin said, while many of the survivors are living in poverty in cities around the United States. "It's an utter disgrace," he said.



Prime Minister Naoto Kan, right, during heated parliamentary debate Wednesday over

Report Finds Japan Underestimated

By MARTIN FACKLER

TOKYO — Japan underestimated the danger of tsunamis and failed to prepare adequate backup systems at the Fukushima Daiichi nuclear plant, a team of inspectors from an international nuclear regulator said Wednesday in a critical report that was released as the Japanese prime minister prepared to face a no-confidence vote in Parliament.

In its preliminary report on the nuclear crisis, which echoed earlier criticisms of Japan's inadequate safety measures, the team, from the International Atomic Energy Agency in Vienna, also called for stronger regulatory oversight. Steps should be taken, it said, to ensure that "regulatory independence and clarity of roles are preserved in all circumstances."

This seemed to repeat a widely held criticism in Japan that collusive ties between regulators and industry led to weak oversight and a failure to ensure adequate safety levels at the plant.

The report did offer some praise, particularly to Japanese nation's government to offer nonbinding recommendations on improving safety.

Still, the report's cautious criticisms gained attention in Japan, coming on the same day as opposition parties submitted a no-confidence motion against Prime Minister Naoto Kan.

While Mr. Kan is expected to survive the measure, which will probably be voted on in Parliament on Thursday, it has reinforced criticism here that he has been slow and indecisive in his response to the March 11 earthquake and tsunami, which left more than 24,000 people dead or missing. The motion has already proved politically bruising,

A nuclear watchdog group says backup systems were inadequate.

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The State Department, under both the Obama and George W. Bush administrations, has vigorously opposed the idea of allowing survivors to press claims in court against European insurance companies because they say it would undermine a reparations agreement that the United States reached in 2000 with Germany, which led to $300 million in insurance payments to survivors and their heirs.

The threat of private lawsuits, administration officials say, treads on the president's authority to set foreign policy. The United States Court of Appeals for the Second Circuit last year validated the State Department's position as it dismissed claims brought against an Italian insurance company, Generali, which had issued many policies before the Holocaust to European Jews who wanted to protect themselves financially against the rise of Nazi power.

"The State Department is concerned that lawsuits by the survivors could not only disrupt prior agreements with European governments but might also have a negative impact on other reparation agreements growing out of the Holocaust as well," the department said in a statement on Friday.

In line with the State Department, leading Jewish groups like the American Jewish Committee and the Anti-Defamation League have also opposed the survivors' attempts to plead their case in court and have lobbied against prior efforts by Congress to intervene, as have the insurance companies themselves.

Now, however, a new push in Congress on behalf of the survivors appears to be gaining some ground.

"I'm feeling optimistic that this is our year," said Representative Ileana Ros-Lehtinen, a Florida Republican who introduced legislation in the House in March that would force insurers to disclose the names of Holocaust-era policy holders and allow survivors and their heirs to seek claims in American courts.

Ms. Ros-Lehtinen, whose maternal grandparents were Sephardic Jews and whose Miami area district includes many survivors, said she was well aware of the stiff opposition the idea has generated and the concerns from the government about undermining foreign agreements.

"This will not usurp anybody's

Susan Rubin, 84, a Hungarian native who survived Auschwitz and now lives in Brooklyn, said that she spotted the name of her father, Jozsef Rosenfeld, who died at Auschwitz, on a listing of unclaimed insurance policies in 2001. It indicated that he had taken out a policy with Generali in Budapest. But after she put in her claim, the processors rejected it for lack of evidence; she was unable to prove that her father was the same Jozsef Rosenfeld who took out the policy.

Incensed and dejected, she and her husband, Nathan, wrote to legislators in Washington and Albany to ask for help, but they got no response.

"It's not about the money," Mr. Rubin said. "It's about what they took away from us. You figure there's any hope now? There's not too many years left for us."

'They're just waiting for all of us to die,' says a former prisoner at Auschwitz.

Opponents of the lawsuits concede that the insurance claims process put in place a decade ago was slow and imperfect, but they say the complaints from some survivors are misinformed and driven more by the agendas of class-action lawyers than by legitimate grievances.

The accusation from Mr. Dubbin's group that Jewish leaders have neglected survivors because of their own agendas "is awful and horrible and offensive," said Rabbi Andrew Baker, the director of international Jewish affairs for the American Jewish Committee.

He pointed, for instance, to a recent agreement forged with Germany by the State Department and Jewish groups to secure more than $500 million in financing for home care for elderly Holocaust survivors.

Stuart E. Eizenstat, a special envoy to the State Department who worked on the recent homecare agreement, said it was distressing to see the government's efforts, and his own personal integrity, now under attack by some survivors.

"I can't figure it out," he said. "It's just very, very sad."

plant workers for braving dangerous conditions to try to bring the stricken plant under control. But it did not address some of the main criticisms of Japan's handling of the crisis, including initially understating the extent of the damage, and slow decision-making that worsened the plant's problems.

In contrast to its role as watchdog against proliferation of nuclear weapons in countries like Iran, the atomic agency operates narrowly in any civilian crisis, as an adviser that is invited in by the

as a small number of disgruntled members of his own Democratic Party, led by the fallen party kingmaker Ichiro Ozawa, have vowed to join the opposition in voting against Mr. Kan.

"What is most sought by the people is for us to work together to achieve reconstruction and resolve the nuclear crisis," Mr. Kan said during the heated debate in which opposition leaders demanded his resignation. "I must respond to their needs, and that is my responsibility."

The report on Wednesday fol-

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Taliban Aim to Derail Security Shift to Af

By RODNEY NORDLAND

KABUL, Afghanistan — Insurgents have stepped up attacks in parts of Afghanistan scheduled to be handed over to Afghan military control next month and have put a new emphasis on a campaign of assassinations aimed at important officials around the country, Afghan officials say.

Afghan officials say the combined campaigns are intended to undermine the first stage of a transition to full Afghan responsibility for security, which is scheduled to begin within weeks in seven of the country's safest prov-

inces and cities. The Afghans and NATO officials insisted that the transition would not be delayed. A delay might call into question President Obama's goal to begin withdrawing some of the 100,000 troops the United States has in the country by July.

However, there has already been some delay in drafting specific plans for the transition, which President Hamid Karzai announced in March. A governmentwide meeting to complete those plans has been put off until June 15, even though Western diplomats say they expect the transition to begin between June 22 and July 22.

The insurgents are trying to interfere with the security transition and are focusing on the places that are scheduled to go into our control," said Lutfullah Mashal, a spokesman for the National Directorate of Security, the Afghan intelligence service, citing a variety of recent attacks.

But NATO officials say they do not see recent attacks as part of a worrisome trend. "We don't see a significant increase in Taliban attacks in the transition areas," an official with the International Security Assistance Force, or ISAF, said, speaking anonymously as a matter of policy.

A spokesman for the Taliban, Zabiullah Mujahid, interviewed by cellphone, also denied that the insurgents were focused on the transition. "We will continue our fight in all areas of the country," he said. "The security transition is not important."

Undoubtedly, there have been a string of prominent attacks in areas scheduled to be handed over. On Monday, insurgents struck in the western city of Herat, one of the first seven places

scheduled for the tran
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them civilians.

Two days earlier, a
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arm city selected for
phase of the transition.

"The Afghan secur
with their current lead
not be able to take over
city's responsibilities in
Sharif," said Qayum I
political analyst from
"They cannot maintain
for themselves; how
protect the city?"

Taliban assassins
bushed the governor of
Province, Gulab Mang
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And in Laghman
where the provincia
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bombers have struck sh

In Mehtarlam itself,
of the Laghman provin
cil, Ajmal Wafa, said th
ficials were worried
transition. "The Talibar
dare attack the provinc
while the Americans
but if the Americans
Taliban will march in,"
said. "If anyone asks

Names of the Dead

The Department of Defense has identified 1,588 American service members who have died as a part of the Afghan war and related operations. It confirmed the deaths of the following Americans this week:

APOLINAR, Martin R., 28, Staff Sgt., Army; Glendale, Ariz.; Third Special Forces Group.

BLASIO, Aaron J., 25, Sgt., Army; Riverside, Calif.; Third Special Forces Group.

CLORE, Peter J., 23, Lance Cpl., Marines; New Philadelphia, Ohio; Second Marine Division.

EMMONS, Richard C. III, 22, Specialist, Army; North Granby, Conn.; 10th Mountain Division.

NUNN, Anthony M., 19, Pfc., Army; Burnet, Tex.; 101st Airborne Division.

SCHULTZ, Joseph W., 36, Capt., Army; Port Angeles, Wash.; Third Special Forces Group.

POLITICO

Justice for Holocaust survivors

By: Annette Lantos
June 20, 2012 04:43 AM EDT

I have been deeply disappointed to learn that many respected Jewish groups have come out against legislation that would restore Holocaust survivors' rights to seek justice in U.S. courts from mega-insurance companies that have compounded the tragedy by refusing to honor policies bought by victims of the Nazis.

This bill, introduced by Rep. Ileana Ros-Lehtinen (R-Fla.) and Sen. Bill Nelson (D-Fla.), gives Holocaust survivors and their heirs the same rights as every other American to pursue justice in our courts.

My late husband, Rep. Tom Lantos, was the only Holocaust survivor ever elected to Congress. He strongly supported this bill, rejecting the arguments of those who lobbied to close the courtroom door to Holocaust survivors. He believed that efforts to negotiate comprehensive settlements for those cheated by the insurance companies had failed to adequately meet the test of fairness and success. And he was right.

Roughly half the Holocaust survivors in this country live in poverty and can't afford sufficient health care, nutrition, shelter, home care and other basic necessities. Many have died in desperation — robbed of the insurance proceeds they should have received decades ago.

This is a scandal, and our only concern should be to ensure that these victims and their families have every opportunity to right the wrong done to them.

Our concern should not be to ensure "legal peace" or "closure" for the behemoth German, Italian, Swiss, and French insurance companies like Allianz, Munich Re, Assicurazioni Generali, Zurich, Swiss Re and AXA, that have refused to honor billions of dollars of unpaid Jewish policies. They are not deserving of our sympathy.

It is closure and justice for their victims that should be our goal. Nor should any Jewish groups, like the Anti-Defamation League, American Jewish Committee, B'nai B'rith, the Claims Conference and the World Jewish Congress, paternalistically tell these survivors that vindication of their legal rights will likely be too daunting and difficult. Holocaust survivors should have the same rights as any other U.S. citizen to decide for themselves.

My husband spent his congressional career fighting for the rights of victims of injustice. He knew too well what it meant for human beings to have their rights stripped away by arbitrary government acts and he fought against such indignities throughout his public life.

That is why – if he were still alive - he would be leading the charge to protect the rights of Holocaust survivors and their families.

I call on Tom's colleagues in the Congress to follow his lead and support this important legislation. It's a matter of standing up for what is right.

Annette Lantos, the widow of Rep. Tom Lantos, is a Holocaust survivor who worked with her late husband as the unpaid director of the Congressional Human Rights Caucus. She is now chairwoman of the ***Lantos Foundation for Human Rights and Justice****. She also serves on the executive committee of the* ***Holocaust Survivors Foundation USA****.*

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June 19, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The Republican Jewish Coalition supports the bipartisan, bicameral effort to enact the Holocaust Rail Justice Act during the 112th Congress, and applauds the Senate Judiciary Committee for holding a hearing on the bill.

Accordingly, I respectfully request that the following statement be included in the hearing record for the hearing scheduled for June 20, 2012:

> Republican Jewish Coalition Statement Regarding S. 634, the Holocaust Rail Justice Act
>
> S.634, the Holocaust Rail Justice Act was introduced in the Senate in March, 2011. Companion legislation – H.R. 1193 – was introduced in June, 2011. In both instances, the legislation was sponsored by a Democratic member but drew substantial Republican support.
>
> On November 16, 2011, the House Committee on Foreign Affairs held a hearing that featured haunting testimony from Leo Bretholz, who managed to escape from a moving SNCF train bound for Auschwitz. Also recognized at the hearing was Donald Shearer, a U.S. prisoner of war shot down over France and deported to Buchenwald on an SNCF train
>
> Now that this legislation will have been the subject of committee hearings in both chambers, and has attracted a growing number of bipartisan co-sponsors, the Holocaust Rail Justice Act is closer than ever before to becoming law.
>
> S. 634 has 18 bipartisan cosponsors, and H.R. 1193 has 55 bipartisan cosponsors. The breadth of support is impressive – ranging from Majority Leader Reid to Senator Rubio and Congressman Allen West.
>
> The Holocaust Rail Justice Act would provide a path forward for a group

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of survivors to finally have their long-delayed day in court against the French rail company that deported them and their loved ones to Nazi death camps.

It is fitting that the Judiciary's committee's hearing will provide SNCF survivors and experts with an opportunity to tell their stories to the American people and to explain to Congress why it is in our national interest to enact the Holocaust Rail Justice Act.

In connection with the upcoming hearing, we'd like to emphasize to Congress's attention some particularly noteworthy facts regarding the history of this issue and recent attempts by SNCF to stymie this legislative effort and whitewash its role in the Holocaust.

Historical Background

During World War Two, SNCF deported more than 76,000 Jews and thousands of others the Nazis deemed 'undesirable' – including American pilots shot down over France – to Nazi death camps. SNCF operated the trains as a commercial venture in collaboration with the Nazis, and the company was paid on a per-head, per-kilometer basis to deliver thousands to their ultimate deaths. One especially telling and troubling historical detail is that SNCF sought payment from the French government for unpaid invoices for the deportation "services" they provided – even after Paris was liberated.

SNCF has never made any restitution or reparations to its victims, and the company has not been held accountable for its actions through any other means.

Hundreds of survivors and family members of those who have perished spent over ten years in litigation trying to hold SNCF accountable in U.S. courts. Unfortunately, SNCF has been successful in hiding behind the veil of foreign sovereign immunity.

The Holocaust Rail Justice Act would simply preclude the defense of foreign sovereign immunity from being raised in this limited instance and allow these survivors to finally have their day in court. The legislation does not determine guilt or innocence – it simply provides an opportunity for justice, something these elderly survivors so very much deserve.

SNCF's "Spin Campaign" in Pursuit of High-Speed Rail and State Rail Contracts

SNCF has embarked on a massive public relations campaign to revise the history of its role in the Holocaust and also to create a misleading

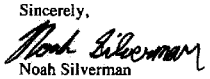
impression as to what existing reparations programs do and do not cover. This public relations campaign has no doubt been motivated by SNCF's bottom line and their interest increasing their opportunities within the U.S. market.

Specifically, SNCF has tried to rehabilitate its public image and to remain competitive for billions of dollars in high-speed rail contracts across the U.S. and to ensure that its related company (Kelois), in which SNCF holds a majority stake, can pursue lucrative state rail contracts (this company currently operates the VRE in Virginia and is looking to operate the MARC line in Maryland).

It is deeply troubling to see this type of corporate conduct even as SNCF refuses to be held accountable to its victims. Congress should act to preclude a circumstance in which SNCF remains unwilling to be held accountable for its past wrongs while benefiting directly from tax dollars of some of the very same American survivors it deported to the death camps.

The Republican Jewish Coalition – with a membership of more than 30,000 members from across the nation – fully supports S. 634 and respectfully urges the Senate Judiciary Committee to move as expeditiously as possible to pass and enact the Holocaust Rail Justice Act so that these survivors can have a chance to seek justice in their lifetimes.

Sincerely,



Noah Silverman
Congressional Affairs Director
Republican Jewish Coalition

cc: Members of the Senate Committee on the Judiciary

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Republican Jewish Coalition
Supplementary Statement submitted to the Senate Judiciary Committee
June 27, 2012

Subsequent to the Republican Jewish Coalition's initial submission for the record in connection with the Senate Judiciary Committee's June 20, 2012 hearing on S. 634, the Holocaust Rail Justice Act, we have been made aware of consultations that could lead to the resolution of claims against SNCF by survivors of Holocaust-era deportations in France within the survivors' lifetimes and thus make legislative action unnecessary.

We understand four other leading American Jewish organizations have urged Congress to support these efforts as a useful way forward. We join with those organizations in the hope that Congress will be supportive of that path as a way to alleviate the pain and suffering of survivors.

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STATEMENT OF THE HONORABLE SAMUEL I. "SANDY" ROSENBERG

DELEGATE, 41st DISTRICT OF MARYLAND

U.S. SENATE COMMITTEE ON THE JUDICIARY

"HOLOCAUST-ERA CLAIMS IN THE 21ST CENTURY"

June 20, 2012

Chairman Leahy, Ranking Member Grassley, Senator Schumer, and distinguished members of the Committee, thank you for the opportunity to express my support for the Holocaust Rail Justice Act (S.634) and share my experiences in Maryland to require transparency from SNCF. On behalf of the victims of Société Nationale des Chemins de fer Français (SNCF) in Maryland and around the world, I would like to express my gratitude for holding this important hearing. Senator Schumer, your leadership on this issue for so many years and your tireless fight to provide these survivors their day in court has been remarkable.

I applaud all those who support this important legislation in the House and the Senate and for setting aside partisan differences to ensure SNCF is finally held accountable for its role in the suffering and death of thousands of innocent victims. I would especially like to thank my dear friend and former colleague Senator Cardin, Senator Mikulski, and the members of the Maryland Congressional delegation who have cosponsored this legislation. On a very personal note, I am certain that Telford Taylor, my Constitutional Law professor at Columbia University Law School and the Chief Prosecutor for the Nuremberg War Crimes Tribunal, would be immensely proud of the work we are doing to hold SNCF accountable. With this hearing and the increasing number of bipartisan supporters of this legislation – including Majority Leader Reid, Foreign

Relations Committee Chairman Kerry, and Senator Rubio, to name a few – I am confident, now more than ever, that Congress will provide SNCF's victims with their long awaited and much deserved day in court.

I learned about the French railroad company, SNCF, last year when some of my constituents brought to my attention that SNCF's majority owned joint venture company intended to bid on MARC commuter rail contracts. Over the following months, I was stunned by what I learned about SNCF's actions during the Holocaust and about the company's ongoing treatment of my constituents and other SNCF victims throughout America. SNCF's blatant refusal to fully acknowledge its role in the Holocaust led me and my colleagues to pass legislation requiring transparency for SNCF's numerous victims. I am here today to share what we learned in Maryland about SNCF and its deplorable past and to urge the enactment of the Holocaust Rail Justice Act so that SNCF's victims can finally attain the justice they so rightfully deserve.

SNCF's Role in the Holocaust

During World War II, SNCF collaborated with the Nazis to deport 76,000 Jews and thousands of other so called "undesirables," including U.S. airmen shot down over France, to Nazi death camps. For each transport, SNCF was paid per head, per kilometer. Fifty people were herded into each SNCF cattle car, with 20 cars per convoy, as they set out from France toward near certain death. These innocent victims were locked inside with barely any food or water and only one sanitary bucket on board. Fewer than three percent of the Jews deported by SNCF survived the Holocaust, and many did not even survive the train journey to the death camps due to the inhumane conditions imposed by SNCF.

Since SNCF has become interested in U.S. high-speed rail contracts and partially federally funded state rail contracts, SNCF has claimed that it was wholly coerced, as if this somehow exonerates the company. However, after examining the facts and the history, I have come to believe, as I expect you will too, that SNCF actively collaborated with the Nazis and negotiated to retain control and responsibility for its trains, including the technical conditions of the deportations. SNCF's actions and the conditions it imposed led directly to the deaths of countless victims. According to the Bachelier Report, commissioned by SNCF itself, the company even protested when Red Cross workers attempted to provide aid to the victims in the trains because it slowed down the transports.

SNCF billed quarterly for the deportations and continued to seek payment for "services rendered" even after the liberation of Paris, after the Nazis were gone. While SNCF's current leadership contends that they were wholly coerced by the Nazis, they have been utterly unable to explain away the active role they played in these deportations and why they sought payment even after the Nazis were defeated. This is because it simply cannot be explained away. This is SNCF's lamentable history.

SNCF's Victims' Fight for Justice

While SNCF does not deny that it sent thousands of innocent people, including 11,000 children, to their deaths, the company refuses to take responsibility for its actions. Instead, it hides behind foreign sovereign immunity and claims it should not be held accountable in U.S. courts. In the 67 years since the Holocaust, SNCF has neither paid any reparations to its victims nor to existing French reparation programs. Furthermore, those reparation programs do not

specifically cover the SNCF deportations. As a result, SNCF's victims who were deported are ineligible to receive any reparations attributable to SNCF's egregious actions.

Even worse, I believe that SNCF is actively seeking to deceive its victims into thinking they are eligible for those reparations. On November 4, 2010, SNCF's chairman stated that the company was "establishing a service to work one-on-one with individuals to help them process their claims and receive reparations from these existing State programs," all the while knowing full well that those programs do not specifically cover SNCF's victims for their deportation.

Unfortunately, SNCF has deployed this campaign of deception in both California and my state of Maryland. SNCF America's former CEO sent a letter to California Assemblymember Bob Blumenfield on March 1, 2011, offering to assist any of his constituents who may have been "affected" by the deportations in obtaining "reparations to which they are entitled." In September 2011, an ad ran in the *Baltimore Jewish Times* which offered assistance in applying for French reparations programs. The ad neglected to inform SNCF victims that these programs are inadequate and do not specifically cover the SNCF deportations.

While SNCF may believe that its ads and public relations campaign may help the company as it seeks to compete for public rail contracts in the United States, it has the unfortunate and unacceptable effect of engendering false hope among those who have already suffered so egregiously. An SNCF employee exposed the true – and deeply troubling – intent of the company. I would like to read directly from a letter written by California Assemblymember Bob Blumenfield to SNCF America's former CEO. Assemblymember Blumenfield states, "First, SNCF seems to now be making clear that it has no intention of providing reparations to its victims, many of whom are California residents. On January 25th, 2011, an SNCF representative

told me, in no uncertain terms, that 'SNCF will never pay the survivors anything' and that the company 'would rather not do business in California' than take any such actions." [1] I would like to enter this letter into the record.

SNCF's Spin Campaign

SNCF's actions during the Holocaust were unconscionable and unforgivable; however, the company's regrettable actions today have convinced me that these are no longer the sins of SNCF's fathers. Through my work on the Maryland legislation, I became well acquainted with SNCF, its representatives, and the company's disingenuous conduct during the Maryland General Assembly's consideration of the bill.

In 2009, SNCF officially expressed interest in entering the U.S. high-speed rail market. Due to survivors' concerns and SNCF's continued refusal to accept responsibility, SNCF's role in the Holocaust was scrutinized in newspapers across the country. While steadfastly refusing to engage with its victims and to accept responsibility, SNCF launched a full scale public relations campaign to spin its role in the Holocaust and the reality of what existing French reparations programs cover, and to try to stem the growing tide of opposition standing between the company and lucrative state and federally funded rail contracts.

It was not until 2010 that SNCF issued its first apology for its role in the Holocaust, almost seven decades after World War II. This long overdue apology rings hollow for Leo Bretholz and SNCF's other victims. The *Los Angeles Times* editorial board perhaps said it best,

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[1] Letter from California Assemblymember Bob Blumenfield to SNCF America CEO Denis Doute (February 2, 2011) *available at* http://holocaustrailvictims.org/wp-content/uploads/2011/02/Blumenfield-Letter-2-2-11.pdf

noting in a November 20, 2010 editorial that SNCF's apology "doesn't save any lives or compensate any survivors. What's more, it comes about 65 years late, at a time when most of those with firsthand memories of the Holocaust have died." The editorial board went on to note that the apology "was apparently not prompted by regret. Rather, it seems to have been spurred by the company's desire to win multibillion-dollar high-speed rail contracts in California and Florida, contracts that were in jeopardy because of stiff resistance from survivors of the deportations and the families of those who died."

State Level Actions

In the face of SNCF's history and its treatment of its victims, I am proud that my state, California, and Florida have all taken a stand against the company.

In Florida, at a time when the state was contemplating a $2.6 billion high speed rail project, SNCF sought to influence the teaching of the history of the Holocaust in Florida classrooms by underwriting a partnership between the Shoah Memorial of France and Florida's Department of Education Task Force on Holocaust Education. As the facts of the agreement between the parties came to light, the potential partnership was met with fierce opposition from Holocaust survivors, Congressional leaders, and even Task Force members, who had been kept in the dark about the decision to engage with SNCF. Survivors were outraged that SNCF, responsible for deporting them and their family members toward the death camps, might have some role in shaping the education of their grandchildren, while still refusing to be held accountable to the survivors. Roughly half of the Florida Congressional delegation, including Senators Nelson and Rubio, wrote a letter to Florida's Commissioner of Education, which I would also like to enter into the record. In that letter, the Congressional leaders stated plainly

that "[i]nstead of attempting to engage in a public relations campaign, SNCF would be wise to resolve the claims of the Holocaust survivors as a consequence of their actions." How could a company that cannot even face its own role in the Holocaust be allowed to influence how the subject of Holocaust history is taught to the next generation of Americans? Thankfully, we do not have to face that prospect, as the Florida Education Commissioner ultimately, and rightfully, cancelled the partnership with SNCF and returned the money.

In both California and Maryland, when SNCF sought to obtain taxpayer funded contracts, California Assemblymember Bob Blumenfield and I introduced legislation in our respective states to ensure our constituents would know the character of the companies receiving public funds. The Maryland bill, which unanimously passed both chambers of the legislature last year and was signed into law by Governor Martin O'Malley, requires companies seeking to bid on MARC contracts to digitize and post relevant Holocaust-era archives online.

Since the law's enactment, SNCF has released its digitized archives to three Holocaust museums. When it did so, SNCF issued a press release claiming it opened and digitized its archives of the 1939–1945 period as part of a "new phase of transparency." True to form, SNCF presented its digitization and online-posting of its archives as a purely altruistic endeavor. Although it is a positive development that SNCF has donated its archives to these Holocaust museums, it is par for the course that SNCF approached this as a PR exercise, failing to mention that the posting of these archives was required in the first instance to allow SNCF and its related companies to compete for lucrative contracts.

Accountability Through the Holocaust Rail Justice Act

I am proud that the law we passed in Maryland should result in long-awaited transparency from SNCF, not only for Maryland residents, but for the world. The archives will become a part of the historical rccord of the Holocaust and will help to ensure that we as a society will never forget the lessons of the Holocaust or SNCF's role in the dcportations and deaths of thousands.

Unfortunately, transparency is not enough for Leo Bretholz and his fellow survivors. As many of them enter the winter of their lives, accountability from SNCF will never be obtained without the help of the members of this committee and this Congress.

For over ten years, SNCF's victims have sought to hold the company accountable for actively collaborating with the Nazis during the Holocaust. So far, SNCF has been successful in escaping responsibility by claiming it is an arm of the French Government entitled to foreign sovereign immunity.

I was shocked to learn that SNCF succeeded in evading jurisdiction and had a suit dismissed from French Administrative court based on the argument that it was performing a *private* function when it deported countless thousands toward their certain death. In the U.S., however, SNCF argues just the opposite - that it is an arm of the French government, to once again evade the jurisdiction of the courts. That SNCF has succeeded in ducking accountability by advancing these contradictory arguments is unconscionable.

Leo Bretholz and his fellow survivors deserve truth, justice, and accountability from SNCF. It is appalling that some 67 years after the Holocaust, SNCF still refuses to accept full responsibility for its actions. I am proud of the progress Maryland has made in seeking to provide transparency to SNCF's victims, but now this Committee and the Congress must provide

the other necessary component of justice – accountability. SNCF's victims have never had their day in court; they have never had an opportunity for accountability. The Holocaust Rail Justice Act would allow Leo Bretholz and SNCF's countless other victims to have their stories told in open court for the first time. This legislation represents the only hope for these survivors before it is too late.

The Holocaust Rail Justice Act does not assign blame or mandate the payment of any reparations. Nor will the act affect existing restitution or reparations agreements. The legislation simply provides SNCF victims with access to court - to the justice they so very much deserve. SNCF's ability thus far to evade legal accountability in U.S. courts - as the company is pursuing federally funded contracts - is a failure of justice. By finally forcing SNCF out of the shadows, and by precluding SNCF from hiding behind foreign sovereign immunity, the Holocaust Rail Justice Act will finally provide necessary accountability.

I recently returned from a trip to Israel. While in Jerusalem, I visited the national Holocaust museum, Yad Vashem. "We've identified many of the people in this film," stated c tour guide. The people in the film were about to be executed by a Nazi firing squad before falling into a shallow mass grave. "Our goal is to give all 6 million a name," declared our guide at the conclusion of our tour. "Thus far, we have done that for 4.1 million." While it is too late for the victims in that film to seek justice, it is not too late for SNCF victims like Leo Bretholz to finally have a chance at justice.

As members of this Committee know all too well, many Holocaust survivors, like Leo, are in the twilight of their lives. Leo now sits before this committee, 91 years old, still waiting for justice after battling SNCF for over a decade. While SNCF tries to run out the clock on survivors like Leo, we must all stand up – on the local, state, and federal levels – and together demand that this company finally be held accountable.

DOCUMENTS

SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS

SERVICES FINANCIERS

DIVISION CENTRALE DE LA COMPTABILITE GENERALE

SUBDIVISION DU CONTROLE DES RECETTES VOYAGEURS

3e Bureau

N° DOSSIER 45843

PARIS, le 12 AOU 1944
212, rue de Bercy (12e)

Monsieur le Préfet de la Haute-Garonne
à Toulouse

Objet: Règlement de frais de transport.

Monsieur le Préfet,

J'ai l'honneur de vous adresser, ci-joint, avec les réquisitions à l'appui, mémoire en double exemplaire, s'élevant à la somme de 210.385,40 (dix concernant les transports effectués pour le compte de votre département pendant le premier trimestre 1944 (Bureau d'Indemnité, Bureau Impôts).

Je vous serais reconnaissant de vouloir bien faire effectuer le règlement de la somme précitée par mandats établis au profit de la Société Nationale des Chemins de fer français, 88, rue St-Lazare, et domiciliés à la Caisse Centrale du Trésor Public, à Paris (Circulaire Ministérielle Division de la Comptabilité Publique n° 3.543 M/C 4.576, du 2 février 1938).

Ces mandats seraient à adresser à la Subdivision de la Comptabilité des Recettes (5e Bureau) 21, rue de Londres, à Paris.

Je me permets, à ce sujet, d'attirer votre attention sur les conditions de la Convention réglement les transports de l'espèce et prévoyant que tout retard dans les règlements imputables au Service départemental donnera lieu au versement d'intérêts moratoires calculés au taux d'escompte de la Banque de France majoré de 1% et courant à partir de l'expiration du délai de 30 jours suivant le reçu des factures.

Veuillez agréer, Monsieur le Préfet, l'assurance de mes sentiments les plus distingués.

Le Chef de la Subdivision
du Contrôle des Recettes-Voyageurs,

SERVICE DU BUREAU
24 OCTO 1944
Réponse le

159 Pièces jointes.

E.T.

TRANSLATION

Paris, August 12, 1944
212 de Bercy Street (12th arrondissement)

The Prefect of Haute-Garonne

Re: Expense Accounting for Transportation

Dear Sir:

I have the honor of sending you the enclosed supporting invoices, in duplicate, for transportation which comes to the sum of 210.385 francs concerning the transportation effectuated by order of your department during the first quarter of 1944. (Handwritten portion is not legible)

I would appreciate your arranging for the payment of this sum prescribed by regulation for the benefit of the Railroad of France, 88 St. Lazare Street, located at the Public Treasury Fund in Paris (Mandates published by Ministerial Division of Revenue Accounts, published February 2, 1938).

These sums should be sent to the Subdivision of Revenue Accounting (5th Bureau) 21, Londres Street in Paris.

On this subject, I call your attention to the conditions of the Convention governing transports of cash and assume that any delay in payment will result in interest at the discount rate of the Bank of France plus 1% commencing on the date that is 30 days after your receipt of the bills and continuing until paid.

Please accept my most distinguished sentiments.

Chief of the Subdivision of Revenue Control

Le facture est datée du 12 Août 1944, durant la bataille de France. Paris a été libéré le 18 Août. En bas à gauche, daté du 20 Novembre 1944, le cachet porteur la mention "Camp de Noé", "Société Nationale" et la Croix de Lorraine, "certifié exact" par le Chef de Camp de Noé. Cette facture de déportation du premier trimestre 1944 a été payée à la SNCF, après la guerre, par le Ministère de l'Intérieur.

E.T.H.I.C. DOCUMENTS

Bien que Paris ne soit pas encore libéré le 12 Août 1944, le cachet en haut à droite porte déjà la mention REPUBLIQUE FRANCAISE.

SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS

CONTROLE DE CONTROLE DE RECETTES

242, rue de Bercy PARIS (12e)

SERVICES FINANCIERS

COMPTABILITÉ ET CONTROLE DES RECETTES

Transports du Ministère de l'INTERIEUR

FACTURE N° 45.313

des transports exécutés pendant le 1er trimestre 1944 pour le compte de la Préfecture de la Haute-Garonne et dont les détails sont portés dans les relevés annexés à la présente facture, appuyés des pièces justificatives.

DÉSIGNATION DES RELEVÉS	SOMMES	
Montant des transports figurant sur le relevé ci-joint (Camp d'internement, Centres de séjour surveillé, Internés, Expulsés etc..)	210.385	9
Total	210.385	9

SERVICE DES ...
24 OCTO 1944
1549

Dressée par le Chef de Bureau, soussigné,

Certifié la présente facture délivrée à la somme de Deux cent dix mille trois cent quatre vingt cinq francs neuf décimes.

Paris, le 12 AOU 1944

Certifié exact
Noé, le 30
Le Chef de Camp

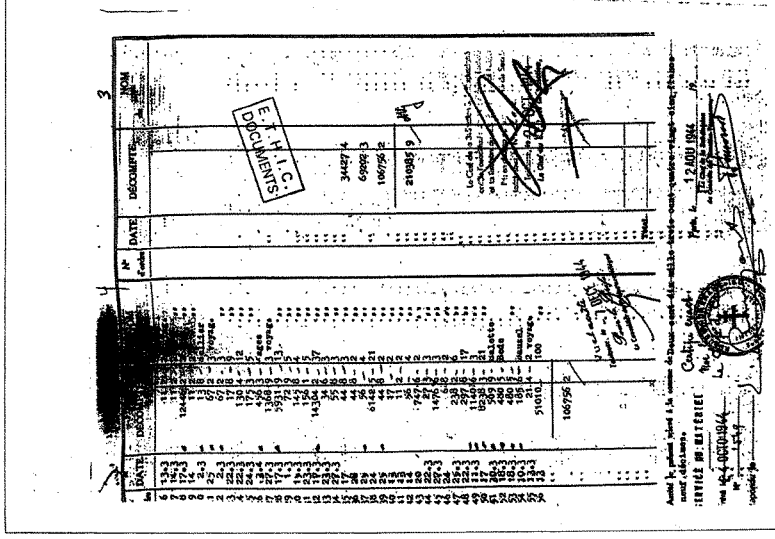
Invoice from the National Railroad of France:

Financial Services
Office of Accounting and Revenue Control
Transportation Ministry of the Interior

Invoice No. 45,313

for transportation provided during the first quarter of 1944 for the account of the Prefecture of Haute-Garonne of which the details are attached in the supporting documentation.

Description of Services	Charges
Provision of transportation on the attached documents to Camp of Internment, Centers of Supervised Stays, Interned and Expelled Persons, etc.	210,385.9
October 24, 1944 (Stamp)	
Total:	210,385.9



4

N° d'ordre	DATE	DÉCOMPTE	NOM du	N° d'ordre	DATE	DÉCOMPTE	NOM du
214	7.12	2842	16 v.Lespages Ned		-		Kazan
17	5	1329	" " "		-		Toulouse N.
18	5	3740	" " "		-		Mauleon
19	17	1329	" " "		-		Toulouse N.
20	20	1329	" " "		-		"
21	16	1329	" " "		-		"
22	26	3447	Tragin Pauleharne s/Ge		-		Lespages Ned
23	5	1329	Tarbert "		-		"
24	10	1329	Tregier "		-		"
25	30	8004	27 Toulouse N.		-		Tarnet d'Ariège
26	2	3767	Lillan "		-		Lespages Ned
27	5	3767	" "		-		Tarnet
28	5	3767	" "		-		Tarnet d'Ariège
29	29.11	2000	" "		-		Tarbes
30	13	2004	28 " "		-		Lespages Ned
31	9	3000	" Varnet d'Ariège		-		Tarbes
32	13	12004	3 29 " "		-		Lespages Ned
33	14	6449	85 " "		-		"
34	8	44002	Dalin Toulouse Mat.		-		St Quentin
35	19	3767	" " "		-		Tarnet d'Ariège
36	7.12	16110	" " "		-		Lespages Ned
37	5	1467	" " "		-		Tarnet d'Ariège
38	5	3767	" " "		-		"
39	11	3767	" " "		-		Tarnet Ned
40	11	7000	26 " "		-		Tarnet d'Ariège
41	13.12	12004	" " "		-		Lespages Ned
42	18	12004	" " "		-		"
43	18	1004	" " "		-		"
44	13	1004	3 St Martory "		-		"
45	4	3032	29 Pamas "		-		Calais
46	4	3047	8 Cajarc Pierrefitte		-		Lespages Ned
47	4	3047	Cahors "		-		Tarbes
48	23	3328	" Lespages		-		Toulouse
49	23	3328	" "		-		"
50	23	3327	Tresard "		-		Calais
51	27	6004	" "		-		Villefranche Lauragais
52	26	3000	" Villefranche L.		-		Lespages Ned
53	30	11047	Arrugne Lespages Ned		-		Saint Ste Marie
54	28	3328	" "		-		Toulouse
55	30	3328	" "		-		"
56	7	3000	" "		-		"
57	7	3047	" Muret		-		"
		122162,30					

E.T.H.I.C. DOCUMENTS

E.T.H.I.C. DOCUMENTS

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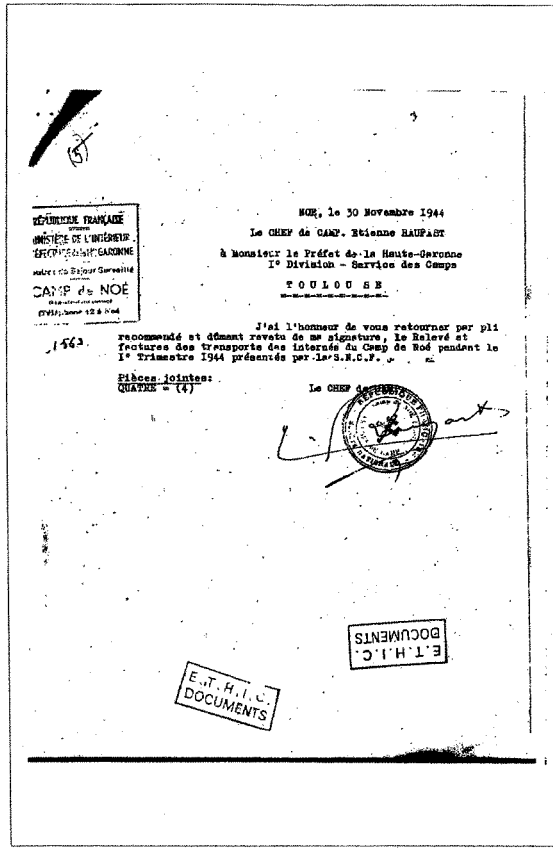

RÉPUBLIQUE FRANÇAISE
MINISTÈRE DE L'INTÉRIEUR
PRÉFECTURE DE HAUTE-GARONNE
Service des Bureaux Surveillés
CAMP de NOÉ
Département du Gers
Arrondissement de Mont-de-Marsan
Canton de Noé

1563.

NOE, le 30 Novembre 1944

Le CHEF de CAMP. Etienne RAUFAST

à Monsieur le Préfet de la Haute-Garonne
I° Division - Service des Camps

TOULOUSE

J'ai l'honneur de vous retourner par pli recommandé et dûment revêtu de ma signature, le Relevé et factures des transports des internés du Camp de Noé pendant le I° Trimestre 1944 présentés par la S.N.C.F.

Pièces jointes:
QUATRE - (4)

Le CHEF de CAMP

E.T.H.I.C. DOCUMENTS

E.T.H.I.C. DOCUMENTS

NOE, November 30, 1944

The Chief of Camp. Etienne Raufast

To The Prefect of Haute-Garonne
First Division -- Service Camps

Toulouse

I have the honor of sending you the bills for the transportation of the interned persons to the Camp of Noe during the first quarter of 1944 presented by the S.N.C.F.

AA- 33

b

R.C/A.3o

Toulouse, le 22 DECE 1944

1° Division
SERVICE DES CAMPS

LE PREFET DE LA HAUTE GARONNE
à
Monsieur le Chef de la Subdivision
de la Comptabilité des Prestes
5° Bureau
21, rue de Londres - PARIS -

Réf. V/Lettre n° 45313 -3° Bureau N° F2 CRV 30/T
du 12/8/1944

J'ai l'honneur de vous transmettre ci-joint, aux fins d'encaissement, un bon de caisse n°.12.096 du montant de 210.385 frs représentant les sommes dûes à la S.N.C.F. au titre des frais de transport d'internés et déportés du département de la Hte Gne.

LE PREFET
P/LE PREFET
le Conseiller de Préfecture de Cabinet,

P.J. : 1

E.T.H.I.C. DOCUMENTS

Toulouse, December 22, 1944

The Prefect of Haute-Garonne
To
Chief of the Subdivision of Accounting
5th Bureau
21, London Street, Paris

Re: Letter no: 45313 – 3rd Bureau No. F2 CRV 30/T of 12/8/1944

I have the honor of submitting, attached here, for collection, a cash voucher no. 12,096 in the amount of 210,385 francs for the sum s due to the S.N.C.F. for fees for the transport of internees and deportees from the department of the Hte Gne [Haute Garonne].

The Prefect.

Testimony of Edward T. Swaine
Professor of Law, George Washington University Law School

United States Senate Judiciary Committee
June 20, 2012

Mr. Chairman, Ranking Member Grassley, thank you for inviting me to appear before the Committee today to testify on the subject of Holocaust-Era Claims in the 21st Century.

I have been asked to focus on the relationship between the proposed Holocaust Rail Justice Act (S. 634) and international law. I am happy to do so. I teach and write at in the fields of international law, human rights law, and foreign relations law, each of which involves the human rights and immunity issues at the bill's core. I also gained experience with the subject during government service, both at the Justice Department and as a former Counselor on International Law at the State Department. Although my remarks are in my personal capacity only, I am also engaged in international law as a member of the Executive Council of the American Society of International Law, a leading organization in the study of international law and international relations.

It is important to stress the limits to my remarks. I will not attempt to describe in detail the tragic events addressed in S. 634's findings, which no one should ever forget, nor the range of efforts to secure reparations. I will avoid policy questions of the kind addressed to Congress and the executive branch, such as the relative merits of alternative remedies. And I will not be addressing many claims and defenses that would presumably arise in any ensuing litigation, which would be addressed to our courts. Instead, I will focus on how international law considerations might inform Congress' judgment. Unfortunately, although it is a carefully tailored solution to a compelling problem, S. 634 confronts substantial challenges under existing law, because of the functional and geographic breadth of liability it proposes for state-owned entities.

Background

European governments and businesses – spurred by U.S. leadership, particularly that provided by Ambassador Stuart Eizenstat – have made great strides in establishing administrative mechanisms that provide a form of "imperfect justice" for Holocaust victims. However, not every kind of claim has been addressed to date, and some cases have been litigated in U.S. courts – including, as relevant here, claims against the French national railroad, SNCF, for the role it played in forced deportations to Nazi concentration camps.[1] A central question in these cases has been whether SNCF enjoys

[1] See Freund v. SNCF, 391 Fed. Appx. 939 (2nd Cir. 2010) (affirming dismissal on immunity grounds of class action brought by Holocaust survivors and their heirs and beneficiaries against France, SNCF, and the French national depository, based on seizure and retention of personal property during forced deportations to Nazi concentration camps); Abrams v. SNCF, 389 F.3d 61 (2nd Cir. 2004) (affirming dismissal on immunity grounds of class action brought by Holocaust survivors and their heirs and beneficiaries against SNCF based on war crimes and crimes against humanity committed during forced deportation to Nazi concentration camps); see also Victims of the Hungarian Holocaust v. Hungarian State Railways, 798 F.

sovereign immunity from suit, which has been resolved under the general principles established in the Foreign Sovereign Immunities Act (FSIA). For example, during the *Abrams v. SNCF* litigation, it was held that SNCF was an "agency or instrumentality of a foreign state" under the FSIA, and thus considered part of a "foreign state" presumptively entitled to immunity.[2] Further, no exception to immunity applied. As to the FSIA's exception for commercial activities, the district court explained, "there is clearly no commercial activity by a foreign state carried on in the United States, and there is no act performed in the United States in connection with a commercial activity by a foreign state," and finally no sufficient "act outside the territory of the United States in connection with a commercial activity of a foreign state that causes a direct effect in the United States." As to the non-commercial tort exception, "no part of the tort . . . occurred in the United States," and neither the waiver exception nor the exception for state sponsors of terrorism was deemed applicable.[3]

S. 634 would dictate a different result in this and potentially additional cases. Essentially, the bill would remove immunity for railroads that owned and operated trains involved in the transportation and deportation of persons in France to concentration camps between 1940 and 1944, so long as the railroad was at that time a separate legal entity, regardless of whether it was then or is now owned by a foreign state. There would, accordingly, be no inquiry by U.S. courts into the scope of sovereign immunity or its exceptions.

In *Abrams* and other cases, the parties debated whether SNCF and other railroads would have enjoyed immunity under international law, either based on the law relating to sovereign immunity as it stood at that time or based on contemporary law. Because the courts found that immunity is dictated by the terms of the FSIA, they did not need to resolve international law questions. If Congress were to amend the FSIA, this would pose squarely the question whether doing so is consistent with international law.

The Salience of International Law

When it enacted the FSIA in 1976, thereby codifying for the United States a restrictive theory of sovereign immunity, Congress was attentive to customary international law – rules derived from the general practice of states accepted as law.

The statute occasionally references international law in addressing the types of claims for which foreign states lack immunity. Most exceptions to foreign state immunity are mundane; the premise of the restrictive theory is that states lack immunity when they engage in conduct like that of private parties, such as when they enter contracts. Nevertheless, the FSIA maintains a few exceptions for distinctively sovereign

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Supp. 2d 934 (N.D. Ill. 2011) (denying motion to dismiss under the FSIA of class action against Hungarian state railroad for seizure of Jewish possessions and expropriation of Jewish funds during the Holocaust).

[2] Abrams v. SNCF, 389 F.3d 61 (2nd Cir. 2004); see also Freund v. Republic of France, 592 F. Supp. 2d 540, 554-55 (S.D.N.Y. 2008) (noting, additionally, plaintiffs' concession that SNCF was an "agency or instrumentality" for purposes of the FSIA), aff'd, 391 Fed. Appx. 939 (2nd Cir. 2010).

[3] Abrams v. SNCF, 175 F. Supp. 2d 423, 429-33 (E.D.N.Y. 2001).

conduct that violates international law – for example, the longstanding exception for certain cases in which "rights in property taken in violation of international law are in issue" (28 U.S.C. 1605(a)(3)). There are no exceptions, however, for conduct by the sovereign that violates human rights norms generally or other international obligations.

The fact that more attention is paid in the FSIA to establishing accountability when governments engage in commercial or other private conduct, but relatively little when governments violate their international obligations, is purposeful – and communicates no lack of respect for international law norms. When a sovereign state violates international law, it is understood that it may discharge its international legal responsibility, including a responsibility to make reparations, without necessarily subjecting itself involuntarily to litigation in foreign domestic courts. And a sovereign state does not generally assume an obligation under international law to open its national courts to allow civil suits against other states based on their violations of international law.

To the contrary, international law provides that governments must respect the immunity of other sovereigns – and Congress was mindful of this when it enacted the FSIA. The House Judiciary Committee recognized sovereign immunity as "a doctrine of international law under which domestic courts relinquish jurisdiction over a foreign state," and sought to revert to a practice based on the "law and practice of nations," noting that "[i]n virtually every country, the United States has found that sovereign immunity is a question of international law to be determined by the courts."[4] Thus, as the Supreme Court has recognized, Congress sought both "adoption of the restrictive view of sovereign immunity and codification of international law at the time of the FSIA's enactment."[5] It is unsurprising, then, that the FSIA's findings and declaration of purpose explain that subjecting foreign states to the jurisdiction of U.S. courts for their commercial activities was consistent with international law (28 U.S.C. § 1602).

The international law of sovereign immunity has not changed markedly since the FSIA was enacted. While the General Assembly adopted the UN Convention on Jurisdictional Immunities of States and their Property in 2004, it largely agrees with the restrictive approach adopted by the United States, and the Convention is not yet in force (nor has the United States ratified it).

The same reasons for heeding international law, too, remain. Generally, of course, the United States has an abiding interest in signaling its respect for international law whenever it can, because that will reinforce our own reputation for compliance and sustain our ability to insist that other states adhere to their obligations. More particularly, the U.S. government has a clear interest in ensuring respect by foreign states and their courts for our sovereign immunity. No other state is as active beyond its borders – militarily, commercially, diplomatically – as we are, and U.S. policies and prosperity make it an inviting target for lawsuits, including sometimes on the basis of alleged violations of international law. If sovereign immunity were disregarded, the United

[4] H.R. Rep. 94-1487, 94th Cong., 2nd Sess. (1976), 1976 USSCAN 6604, 6606, 6608.
[5] Permanent Mission of India to United Nations v. City of New York, 551 U.S. 193, 199 (2007).

States and its agencies and instrumentalities could be sued based on allegations involving civilians injured in drone strikes, torture, or extraordinary renditions – or, using more novel international law theories, based on allegations of cyber-attacks or damage to the global climate. Exposure would be particularly broad if proceedings could be brought concerning contentious historical events, like past U.S. policy in Central and South America or Southeast Asia, and if proceedings could be initiated in any foreign court, regardless of its connection to the events.

To be clear, ensuring U.S. accountability for its wrongdoing is desirable, including through appropriate judicial proceedings. Even so, steps that might subject the United States to greater risk of litigation before foreign (and sometimes hostile) courts requires careful evaluation, and there is no more direct way to compromise our ability to insist that foreign states honor U.S. sovereign immunity than for us to disregard the immunity of other governments. The structure of S. 634 may inadvertently accentuate that possibility. The bill is meticulously drafted to address the facts at hand – that is, claims arising from specific conduct, occurring during a circumscribed period, and against a designated class of defendants – in marked contrast to the FSIA, which generally articulates principles that can be universally applied. Piecemeal legislation may make it harder to establish a deliberate, consistent, and nondiscriminatory approach that can be defended in light of international objections. And U.S. interests abroad may be better protected if our government is subject to generalized principles respecting both human rights and sovereign immunity, not having encouraged the propagation of event-focused approaches – which may single out particularly controversial U.S. activities without the impediment of standards applicable other states or to the foreign state itself.

The Recent Decision on Jurisdictional Immunities of the State (Germany v. Italy)

The international law of sovereign immunity is addressed by an important recent judgment by the International Court of Justice (ICJ), the most prominent tribunal in the international legal system. As explained below, the decision echoes principles already established under the FSIA as a matter of domestic law, but makes clear that they also bind the United States internationally.

The case, *Jurisdictional Immunities of the State (Germany v. Italy)*,[6] involved admitted wrongdoing by German armed forces in German-occupied Italy during World War II – including arrests and deportation of Italian nationals to perform forced labor in Germany, forced labor by members of the Italian armed forces who had been denied prisoner of war status, and massacres of civilians. Although Germany reached agreement with Italy on the compensation of Italian nationals for certain wrongs, and subsequently adopted national law entitling others to compensation, these did not make whole victims of forced labor and successors in interest to civilians killed in massacres. Beginning in the late 1990s, these victims commenced multiple proceedings against Germany in Italian courts, and the Italian Court of Cassation – the court of last resort – held that Germany lacked immunity for the acts in question. Germany subsequently applied to the ICJ, and

[6] Jurisdictional Immunities of the State (Ger. v. Italy: Greece Intervening), Judgment (Feb. 3, 2012), available at http://www.icj-cij.org/docket/files/143/16883.pdf.

in a judgment issued this February, it held in Germany's favor, finding – by a vote of twelve to three – that Italy had violated customary international law by failing to respect Germany's immunity from civil claims.

Germany v. Italy, like the claims being addressed by S. 634, arose from terrible wrongs committed during the Holocaust. Nonetheless, there are limits to that judgment's authority for this matter. To begin with, the judgment binds Italy and Germany in respect of that particular dispute, but does not in itself formally bind the United States or other states in connection with different disputes. Rather, it construes customary international law, which does bind the United States, and sets the benchmark for how other states will evaluate the legality of our conduct, whether through formal litigation or otherwise.

More important, the claims differ in a potentially critical way. The dispute before the ICJ involved wrongs committed by Germany armed forces, and more generally, sovereign acts (*jure imperii*) rather than commercial or other private acts (*jure gestionis*) – while the railroad claims addressed by the bill involve acts depicted in the findings as more commercial in character. The Court properly stressed that it was not addressing state acts of a non-sovereign nature (para. 60), and further stated that "[t]he issue before the Court is confined to acts committed on the territory of the forum State by the armed forces of a foreign State, and other organs of State working in co-operation with those armed forces, in the course of conducting an armed conflict" (para. 65).

Despite these important limitations, the judgment remains instructive, and will certainly inform the judgment of foreign states appraising any U.S. legislation. The ICJ stated four propositions of potential relevance to S. 634.

First, the Court recalled that "in claiming immunity for themselves or according it to others, States generally proceed on the basis that there is a right to immunity under international law, together with a corresponding obligation on the part of other States to respect and give effect to that immunity" (para. 56). The Court's understanding that immunity is a binding obligation under customary international law – which was common ground between Italy and Germany – is consistent with views expressed by Congress in adopting the FSIA.

Second, the Court addressed the relevant time frame for reckoning the international law to be applied. The Court acknowledged the general principle that "the compatibility of an act with international law can be determined only by reference to the law in force at the time when the act occurred" (para. 58). It distinguished, however, between applying this principle to Germany's conduct – which, having occurred in 1943-1945, would be governed by the international law applicable during that period – and applying it to Italy's acts. As the Court explained, Italy's alleged violations of international law stemmed from the recent judicial proceedings against Germany, to which contemporary international law is applicable; this is consistent with the "procedural" nature of sovereign immunity, which regulates the exercise of jurisdiction, and which is distinct from the substantive law regulating whether the underlying conduct motivating the judicial proceedings is lawful (para. 58).

This approach, too, is consistent with the FSIA as it has been construed by our courts. In *Republic of Austria v. Altmann*,[7] the Supreme Court determined that the FSIA applied to conduct occurring prior to its enactment, even before the U.S. moved to adopt the restrictive theory of sovereign immunity, in part because this was consistent with Congress' objective of establishing a comprehensive framework for resolving immunity issues. The effect, in the context of that case, was reduce the scope of sovereign immunity, and to permit plaintiffs seeking the recovery of Nazi-confiscated art the opportunity to invoke the expropriations exception, but the Court's reasoning did not turn on that. In another case, *Dole Food Co. v. Patrickson*,[8] the Court held that whether an entity is part of a foreign state under the FSIA depends on the facts at the time suit is brought rather than when the conduct occurred. As both the ICJ and the Supreme Court have emphasized, the question is not whether a foreign state has legitimate expectations that its conduct, when rendered, will be immune, but rather the circumstances under which that state will be subject to judicial proceedings.

Third, the ICJ rejected the proposition that the illegality of the underlying conduct – as opposed to its characterization as sovereign or non-sovereign, or similar inquiries related to recognized exceptions – affected the immunity inquiry. Thus, the evident illegality of conduct by German armed forces had no bearing on their sovereign character (para. 60). The Court further stated that under existing customary international law, even serious violations of human rights or the laws of war would not deprive a state of immunity for the relevant acts (para. 91), and similarly concluded that a violation of *jus cogens*, or nonderogable, rules would not affect the immunity inquiry (para. 97).

This is not self-evident as a matter of first principles. There is surely a case to be made for a norm according to which the egregious wrongs committed during the Holocaust – not just by the railroads – are unprotected by immunity. Other behavior causing massive human suffering (inhumane bombing campaigns, apartheid and racial segregation, crimes against humanity, genocide, and torture) might likewise be interrogated in lawsuits against sovereigns, presumably in another state's courts, rather than through international diplomacy, international criminal courts, and other alternative means.

Nevertheless, the ICJ rejected such an approach as inconsistent with the sovereign rights secured by customary international law as it now stands. The Court cited its own precedent and decisions by bodies like the European Court of Human Rights. The Court also recalled the distinction between the substantive illegality of a foreign state's acts – and its duty to make reparations – and the issue of whether immunity permits national courts to maintain jurisdiction, which in effect implicates only one possible means of providing reparations (para. 94). Finally, it noted the difficulty of reconciling any judicial inquiry into the gravity of the underlying violations with the jurisdictional character of immunity, warning that immunity would be effectively negated if skillful construction of a claim would subject foreign states to lengthy trials (para. 82).

[7] 541 U.S. 677 (2004).
[8] 538 U.S. 468 (2003).

The Court's reasoning was strikingly similar to that of U.S. courts, which have also resisted arguments to the effect that *jus cogens* claims fall within a nonstatutory exception to the FSIA, including in cases involving the use of slave labor in Nazi concentration camps.[9] The Supreme Court has not reached this precise question, but has more broadly suggested that "immunity is granted in those cases involving alleged violations of international law that do not come within one of the FSIA's exceptions."[10]

Fourth, and finally, the ICJ rejected Italy's "last resort" argument – the suggestion that the failure to secure other means by which Germany would compensate victims warranted denying Germany immunity to which it was otherwise entitled. The Court criticized Germany's failure to provide a remedy, particularly its decision to exclude from its compensation program Italian military detainees (para. 99). Nonetheless, the Court explained that customary international revealed no principle according to which immunity depended on the availability of adequate alternatives; it further noted practical difficulties with making immunity contingent on some indefinite prospect of alternative redress or, alternatively, inquiring into the purposes to which a foreign state had put reparations or other remedies it had received (paras. 101-102).

Application to S. 634

How does the proposed legislation comport with these and related principles of international law? In effect, S. 634 tries to produce a different result on the *Abrams* facts by two means: first, by focusing on how railroads were organized during 1940-1944 rather than now; second, by removing immunity without regard to where the conduct giving rise to the claims occurred.

Historical status of railroads. S. 634 changes the focus from the present-day status of the defendant railroads – when some, like SNCF, are wholly state-owned and entitled under U.S. law to be treated as part of a foreign state – to their legal and factual status when the underlying events occurred, when they may have lacked immunity. Thus, S. 634 would withdraw immunity from any railroad that owned and operated trains between approximately 1940 and 1944 and "was, at the time of the transportations or deportations, a separate legal entity, whether or not any or all of the equity interest in the railroad was or is owned by a foreign state." The premise is likely the opinion that during that period, prior to U.S. adoption of the restrictive theory, a "separate legal entity" like SNCF was not entitled to immunity.[11] Congress presumably has the authority to make

[9] See Princz v. Federal Republic of Germany, 26 F.3d 1166, 1173-74 (D.C. Cir.1994); Sampson v. Federal Republic of Germany 250 F.3d 1145, 1151-56 (7th Cir. 2001); see also Smith v. Socialist People's Libyan Arab Jamahiriya, 101 F.3d 239, 242-45 (2nd Cir.1996); Siderman de Blake v. Republic of Argentina, 965 F.2d 699, 706, 718-19 (9th Cir.1992).

[10] Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989).

[11] Abrams, 175 F. Supp. 2d at 447 (noting reliance by plaintiffs on William C. Hoffman, The Separate Entity Rule in International Perspective: Should State Ownership of Corporate Shares Confer Sovereign Status for Immunity Purposes?, 65 Tul. L. Rev. 535 (1991)). The district court noted, however, that it was entirely possible that immunity would have been conferred even under that approach. See *Abrams*, 175 F. Supp. 2d at 447-48.

such a change as a matter of domestic law, since the Supreme Court's contrary holdings in *Republic of Austria v. Altmann* and *Dole Food Co. v. Patrickson* simply construed the FSIA as Congress had then written it.[12]

International law permits other approaches to defining what constitutes a "foreign state," entitled to a foreign state's immunity, beyond the one Congress has hitherto used under the FSIA. Title 28, section 1603(a) effectively includes within the definition of a foreign state all agencies or instrumentalities in which a foreign state has a majority holding. What matters, ultimately, is the scope of immunity conferred, and the FSIA accords these agencies and instrumentalities somewhat reduced protection against service, attachment, and punitive damages. Generally, though, it regulates them according to the same immunity and exception provisions applicable to other forms of a foreign state.

Other approaches to defining the notion of a foreign state have been adopted and seem to be legally available under international law, so long as adequate safeguards are in place. For example, the 1972 European Convention on State Immunity excludes immunity for "any legal entity of a Contracting State which is distinct therefrom and is capable of suing or being sued, even if that entity has been entrusted with public functions" – an approach, notably, that was intended to limit immunity for entities like "railway administrations"[13] – unless the proceedings concern "acts performed by the entity in the exercise of sovereign authority (acta jure imperii)" (art. 27). The UN Convention includes within the definition of a sovereign state "agencies or instrumentalities . . . or other entities," if "they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State" (art. 2(1)(b)(iii)). Conversely, it removes the immunity of state enterprises and similar entities that have "independent legal personality," can sue and be sued, and can engage in property transactions, so long as the proceeding relates to their commercial transactions, which (as under the FSIA) are indirectly contrasted with sovereign functions (arts. 10(3), 2(2)).[14] Each convention was relied upon by the ICJ as part of reckoning customary international law (e.g., *Germany v. Italy*, para. 66). Regardless of which approach is preferable, it appears that there is sufficient room for both the FSIA's present approach and one that – like S. 634 – pays heed at the threshold to whether an entity has a separate legal identity.

The reason this is permissible is important, because it affects how much latitude Congress ultimately has. The premise should not be that the United States is capable of dictating application of the law of sovereign immunity as it existed in 1940-1944, such that a railroad's status "at the time of the transportations or deportations" is used to tap

[12] If S. 634 is intended to enable the re-opening of a final judgment, however, there may be constitutional objections. Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995).

[13] Explanatory Report, European Convention on State Immunity (ETS No. 074), para. 109, available at http://conventions.coe.int/Treaty/EN/Reports/HTML/074.htm.

[14] See also Draft Articles on Jurisdictional Immunities of States and Their Property, with Commentaries, in Report of the International Law Commission on the Work of Its Forty-third Session, [1991] 2 Y.B. Int'l L. Comm'n, pt. 2, at 13, 17 para. 15 (noting theoretical inclusion of state enterprises among "other entities"), 20 para. 25 (distinguishing "commercial transactions" from those "non-commercial or governmental in nature"), UN GAOR, 46th Sess., Supp. No. 10, UN Doc. A/46/10 (1991).

into a prior era's law. While law in effect from 1940-1944 bears on whether railroads violated international law, it is the contemporary law of sovereign immunity, applied to the facts of the railroad's complained-of conduct during that period, that determines whether it is presently entitled to sovereign immunity or is governed by one of its exceptions. As the ICJ indicated in *Germany v. Italy*: "it is the international law in force at the time of [judicial proceedings against a foreign state]" which must be applied, because it is the proceedings that give rise to potential offense against immunity (para. 58). This means that the invocation of immunity by SNCF and other railroads can be ignored only if doing so is consistent with contemporary international law, regardless of the result that would have obtained were this suit to have been adjudicated in the 1940s.

To simplify somewhat, it seems plausible that if contemporary international law permits distinct treatment of certain legally separate entities as they are presently composed, per the European and UN Conventions, it might permit similar treatment of state entities on the basis that they were once so composed – perhaps even if they no longer possess that separate identity, if they did so during the underlying conduct. Critically, however, nothing in this distinct treatment under contemporary law would warrant disregarding all immunity for such entities. As previously noted, both the European Convention and UN Convention inquire whether the separate entity was nonetheless engaged in the exercise of sovereign authority, in which case it is entitled to sovereign immunity just as if it were any other part of the state. Similarly, while English law excludes from the definition of a foreign state "any entity [a "separate entity"] which is distinct from the executive organs of the government of the State and capable of suing or being sued," it separately provides that such a separate entity is entitled to immunity if "the proceedings relate to anything done by it in the exercise of sovereign authority" and the circumstances are such that a state would be immune.[15] In contrast, S. 634 seems to withdraw all immunity on the predicate that a state agency or instrumentality was, at a prior interval, a separate legal entity, mooting any inquiry into whether a claim is based on sovereign or non-sovereign (for example, commercial) conduct.

Whether or not this approach would be acceptable if applied to the U.S. government is an important question of policy. Beyond that, rendering S. 634 more compatible with contemporary international law seems to require two additional steps. Given the precise geographic focus of S. 634 – and the likelihood that the states concerned regard the European Convention (to which Germany, but not France, is a party) and the UN Convention (which France, but not Germany, has approved, but which is not yet in force) as compatible with customary international law – it would be appealing to add provisos that accorded with the approach of those treaties.

First, it would be preferable to determine whether an otherwise-qualified railroad was during 1940-1944 a separate entity of the kind distinguished by international conventions (and not fully regarded as a foreign state), and whether present international law genuinely permits ascertaining status at the time the entity engaged in relevant conduct. (Of course, if a railroad was entirely private at the relevant time, no immunity would be warranted; if, on the other hand, it was state owned and not legally separate, no

[15] State Immunity Act (1978), § 14(1), (2).

distinct approach to its immunity would be warranted under S. 634 or otherwise.) Whether S. 634 complies turns in part on what the bill means by the term "separate legal entity." Both the European Convention and UN Convention have what appear to be more demanding tests that must be satisfied before (partly) separating a state-owned entity from immunity. For example, for the European Convention, which requires both a distinct existence and capability of suing or being sued, the Explanatory Report stated that "the criterion of legal personality alone is not adequate, for even a State authority may have legal personality without constituting an entity distinct from the State," such that a dual test was thought necessary to "identify[] those legal entities in Contracting States which should not be treated as the State."[16]

Second, and more critically, it still remains essential to establish that the claims are based on non-sovereign conduct of some kind, though the burden of establishing sovereignty might be placed on the railroad.[17] For example, one might provide that immunity could be afforded to any railroad that was a separate legal entity during the relevant period in 1940-1944, but which would be deemed an agency or instrumentality of a foreign state based on its present status, provided that it could demonstrate that it was exercising sovereign authority at the relevant time. This would likely reduce the breadth of international law objections by affording state entities the opportunity to present immunity defenses for U.S. courts to evaluate – according to standards that the relevant countries should accept.

To be clear, the result might be to sustain the immunity of railroads, depending on the facts and pleading. U.S. case law illustrates the contentious and difficult questions that arise in distinguishing between commercial and sovereign activities; in one case, for example, the Supreme Court held that intentional torts allegedly committed by Saudi Arabia against an American employee in a Saudi hospital – including torture – were, notwithstanding their relation to commercial employment activities, better described as being "based upon a sovereign activity immune from the subject-matter jurisdiction of United States courts under the Act."[18] While that decision has been sharply criticized, international law does not take an altogether different approach in distinguishing between sovereign and non-sovereign activities, and it plainly reserves to governments the capacity to breach international law while still claiming that they are exercising sovereignty. Per *Germany v. Italy* and the decisions it cites, even *jus cogens* offenses do not diminish an activity's characterization as an act of sovereignty (*jure imperii*). Thus, even if proof of *jus cogens* offenses is mustered in a particular action (though that is not required by S. 634), it remains possible that courts would order dismissal or, if they did not, that foreign states would object on the ground that their immunity was not respected.

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[16] Explanatory Report, European Convention on State Immunity (ETS No. 074), para. 108, available at http://conventions.coe.int/Treaty/EN/Reports/HTML/074.htm

[17] This is consistent with the authority cited to the district court in *Abrams*. Hoffman, supra, at 564 (stating, in reference to current national laws, that "[i]n all these jurisdictions, the law clearly provides that the separate entity's presumption of nonimmunity may be rebutted by evidence showing that the entity has acted in a sovereign capacity").

[18] Saudi Arabia v. Nelson, 507 U.S. 349, 363 (1993).

Geographic scope of exceptions. In addition to pretermitting inquiry into whether a railroad is engaged in sovereign or non-sovereign (or commercial) activities, S. 634 simultaneously changes the geographic scope of exceptions to sovereign immunity. In the *Abrams* proceedings, the fatal difficulty was not whether, in principle, SNCF had engaged in commercial activities or committed a non-commercial tort, but rather where any such activity had occurred. Assuming SNCF is deemed now or during 1940-1944 to be part of a foreign state, or at a minimum to constitute a separate or distinct legal entity entitled to some measure of immunity, S. 634 would curtail nexus restrictions that limit the liability of sovereign entities.

The scope of U.S. capacity to adopt civil liability on the basis of universal jurisdiction – jurisdiction based on the nature of the offense, rather than on territorial nexus or the nationality of the plaintiff or defendant – is hotly disputed among governments. It is also the subject of expert briefing in *Kiobel v. Royal Dutch Petroleum Co.*, which is pending before the U.S. Supreme Court. Without reproducing the extensive discussions of this question, universal jurisdiction over foreign states is a further bridge to cross. Territoriality is integrally related to immunity. At its core, international law seeks to reconcile the sovereign equality of states, which supports state immunity, with the sovereignty that each state possesses over its own territory, including the right to exercise jurisdiction that flows from that sovereignty – with which state immunity interferes (*Germany v. Italy*, para. 57).

It is unsurprising, then, that territorial elements are a near constant in exceptions to immunity. For example, the UN Convention makes states accountable for commercial transactions that "fall within the jurisdiction of a court of another State" (art. 10) and for torts involving personal injuries or damage to property if, among other things, "the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission" (art. 12) – the latter being known, revealingly, as the "territorial tort" exception. The European Convention is suffused with required links to "the territory of the State of the forum."

This approach is generally followed in the United States. As previously mentioned, the commercial activities exception under the FSIA requires a nexus to the United States (28 U.S.C. § 1605(a)(2)), and the exception for other matters involving personal injury or death requires (inter alia) requires that the injury or death "occur[] in the United States" (28 U.S.C. § 1605(a)(5)). One notable departure, however, is the FSIA exception for state sponsors of terrorism (28 U.S.C. § 1605A). However, that exception is itself controversial as a matter of international law, and the ICJ noted in *Germany v. Italy* that the exception "ha[d] no counterpart in the legislation of other states (para. 88).[19] In articulating the terrorism exception, in any event, Congress adopted several important safeguards: for example, foreign states must be designated by the United States as state sponsors of terrorism, and as a substitute for territoriality, claimants

[19] A comparable statute was subsequently enacted in Canada. Justice for Victims of Terrorism Act, S.C. 2012, c. 1, s.2 (assented to March 13, 2012).

must be U.S. nationals, members of U.S. armed forces, or government employees or contract personnel.

S. 634 would not, as introduced, include any similar restriction. To my knowledge, the bill would be among the first national statutes to establish universal civil jurisdiction – irrespective, that is of any obvious claim to territorial jurisdiction, or nationality or passive personality jurisdiction – while simultaneously denying foreign states the benefit of sovereign immunity.[20] The most material limitation, which bears emphasis, is the requirement that the railroads concerned have separate legal identities at the time of their conduct, together with a legislative finding that they were engaged in commercial activities. At least in the absence of reconciling that inquiry with known international law standards, the bill would be quite exceptional.

I do not mean to overstate this objection. It is difficult to define precise territorial limits to exercising jurisdiction over foreign sovereigns, or even whether these limits derive from sovereign immunity or other jurisdictional principles. While territorial thresholds are kept frequently set higher for foreign state defendants, probably because of states' frequent extraterritorial contacts and the political sensitivity of suits against them, there is no internationally agreed standard. At the end of the day, however, it is doubtful these points of uncertainty redeem a statute with no nexus requirements whatsoever.

Were S. 634 adopted, the United States might try to defend it as a progressive measure that pushes the boundaries of universal civil jurisdiction, which many have advocated for certain international offenses. While the United States has often defended extraterritorial legislation against foreign complaints, this would be an uphill battle, given the holding in *Germany v. Italy* that that a foreign state is entitled to sovereign immunity under international law notwithstanding allegations of grave offenses that may give rise to universal jurisdiction. Some of the leading advocacy for universal jurisdiction, moreover, has conceded that such jurisdiction if recognized would still be tempered by appropriate accommodation of immunity.[21] Defending this broader proposition – assuming, that is, that S. 634 extends to entities that colorably enjoy all or some of the status of foreign states – may risk the argument for universal jurisdiction even over parties that lack immunity. If accepted, moreover, it would expose the United States itself to proceedings in any foreign court based on alleged present or past offenses. This feature requires careful reconsideration in light of international law concerns.

Additional Concerns Relating to International Agreements

As a separate matter, I understand that S. 634, as originally submitted, may be augmented by text that would retain the immunity of "any railroad that is an agency or

[20] Neither the Alien Tort Statute nor the Torture Victim Protection Act, which provide for civil liability, purport to override state immunity, and various criminal statutes reaching extraterritorial offenses like piracy or torture are not understood to concern states either.

[21] See, e.g., Case Concerning the Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3, 86-87 para. 79 (Feb. 14) (joint separate opinion of Judges Higgins, Kooijmans, and Buergenthal). Indeed, the distinction of cases involving immunity is a recurring features of the briefs recently filed to defend the Alien Tort Statute as an exercise of universal jurisdiction.

instrumentality of a foreign state . . . that has contributed, as of January 1, 2010, to any fund established under an agreement of the United States of America to resolve Holocaust-related claims in United States courts." This is a well-conceived and welcome attempt to respect existing agreements. Although Congress generally enjoys the right under U.S. law to limit the domestic legal effect of international agreements entered into by the United States, this has no effect on the international legal responsibility of the United States. For this reason, exempting international agreements is highly desirable.

Nonetheless, the exemption may narrower than is intended, in that the relevant U.S. agreements may not invariably be characterized as being to "resolve Holocaust-related claims in United States courts." For example, under the German Foundation Agreement, which involved substantial contributions by both the German government and by German companies, claims in U.S. courts were not conclusively resolved. Rather, the United States agreed to represent in U.S. judicial proceedings that our foreign policy interests favored using the Foundation as an exclusive forum for resolving World War II-era claims against German companies, and that these interests favored "dismissal on any valid legal ground," but stopped short of guaranteeing that these interests would "in themselves provide an independent legal basis for dismissal."[22] It is unclear whether contributions by a German railroad to the fund established by this agreement would allow it to retain immunity under the bill.

Finally, if and to the extent there is interest in fostering alternatives to U.S. litigation, provision might be made for the legislation's suspension upon some form of executive branch certification – for example, that negotiation concerning reparations for the implicated claims was ongoing. I am not in a position to evaluate whether that kind of provision is warranted in light of diplomatic realities, or whether the executive branch would welcome it. However, it would not resolve other international law issues posed.

* * *

Because Congress has paid heed to international law in enacting and amending the FSIA, the United States has generally managed to avoid international controversy, thereby contributing to the legal integrity of our domestic judicial processes. This proves important when, as is inevitable, politically sensitive matters against foreign sovereigns are litigated in our courts – and helps to ensure that foreign states obey international law when contemplating litigation against the U.S. government in their courts.

Claims like those addressed by S. 634 deserve to be addressed in some forum. The bill presents difficult questions with which the political branches should be engaged, requiring attention both toward respecting human rights, on one hand, and toward respecting the legal rights of foreign sovereigns, on the other. Each contributes to respect for the rule of law. I appreciate the continued attention of Congress to these matters, and the opportunity to testify about them.

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[22] Agreement Concerning the Foundation "Remembrance, Responsibility and the Future," 39 Int'l Legal Materials 1298, 1303-04 (2000); see American Ins. Ass'n v. Garamendi, 539 U.S. 396, 405-06 (2003).