

TESTIMONY OF JACK RUBIN
HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE FOR EUROPE
OCTOBER 3, 2007

My name is Jack Rubin, and I live in Boynton Beach, Florida. I want to thank Chairman Wexler, my Congressman, for holding this important hearing and for inviting Holocaust survivors to speak for ourselves about these issues of great concern. I am here to urge you in the most urgent terms possible to pass HR 1746, the Holocaust Insurance Accountability Act of 2007.

I was born in 1928 in Vari, Czechoslovakia, which was annexed by Hungary in 1938. We lived in a building where my father's general store was also located. There was a sign that said the building and premises were insured by "Generali Moldavia." I am certain that my father, who was a careful business man, had all kinds of insurance, including life insurance, because he spoke about it often. From these conversations, I even remember the name of the agent, Mr. Joseph Schwartz.

Like all Jews in our town, we were forced out of our home in April of 1944 with only the clothes on our back and one suitcase each, and taken to the Beregsasztz Ghetto. There the Nazis forced everyone to turn over their

jewelry, watches, wedding rings, and hand over everything of value. We were then deported to Auschwitz, where my parents perished. I survived Auschwitz and three other camps. Needless to say, after the Holocaust, I had no way to find any papers such as insurance policies.

After ICHEIC was created, I applied because of the publicity encouraging applications. They promised to open company records and apply “relaxed standards of proof.” I filed two claims, naming my father Ferencz Rubin and my mother Rosa Rosenbaum-Rubin, and their birth years. I mentioned the sign on our building for “Generali Moldavia,” and the fact that the agent Mr. Schwartz was our agent, who also died in the Holocaust. This was all the information I had, but considering the circumstances it was certainly enough to show we had insurance.

Four years later I received a letter from Generali stating that they had no records from their subsidiaries and no records of policies in the family. This is absurd, because I know we had insurance. Yet Generali did not produce one piece of paper to justify its decision, and the ICHEIC Arbitrator did not require the company to produce any proof. He did not force them to produce records from Generali Moldavia, a known subsidiary, and he did not require them to produce information about Mr. Schwartz, the agent from our town. He just accepted Generali’s word.

Survivors are appalled by the treatment we have received from ICHEIC and other institutions. ICHEIC was controlled by the insurance companies and conducted in secret. Once again, we survivors were denied access to the truth. Stealing our money is bad enough, but concealing the truth from Holocaust survivors is a terrible thing. If our society today has any decency, it would require the companies to open their records and be fully accountable for their thefts of our families' legacies. After all, isn't this why people buy insurance? The companies betrayed us and to date, the U.S. justice system has blocked our access to the truth. I am here today to ask you to fix this by passing HR 1746, because it will require the companies to open their records, and allow survivors and heirs to go to court for the truth.

I would also be able to tell you about horror stories facing elderly, poor survivors today in my community, and throughout the United States. And the funds are not getting to those who were looted and those who need the help. The ICHEIC money we talked about. Also, in the Swiss bank case, Judge Korman allocated 75% of the Looted Assets funds to the Former Soviet Union, with only 4% for the needs of survivors in the United States, is an insult to those of us who went through the Holocaust, denying assistance to Americans just because he believes the rich here should take

care of the survivors here. This is the survivors' money, but the poor here do not have a fair chance to benefit from the settlement.

Also, the Claims Conference is sitting on hundreds of millions of dollars. Survivors do not believe there has been an adequate accounting of the property obtained from Germany and the uses of those funds. We deserve a full accounting, because survivors are suffering.

Finally, let's not forget that Germany bears primary responsibility for the rights and needs of Holocaust survivors. We call upon Congress to raise with the Administration and the German Government the fact that thousands of survivors today are not living with the dignity to which they are entitled. SS officers receive more from Germany in pensions than Holocaust survivors. We need immediate solutions, no matter what the source.

I hope you will do a complete audit of where the survivors' money has gone, because we know it isn't coming to those who were looted, or those in need.

There is a common theme in the restitution area. There has been secrecy, and the deals have been made by people we did not appoint or approve. We have been denied the truth, and that is outrageous. We survivors, who are the most affected, were not allowed to participate and the results are terrible. They are totally inadequate. We need Congress to

expose these deals and demand, as a matter of morality, a just outcome. The time for talk is over.

I have submitted a few news articles on these subjects, which I hope you will allow for the record.

Thank you very much.

The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(05/04/2007)

Holocaust Era Claims: Mission Not Accomplished

Yisroel Schulman

The International Commission on Holocaust Era Claims (ICHEIC), with a mandate to help policyholders and their heirs receive monies from unpaid Holocaust era insurance claims, held its final meeting in Washington, D.C., on March 20. After nine years, ICHEIC is out of business.

In the weeks following ICHEIC's closing, there have been articles chronicling that organization's alleged successes. While those same articles mention that ICHEIC has had its share of critics, not enough thoughtful analysis has been given to the commission's real failures.

ICHEIC is often lauded for having processed, free of charge, more than 90,000 claims and compensated more than 48,000 claimants. What is not made clear, however, is that, of these 48,000 claimants, about 34,000 of them received so-called humanitarian awards of \$1,000. Only 14,000 claimants who applied to the commission were compensated because their relatives were actually determined to have bought insurance policies.

To put this in perspective, the Conference on Jewish Material Claims Against Germany recently met with German Chancellor Angela Merkel to bring to her attention the fact that the German social security administration has denied ghetto pensions to about 61,000 of the approximately 70,000 survivors who applied for such compensation. With a failure rate of over 87 percent, the German program has been rightfully and widely criticized by survivors and Jewish and humanitarian organizations. Considering that ICHEIC has done only marginally better, why hasn't there been a similar public uproar?

Over the years, ICHEIC fostered the notion that claimants were denied compensation solely because they did not have adequate documentation regarding purchased insurance policies. However, we are aware of numerous claimants (only the commission knows the precise number who fall in this category) who, in fact, had definitive proof that policies were purchased, but were nonetheless denied compensation because the commission allowed the use of "negative evidence."

For example, if a claimant had a copy of an actual insurance policy that her relative had bought from the Generali Insurance Company, but the policy information did not appear in Generali's records, the "negative evidence" would lead to her application being denied. It was ICHEIC's decision to allow the use of "negative evidence," which certainly belies the claim of Lawrence Eagleburger, the commission's chairman, that the organization's principal purpose was to find claimants and pay them.

Other examples of ICHEIC's failings include the way in which it dealt with decisions made by the Generali Trust Fund (GTF). The trust fund was created to process claims concerning Generali and, in that capacity, had the authority to determine if claimants had compensable claims. As early as November 2002, ICHEIC had concerns that GTF's performance was below acceptable standards and, in late October 2004, the commission terminated its relationship with the trust fund, citing GTF's gross incompetence. Despite acknowledging GTF's sub-par performance, ICHEIC refused to review any of the fund's final decisions, thereby denying

claimants a fair decision-making process.

There has been mention in the press that ICHEIC, over its nine-year lifespan, spent approximately \$100 million on administrative expenses. Because the commission distributed about \$300 million to the 48,000 claimants noted above, for every \$3 that went to the heirs of insurance owners, about \$1 went to keep ICHEIC's bureaucracy afloat. The commission, which was funded with about \$550 million, is going out of business with monies left over.

According to various press reports, ICHEIC has disbursed between \$174 million and \$200 million through a humanitarian fund to support Holocaust education and needy survivors. Unanswered questions include who made these "humanitarian" decisions and, indeed, whether it was ever in ICHEIC's mandate to disburse money for philanthropic purposes.

Among those benefiting from the commission's largesse is a program called the "Initiative to Bring Jewish Literacy to Youth in the Former Soviet Union." From 2004 to 2006, ICHEIC spent \$3.4 million to send children to camp in St. Petersburg and Moscow. While a good cause, one would be hard-pressed to find a true nexus between that grant and ICHEIC's mission to facilitate the processing of insurance claims from the Holocaust period.

At the final commission meeting, Chairman Eagleburger is quoted as having said that ICHEIC "has achieved its goal of bringing a small measure of justice to those who have been denied it for so long." As a lawyer who has closely worked with ICHEIC claimants, I sadly disagree. For nine years, ICHEIC failed the very people it was created to serve. n

Yisroel Schulman is the president of the New York Legal Assistance Group (NYLAG), a not-for-profit organization. Laura Davis and Phyllis Brochstein, attorneys with NYLAG, contributed to this column. Based in New York City, since May, 2000 NYLAG has provided free legal services to over 50,000 Holocaust survivors and their heirs. www.nylag.org

Special To The Jewish Week

February 28, 2007

Settlement Approved in Holocaust Victims' Suit Against Italian Insurer

By JOSEPH B. TREASTER

A federal judge approved a settlement of a class-action suit yesterday against an Italian insurance company, ending a long-running dispute over payments on life insurance policies taken out by Holocaust victims.

The settlement provides less money than Holocaust survivors and relatives had hoped to receive from the company, Assicurazioni Generali, and it significantly raised the chances that the insurer would be able to avoid public scrutiny of its records from the Nazi era.

But Judge George B. Daniels of Federal District Court in Manhattan said he was convinced that the deal was the best the survivors and their relatives could get.

"The settlement is not perfect," he told a room of lawyers and a handful of survivors and relatives. But he said that for most families who had bought coverage from Generali, it "may be their only real opportunity for any monetary recovery."

Lawyers representing the survivors had reached an agreement with Generali last summer after another federal judge dismissed their claims and they decided the odds of winning an appeal were low.

Judge Daniels had interrupted an initial hearing on the fairness of the settlement on Jan. 31 after Samuel J. Dubbin, a Miami lawyer opposing the settlement, appealed for more time to give survivors and relatives a chance to look for evidence to support their insurance claims in long-sealed Holocaust-era archives in Bad Arolsen, Germany.

The United States and 10 other countries that control the archives have agreed to open them and are meeting in the Netherlands on March 7 and 8 to discuss speeding up the process.

At Judge Daniels's urging, Generali and lawyers for survivors and relatives amended their agreement to extend the deadline for filing claims to take account of evidence found at Bad Arolsen until Aug. 31, 2008. The judge said yesterday that the extension eliminated his major concern. The deadline for all other claims remains March 31.

Before the settlement Generali had paid about \$100 million in claims on Holocaust-era policies, mainly through a commission in Washington. It agreed to pay \$35 million more as a result of the settlement. The company said the \$135 million covered 5,500 claims.

Generali said it had received 3,300 more claims as the settlement has been pending, and Robert A. Swift, a Philadelphia lawyer for the Holocaust survivors, estimated that the company would pay another \$10 million on those and other claims made before the deadlines. Generali will pay about \$4 million in legal fees.

Mr. Dubbin has contended that Generali sold policies worth billions on which it has never paid claims. But Generali and the lawyers in the class-action suit take issue with Mr. Dubbin's estimates.

Mr. Dubbin also argued that Generali had failed to adequately publicize the settlement. He and other advocates for the survivors said that because Generali has refused to publish a full list of its policyholders, tens of thousands of Holocaust survivors and relatives have been unaware that they had reason to file a claim -- with the approval of the settlement they would be foreclosed from ever doing so.

Generali has published the names of many policyholders, but contends that survivors and relatives have other ways of knowing whether they are eligible to file claims.

Mr. Swift, who helped draw up the agreement, used almost the same words as Judge Daniels in characterizing the settlement.

In a statement distributed before the hearing, Generali said it viewed the settlement "as an important step in its longstanding commitment to bring fair closure to the Holocaust-era claims process."

In the late 1990s, American lawyers filed lawsuits against more than 20 European insurance companies, accusing them of refusing to pay claims on billions of dollars in policies they had sold to people who became victims of the Holocaust.

The other lawsuits were either dropped or resolved. The settlement ends the biggest case against Generali. But a handful of lawyers, including Mr. Dubbin, are continuing to appeal the earlier dismissal of a group of lawsuits against the insurers. In dismissing the case, Judge Michael B. Mukasey cited a Supreme Court ruling that dealing with Holocaust claims in United States courts could interfere with the president's ability to resolve international disputes.

In an interview, an aide to Representative Ileana Ros-Lehtinen, a Republican of Miami, said the lawmaker was planning to introduce legislation that would require Generali and other insurers to publish lists of policyholders -- a longstanding request of survivors and relatives -- and would attempt to provide jurisdiction for European insurance cases in American courts.

Generali says its policy is to pay valid claims and has denied accounts by Holocaust survivors that its representatives demanded copies of policies from people who had lost everything and death certificates for policyholders who died in camps.

In the settlement, the company acknowledges no wrongdoing.

"This is a sad day for Holocaust memory and historical justice," said Thane Rosenbaum, a son of Holocaust survivors and a professor at the Fordham University law school. "The only entity that really benefited from this is Generali. They avoided having to pay tens of thousands of claims and they avoided opening up their archives and historical records to reveal what happened, how and why."

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The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(06/29/1997)

'Phantom Rule' May Have Limited Holocaust-Era Awards To Claimants

Former arbitrator says policy that should have favored survivors and heirs was not applied in many cases.

Stewart Ain - Staff Writer

When a commission investigating Holocaust-era life insurance policies ended its work in March after nine years, it boasted that it had awarded more than \$300 million to survivors and their heirs.

Now, a former commission arbitrator is criticizing the group's work, alleging that a "phantom rule" was used by some of the dozens of arbitrators, accounting in part for the denial of 84 percent of all claims filed.

The arbitrator, Albert B. Lewis, who is also a former New York State insurance superintendent, is calling for a reopening of these cases.

The "phantom rule," as Lewis described it, was that without an actual insurance policy in hand, either from the company or the claimant, the onus was on the claimant in seeking financial redress.

In fact, though, when the commission was established, the actual rules called for a more sympathetic stance toward the survivors and their heirs, specifying that there would be "relaxed standards of proof" favoring the claimant in determining the awards.

Lewis's comments follow that of other critics of the International Commission on Holocaust-Era Insurance Claims (ICHEIC), who have pointed out the wording of the 1998 memorandum of understanding signed by the six major European insurance companies that provided the money. The memorandum said the commission "shall establish 'relaxed standards of proof' that acknowledged the passage of time and the practical difficulties of the survivors, their beneficiaries and heirs, in locating relevant documents."

Lewis told The Jewish Week that Katrina Oakley, the commission's law administrator in London, had tried to pressure him into changing two awards that he granted to claimants. She complained that his interpretation of "relaxed standards of proof" differed from that of other arbitrators.

In an e-mail she sent Lewis on Nov. 26, 2003, Oakley wrote that she was "concerned" that his "interpretation is sufficiently different that it would set a precarious precedent."

Oakley wrote also that in cases where neither the heir nor the company was able to prove a policy's existence, "the appellant has a heavy burden of proof that" such a policy was issued.

Lewis said he refused to change his ruling and that the appellants were paid because the "phantom rule" Oakley cited "was never adopted by ICHEIC, nor was it included in the arbitrator's handbook."

"Ms. Oakley had no authority to promulgate any of ICHEIC's rules," Lewis said.

He relied instead, he said, on rules adopted by ICHEIC that said arbitrators should be more lenient, following the "principles of equity and justice." And he quoted the commission's chairman, Lawrence Eagleburger, as saying "there is intentionally built into the standards wide latitude and flexibility."

But Oakley delayed granting the contested awards, prompting Lewis on June 15, 2004, to send her an e-mail saying he considered her actions a "blatant attempt to pressure me as an arbitrator to reverse proposed monetary awards to claimants. It was a flagrant violation of the rules and it denied the claimants due process. ... Your unauthorized conduct in delaying [the] award during which [the claimant] is receiving no interest is an affront" to those who drew the rules and acted as arbitrators.

Elan Steinberg, a former member of the ICHEIC board, said he had never heard of the "phantom rule" and termed it a "smoking gun" for those who are still seeking payment of their relatives' Holocaust-era life insurance policies.

"We had agreed that we would use relaxed standards of proof, which is contrary to the adjudicator's letter," he said, referring to Oakley.

Steinberg, who left the commission in 2004, said he was “deeply saddened and troubled” by the high percentage of claim rejections.

“There should be no statute of limitations on justice,” he said. “There is no question in my mind that these issues, which touch on the moral and ethical obligations we have to our Holocaust martyrs, must remain open.”

Sidney Zabłudoff, a retired U.S. government economist who was a consultant to Jewish claims restitution groups and has been highly critical of ICHEIC, said he had never before heard of the “phantom rule.”

Although he said it was “always clear” that documentary proof of each Jewish life insurance policy could never be found – he estimated that there were 870,000 of them in 1938 in what was later Nazi-occupied Europe – the commission’s rejection of 84 percent of claims “sounds a little high.”

“ICHEIC rules clearly state that there was to be a relaxed standard of proof and that if any evidence existed at all, the burden of proof shifted to the company,” he said.

The rule Oakley mentioned in her e-mail, Zabłudoff said, “is absolutely strange because it is against ICHEIC’s precedent.. I never heard anybody say that.”

Lewis said he was unable to review the cases before him in a detached way.

“You have to be made of wood not to feel the pain,” he said. “One woman of six siblings is living in Borough Park and said she had a sister who had a \$10,000 policy. I believed her. She said she went to five concentration camps and when she was liberated she couldn’t walk. She asked me to hurry up [with his review] because if she got something [from the policy] she would like to share it with her grandchildren. Is there an emotional involvement? Yes. Should I tell her she’s a liar? I gave her \$104,000. It was my last award. They were upset with that one too.”

The \$104,000 reflected the price of the insurance payoff adjusted for inflation over more than 60 years.

After his ruling, Lewis said he learned that the woman wrote to ICHEIC “wanting to know my mother’s name because she wanted to make a special prayer for her memory. ... If I had to do it again, I

would.”

Asked why he was coming forward now, Lewis said he was not aware of the high percentage of rejected claims until the commission released the figures in March. He said that of the more than 90,000 claims made, 78,814 – or 84 percent – were denied.

What’s more, 34,158 of the claimants received a \$1,000 humanitarian award, seemingly a token amount.

“Is a humanitarian award a mendicant award?” he asked.

“I’m appalled,” Lewis continued. “It indicates to me that something is wrong, and part of what might be wrong is that phantom rule that was put into the system.

“When ICHEIC was formed, [heirs] were urged to file their claims. Thus, they were given hope by ICHEIC that their claims would be heard, only to have them denied by ICHEIC. Is this tantamount to being indirectly labeled as fraudsters or liars? How much abuse must they take?”

Samuel Dubbin, a Miami lawyer who represents Holocaust survivors and their heirs, said he was aware that there had been “a lot of inexplicable denials” of claims. He noted that the ICHEIC process “resulted in the payment of less than 3 percent of all the policies owned by Jews at the beginning of World War II.”

Zabludoff said that of the more than 90,000 claims filed, only 16,000 were offered settlements as a result of documentary evidence or because of sketchy documentation that could be pieced together to prove a claim.

Lewis is calling for survivors and heirs to be able to press Holocaust-era claims in the courts, and he said he would ask the National Association of Insurance Commissioners to address this issue once more. He noted that the European insurance companies only began to address this issue after state insurance commissioners, who regulate the insurance industry in the United States, warned them that their Holocaust claims practices jeopardized their licenses in the U.S.

Dubbin noted that Congressional legislation is now being written that would require insurers to disclose all Holocaust-era policies and permit heirs to pursue their claims through the courts. Few names of Jewish policyholders from Eastern Europe were ever

published, despite the existence of ICHEIC. It is estimated that the value of those Holocaust-era policies is between \$17 billion and \$200 billion, according to a draft of the bill.

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The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(07/06/2007)

Probe 'Phantom Rule,' Says Congressman

Rep. Engel, sponsor of Holocaust-era insurance disclosure bill, says former arbitrator has raised 'serous allegations' about denied claims.

Stewart Ain - Staff Writer

An investigation should be launched into charges of a so-called "phantom rule" favoring insurance companies being improperly used to decide Holocaust-era insurance claims, according to Rep. Eliot Engel (D-Bronx).



Engel was responding to a claim by Albert Lewis in The Jewish Week that he was pressured into applying this rule while he served as an arbitrator for the International Commission on Holocaust-Era Insurance Claims (ICHEIC).

"His charges should be looked into" by Congress or the Justice Department, Engel told The Jewish Week. "These are very serious allegations."

Lewis, a former New York State insurance superintendent, said he believes the "phantom rule" may have played a role in the commission's decision to deny 84 percent of all claims it reviewed.

Engel said he is co-sponsoring a bill that would require Holocaust-era insurance companies to disclose the names of all Holocaust-era policies and to permit federal courts to consider claims stemming from unpaid insurance claims.

ICHEIC, which was created to handle all Holocaust-era insurance claims, ceased operations earlier this year after saying the deadline for filing claims had ended and that it had resolved all outstanding claims. In all it awarded more tha \$300 million to survivors and their heirs.

"You cannot put a timetable on justice," Engel insisted, "when we're talking about crimes as monumental as the Holocaust. In no way could you ever have a statute of limitations ... While some people want to slam the door on it and move on to more pleasant things, the victims and justice" should not allow that.

But passage of such legislation would do no more than "give rise to decades of further litigation on top of all the litigation that has already occurred," according to Peter Simshauser, a lawyer representing Assicurazioni Generali, the largest insurance writer at that time in Europe and one of six major European insurance companies that

provided the money.

He said claims had already been resolved through the actions of organizations such as ICHEIC that had been created by both the Bush and Clinton administrations.

“Generali has paid more than \$170 million with respect to these claims in reliance on those policies [of the Bush and Clinton administrations],” he said.

Asked about the high percentage of claims that had been rejected by ICHEIC, Simshauser insisted that Generali “was audited by independent authorities, including prominent international accounting firms, which have verified that its historical records are complete and enabled it to make a determination of which policies were in effect in 1936 and thereafter. And those findings were accepted by ICHIEC and its members, including State of Israel and the insurance commissioners in the United States.”

Another attorney involved with the case said the insurance companies “bent over backward” to side with claimants, but that many of the claims were invalid, accounting for the high percentage of rejected claims. “Standards were lenient, but some evidence was required,” said the attorney, who asked not to be named.

Nevertheless, Leo Rechter, director of the National Association of Jewish Child Holocaust Survivors, said he knew of individuals who submitted claims to collect the death benefits of their family members and were rebuffed because they had no documentation.

“Very few people kept the actual policy,” he said. “When you are running for your life, you don’t want to identify as a Jew.”

Alex Moskovic of Sound Hope, Fla., said he applied to ICHEIC when it was established in 1998 and didn’t receive a reply. He said he later saw the name of his father, Joseph Moskovic of Sobrance, Hungary, and two uncles — along with their hometowns — on the Web site of two insurance companies.

“In 2001 I received a \$1,000 check from a humanitarian fund” from ICHEIC, Moskovic said.

He said he believes he should have received more than that because “we had a store and two houses and were pretty well off. I was 13 when we were taken away and I remember them [his relatives] talking about policies.”

But Moskovic said he had no further details.

Esther Finder of Rockville, Md., president of the Generation After in Washington, D.C., said her organization and others have been sending letters to House members asking them to support the legislation.

Told Generali's position that its historical record is complete, she said: "I don't know that all the records have been made available. There is always another archive opening here and another there. The archive in Vienna just became available. It could be that not a single piece of paper is in there having to do with insurance claims, but we still need to open the process. ... I'm tired of hearing everyone's assurances. I'd like to see for myself that there is no paper in there. Show me."

Lewis, the former ICEIC arbitrator, provided The Jewish Week with copies of e-mails he said he had received from Katrina Oakley, the commission's law administrator in London, who suggested that he reconsider his decision to pay two claimants. (See June 29, page one.) Oakley said the two claimants didn't have copies of the policies and none of the insurance companies in ICHEIC claimed to have a record of those policies, therefore they should be denied.

Oakley cited the actions of another arbitrator who denied similar claims, noting that the rule is that when no written proof exists, the burden on the claimant is a "heavy one."

But Lewis said no such rule existed. And in a note to Oakley, Lewis wrote that he reviewed that arbitrator's records and found that he had granted awards "where there was no written evidence of a policy" simply based on anecdotal evidence.

"I had accepted such evidence in granting my monetary awards," Lewis wrote.

He then questioned why this arbitrator's other decisions granting awards based solely on anecdotal evidence was not sent to him.

"Were any other arbitrators similarly pressured by you and changed their awards?" he asked.

Cleveland Jewish News

March 13, 2003

Debate rages over aid to survivors

By MARILYN H. KARFELD Staff Reporter

Of the estimated 2,000 to 3,000 Holocaust survivors currently living in Cleveland, a small number are needy. Sometimes, say social workers, they're forced to choose between paying for medicine or paying for heat.

About 30 poor survivors here receive limited home care services paid for by a grant from the Conference on Jewish Material Claims Against Germany, referred to as the Claims Conference. Others are turned away due to limited funds.

The size of the Claims Conference grant to Cleveland and other cities like Miami, with large survivor populations, is the subject of a disturbing debate in the Jewish community. Some Jewish leaders are loudly criticizing the Claims Conference for what they call a failure to distribute to Holocaust survivors all the funds raised in their names.

Since 1993, the Claims Conference has devoted 80% of the Holocaust restitution money it receives to care for needy survivors. The remaining 20% goes toward Holocaust remembrance, research and education.

In response to widespread rebuke from Jewish leaders that 100% of the money should go to poor, frail survivors, the Claims Conference has recently told Jewish news media that it most likely will examine its distribution split at its July meeting in New York.

The Claims Conference was founded in 1951 to distribute reparations from Germany and other sources to Jewish victims of the Holocaust. It's also the agency responsible for allocating the proceeds from the sale of unclaimed property in the former East Germany that the Nazis seized from Jews.

Last week for the first time, the Claims Conference posted on its Web site an accounting of the \$82 million it received in 2002 from the East German property and the German fund for forced and slave laborers.

About \$76.8 million was allocated to organizations that care for needy survivors worldwide, while \$9.5 million went to Shoah research, education and documentation. The latter included grants to Yad Vashem, Israel's Holocaust memorial, and to youth visiting the sites of concentration camps. The organization also said it allocated \$4.2 million from the Swiss banks settlement for emergency assistance to needy survivors in 20 countries.

The Jewish Council for Public Affairs, a consortium of local and national organizations, last week joined a growing chorus of leaders criticizing how the Claims Conference spends what they say is, in essence, the survivors' money. Holocaust education and archival programs should only receive funds after all the survivors' present and future needs are fully met, the organization said.

Officials from United Jewish Communities (UJC, the umbrella organization of North American federations) and individual federations around the country have also weighed in on the controversy. The heads of the federations in Miami, Los Angeles, Boston and New York have met with Gideon Taylor, Claims Conference executive vice president, to discuss the claims of the survivors.

Also present was Clevelander Stephen H. Hoffman, president and CEO of UJC and former longtime chief professional officer of the Jewish Community Federation of Cleveland.

In the past, earmarking funds for education and remembrance has been a wise policy, Hoffman notes. But with the establishment of Yad Vashem, the U.S. Holocaust Memorial Museum and other institutions, "the original mission in this area has been accomplished."

How much more money should be raised for Holocaust remembrance now must be balanced against the needs of survivors, he says.

While survivor groups have been criticizing the Claims Conference for some time, a firestorm erupted in June 2002, when Israel Singer, Claims Conference chairman and the son of Holocaust survivors, wrote an essay in the Jewish opinion magazine Sh'ma. He suggested a new organization be created to spend any leftover Holocaust restitution "to rebuild the Jewish soul and spirit" and "ensure the continued existence of the Jewish people" through education and other projects.

Singer also suggested using the restitution money for a voucher system to allow every Jewish child to attend Jewish day schools.

Survivors and Jewish leaders lashed out at Singer, saying the Claims Conference was seeking to perpetuate itself as an organization with funds that rightfully belong to survivors.

Others came to Singer's defense, agreeing that those who perished in the Holocaust would want remembrance and Jewish education to be their legacy, not only social welfare to the Nazis' victims.

Claims Conference officials say they don't have enough money to take care of all survivor needs. There are an estimated 500,000 to 800,000 Holocaust survivors worldwide. Of the 127,000 to 145,00 survivors who live in the U.S., about 40% rely on Medicare, Social Security and reparations to cover their rising health care costs, JTA reports.

The federations, Claims Conference officials insist, should be raising more money to aid survivors.

Hoffman does not think that is the federations' mission. "The Claims Conference is designed to address the needs of survivors in particular," he notes. "The federations have responsibility for all older persons in need."

The ugly specter of Jews fighting Jews is nothing new, he says. Every year in the community there is combat over the distribution of Jewish welfare campaign funds. What is new is how public these arguments have become, he says.

"It's uncomfortable to see it played out in the Wall Street Journal and The New York Times," he admits. "No one likes to see the family argument in print, but we'll get over it."

Cleveland Robert Goldberg, chairman of the UJC executive committee and its top volunteer, has urged the Claims Conference to resolve the controversy. "There are survivors in this country who are in need of home health care and not all of them are getting it," Goldberg says. He's asked the Claims Conference for a detailed accounting of the value of all its remaining East German property.

Holocaust and Jewish education is a worthy project, Goldberg adds. "But if I had to choose between helping a survivor and anything else, I would lean toward helping the survivor. That is our number one obligation."

Federations around the country are currently helping the survivor community, Goldberg says. But federations can only raise so much money.

By speaking out, Goldberg feels he and other federation leaders will ultimately persuade the Claims Conference to increase grants to survivors. "You can't force anybody to do anything, but we can drive them crazy," he says.

Through last September, the Claims Conference has received over \$1 billion from the German-Jewish property, either through sale of the property or compensation from Germany, The Jewish Week reports. Subtracting payments to rightful property owners and those expected to still make claims, and setting aside money for future survivor needs, the Claims Conference has thus far distributed \$451 million for survivor assistance. That was 80% of the available money, they say.

In Cleveland, the Holocaust Survivors Program of the Jewish Family Service Association receives \$150,000 annually from the Claims Conference. That pays for staff salaries, case management, assistance with reparation forms, a drop-in center called Europa Café, and up to six hours of home care weekly for about 30 people.

According to Michelle Keller of the Holocaust Survivors Program, she and her staff have seen about 800 to 1000 Holocaust survivors, many of whom just stop by to receive help in filling out the reparations forms. Others are alone and destitute.

"Some go without medication," says Keller. "They will choose heat over filling a prescription. Of if they need a pill twice a day, they will take it once a day."

For these people, Keller arranges for groceries to be delivered, provides transportation to link the isolated to the outside world, and sets up a schedule of home assistance, including personal care, laundry and light housekeeping. Most people get only two hours a week of help.

"Of course we could use more money," says Sue Biagianti, JFSA director of elder care services. "There's no way we can meet everyone's need."

Scarce funds mean some survivors who could use the aid had to be turned away. Others receiving help were removed from the program, Biagianti says.

The Claims Conference's stance is "incredibly disappointing," says former Clevelander Mark Talisman, a founding vice president of the U.S. Holocaust museum, who has been working on this problem pro bono for almost four years.

"Needy survivors are blown off and don't get the help they need. When billions of dollars are negotiated on behalf of survivors and they don't get the benefit of those dollars, it's unconscionable," says Talisman, who arranges exhibits and other projects through his Project Judaica Foundation.

Some survivors also don't think the Claims Conference represented their best interests in negotiating for reparations from the Swiss banks that confiscated Jewish wartime accounts and German industries that exploited slave labor.

In May 2001, the Holocaust Survivors Foundation, based in Florida and comprised of about 50 grass-roots survivor groups, appealed to Judge Edward Korman, who is overseeing the Swiss banks settlement. The foundation asked for additional money to help with the human services needs of U.S. survivors, says Sam Dubbin, Miami attorney for HSF and chairman of the Miami Jewish Community Relations Committee.

The judge had allocated 75% of the money - \$67 million -to survivors in the former Soviet Union and less than 1% - or \$215,000 - to those in the U.S., Dubbin says. While there is no doubt great need in the former Soviet Union, U.S. survivors call that distribution unfair.

The HSF eventually withdrew its appeal of the Swiss settlement with the understanding that U.S. survivors would get more help from a secondary distribution of leftover restitution funds, Dubbin says. So far survivors are still waiting.

The Association of Jewish Family and Children's Agencies has said \$30 million annually for five years would provide adequate home care for about 8,000 needy survivors in the U.S.

"For the Jewish community to stand by and allow restitution money to be hoarded so their fund-raising burdens can be alleviated now and in the future is wrong," says Dubbin. "The general community has an obligation for Holocaust education. It's a bizarre concept to say take the money and pay for their (survivors') memorial while their (immediate) needs are going unmet."

The average age of survivors is now 80; they are dying at a rapid pace, sometimes poor and alone. As Goldberg notes, the problem of assistance to survivors is one that will not be with us for too many more years. "I would not want the lesson to our children to be that we did not take care of the survivors."



The Global News Service of the Jewish People

Survivors still seek justice

Edwin Black

Holocaust survivor groups and key congressional leaders have joined two separate issues — the opening of the Bad Arolsen archives on Holocaust victims and the quest to recover unpaid insurance claims — into a single cause.

NEW YORK (JTA) — Reaction to recent revelations of corporate complicity, unrevealed insurance company involvement and the great number of IBM punch cards among the papers in a secret archive in Bad Arolsen, Germany, have reignited a grass-roots campaign among Holocaust survivors to recover Nazi-era insurance claims against companies such as the Italian insurance giant Generali.

Following a series of revelations that began last year in Jewish media, grass-roots survivor and second-generation groups in Miami and New York have mounted a fierce campaign in Congress to supersede international agreements brokered by the State Department to settle insurance claims through the International Commission on Holocaust Era Insurance claims (ICHEIC), as well as a variety of adverse Supreme Court rulings that have denied survivors the right to sue to recover policy claims or disgorge profits from the insurance companies.

The groups have used revelations about the unreleased Bad Arolsen records as a rallying point to prove that their insurance claims have been pushed into oblivion. Key congressional leaders agree and have promised swift action.

Thus, two separate issues — the opening of the Bad Arolsen archives and the quest to recover unpaid insurance claims — have been joined into a single cause among survivor groups and key congressional leaders.

The latest round of efforts began last fall, when officials of survivor groups unsuccessfully demanded that ICHEIC and other authorities postpone the final disposition of claims pending further research in the International Tracing Service files at Bad Arolsen. The groups include such elected bodies as the Miami-based Holocaust Survivors Foundation USA and the Queens, N.Y.-based National Association of Jewish Child Holocaust Survivors.

The International Tracing Service, or ITS, was established by the Allies after the war to help families trace Holocaust and war victims. The Allies forwarded millions of captured documents to

the facility in Bad Arolsen. The International Red Cross was given custody and control of the archives, which provided information on individuals only to survivors and their families. A typical family request could take years to process.

In January, Holocaust survivors petitioned federal Judge George Daniels to reject a settlement with Generali because ICHEIC had failed to publish the names of all Jews whom the company insured before World War II. The petition, which included numerous quotations from the Jewish media about Bad Arolsen's insurance documentation, decried the alleged rush to judgment.

Judge Daniels temporarily delayed a decision, but ultimately finalized the permanent settlement with a limited extension for claims based on discoveries that might emerge from the Bad Arolsen archive.

Having lost in court — and convinced that established Jewish organizations would not aid them — survivor groups lobbied Congress to link the campaign to open Bad Arolsen to the separate campaign to recover insurance claims and compel disclosure of the names of those insured.

On March 28, U.S. Rep. Ileana Ros-Lehtinen (R-Fla.) introduced the Holocaust Insurance Accountability Act of 2007, to enthusiastic support on both sides of the aisle.

The act seeks to supersede international agreements brokered by the State Department to settle insurance claims through ICHEIC. The bill concludes that ICHEIC, which is due to terminate operations soon, "did not make sufficient effort to investigate" or compile the names of Holocaust-era insureds or the claims due to survivors. The bill adds that recent media disclosures about the contents of Bad Arolsen have given new justification to such legislation.

In response, a representative for ICHEIC said the commission had accomplished its mission of identifying and settling unpaid Holocaust-era life insurance claims by processing more than 90,000 claims and distributing more than \$306 million to more than 48,000 claimants. More than half of the funds distributed via ICHEIC were the result of ICHEIC's archival research and matching work, the representative said..

Still, Ros-Lehtinen's bill would require insurers to disclose comprehensive lists of Jewish policyholders from the Nazi era. The legislation also would enable federal lawsuits to recovery money from insurers, thus overruling ICHEIC's final word and a variety of Supreme Court rulings that have denied survivors' rights to sue or gain access to policyholder names.

The proposed law thus would trump both the executive and judicial branches on Holocaust-era insurance.

The same day that Ros-Lehtinen's bill was introduced, Rep. Robert Wexler (D-Fla.), chairman of the House Foreign Affairs Committee's Subcommittee on Europe, convened an extraordinary hearing on Bad Arolsen. The purpose was to orchestrate congressional pressure on the 11 governments — the United States, France, England, Belgium, Greece, Luxembourg, Netherlands, Poland, Israel, Italy and Germany — that control the ITS to rush full access to its archives, providing the insurance information that has been submerged for decades.

Members of the Foreign Affairs Committee sat stony and grim-faced, some holding back tears, as the hearing unfolded about the Bad Arolsen archives and their impact on survivors' decades-long effort to recover their insurance claims. Survivor David Schaecter of Miami, who admitted he was "emotionally overcome," spoke of impoverished survivors in South Florida who cannot afford housing or medicine because their insurance payouts were first denied by the insurance companies and then by ICHEIC.

"I am begging this Congress," he implored, "to please believe us. We have been wrongly stripped of our pride and property."

Leo Rechter of Queens pleaded, "Open up Bad Arolsen to expose the Holocaust profiteers."

Rep. Albio Sires (D-N.J.) held back tears both in the hearing room and in the corridor. Wexler promised to fast-track legislation and action to open Bad Arolsen.

"We will take the next step and then the next step, and then the next step," Wexler said.

March 14, 2004

For Holocaust Survivors, It's Law Versus Morality

By ADAM LIPTAK

IN 1998, after Swiss banks agreed to pay \$1.25 billion for keeping the property of victims of the Nazis and for laundering the profits of Nazi slave labor, the question arose: how should the money be spent, given that only part of that sum could be traced back to individual who had their money stolen?

On Tuesday, a federal judge in Brooklyn ruled that the poverty of Holocaust survivors in the former Soviet Union required the bulk of the available money, saying that current need is more important than perfect restitution. In essence, he said survivors who live in richer countries should receive less than those in poorer ones.

But that answer leaves some people, including many Holocaust survivors, angry and frustrated. "The whole point of restitution is to compensate people for their actual suffering at the time of the crime," said Thane Rosenbaum, a law professor at Fordham University and the son of Holocaust survivors.

History rather than charity should supply the guiding principles, said Mr. Rosenbaum, the author of a forthcoming book, "The Morality of Justice," which argues that the legal system often fails to achieve moral results. The Swiss bank settlement, he says in the book, is such a case.

"From a moral perspective, it's the victims' money," Mr. Rosenbaum said, adding that it is up to survivors to determine how the money should be used.

Edward R. Korman, the chief judge of the federal district court in Brooklyn, acknowledged the difficulty of the problem. "A comparison of needy survivors is by definition an odious process," he wrote in the decision issued last week. But morality required him, he said, to send some 70 percent of what may amount to \$400 million to survivors in the former Soviet Union, and only 4 percent to survivors in the United States.

Of the 900,000 or so Jewish survivors of Nazi persecution, 19 percent to 27 percent live in the former Soviet Union while 14 percent to 19 percent live in the United States. Those in the former Soviet Union, the judge wrote, live in desperate poverty. The poverty of

some American survivors is by contrast "clearly less pressing," he said, given the public assistance and private charity available to them.

But Samuel J. Dubbin, a lawyer for the Holocaust Survivors Foundation-USA, which says it represents more than 50 organizations and 20,000 American survivors, objected to the judge's reasoning.

"You can't say that a survivor in need here is less worthy than a survivor in need in the former Soviet Union," he said. "The reason you can't say that is that this is survivor money. Maybe you could say that if this was community money, if this were charity."

Instead, the foundation asked Judge Korman to base future distributions on pro rata allocations to the nations where large numbers of survivors live and only then require distribution within those nations to the neediest survivors.

"There's not enough money to hand out to all the survivors, unfortunately," said Leo Rechter, a 76-year-old retired banker who was born in Vienna and spent the war in hiding. "The next best solution is that all the needy people be taken care of."

"The percentage of survivors' money in each country should be allocated to that country," said Mr. Rechter, whose father died at Auschwitz, "and from that money the needy people there should be taken care of."

Judge Korman rejected that and other alternatives. He wrote that trying to adjudicate claims individually would be unwieldy, expensive and in many cases impossible. A simple pro rata distribution, on the other hand, would yield "literally pennies to each of the millions of individuals" victimized by the Nazis, including all survivors and their heirs. He called the hybrid solution proposed by Mr. Dubbin and the survivors' foundation frivolous and inconsistent with law and morality.

Should other lawsuits for historical wrongs succeed, the problem in the Swiss bank case is likely to recur. Burt Neuborne, who represents the plaintiffs in the settlement, has written that some claims should by their nature give rise to indirect compensation in the form of social programs.

For instance, he said, if lawsuits seeking damages for American slavery ever produce damages, the proper response may be affirmative action or providing money to assist for poor blacks.

And Stuart E. Eizenstat, deputy treasury secretary from 1999 to 2001 and the author of "Imperfect Justice: Looted Assets, Slave Labor and the Unfinished Business of World War II," an account of the negotiations leading to the settlement, said such suits have an important moral and political aspect that may call for ignoring some usual legal remedies.

"A purely legal response," he said, "does not work."

In this case, all agree that the dispute needs a speedy resolution. The average survivor is 77 years old if living in Israel and 84 if living elsewhere. Their numbers, according to a report issued in 2000 by the court-appointed special master in the case, Judah Gribetz, are projected to fall by 6 to 8 percent each year through the end of the decade and faster afterward.

The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

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Claims Conf. Revises Old Funding Formula

An added \$100 million to go to survivors over four years, as controversial Holocaust education funding is frozen.

Stewart Ain - Staff Writer

With no fanfare and little debate, the Claims Conference has overturned its controversial 17-year policy of setting aside 20 percent of its allocations for Holocaust education.

As a result, the group has decided to pump another \$112 million into social-service programs for survivors over the next four years while freezing funds for educational, documentation and research projects at \$18 million annually.

The 80/20 formula — 80 percent for survivor benefits and 20 percent for education programs — will be applied only to \$90 million of the conference's yearly allocation, the amount it had been distributing since 2003.

Julius Berman, chairman of the Conference on Jewish Material Claims Against Germany, said the action was taken last month at the group's annual meeting "because of the crying need for social welfare programs as survivors get older and sicker."

But Roman Kent, a survivor and the group's treasurer, said the move was in response to "pressure" from survivors. He said he spearheaded the effort to revise the allocation distribution.

"As long as survivors are in need, they come first," Kent said he has argued. "Even the rabbis acknowledged that if you have a sick man, you could break the sanctity of the Shabbos to help the sick."

Samuel Dubbin, a Miami lawyer who represents survivors, noted that the Claims Conference board met just a month after an Op-Ed article in The New York Times questioned the millions of dollars the group had spent for education, including "\$700,000 to a 'consultant' — a friend of the organization's president — who, in an interview with The Jewish Week, couldn't recall what he had been asked to consult on."

"While the conference supports many worthy projects, it is controlled not by survivors but by surrogates, and operates with limited oversight and financial accountability," wrote Thane Rosenbaum, a professor of law at Fordham University.

"They obviously decided that when it hit The New York Times, it was time to act," Dubbin said. "This decision just sharpens the focus on the continued expenditure for non-survivor needs and demands justification in light of the suffering those expenditures permit."

The 80-20 split has been the subject of debate even outside of the Claims Conference. In 2002, Israel Singer, then president of the Claims Conference, defended the allocation, telling the Jewish Telegraphic Agency, "The survivors are not the only heirs of Jewish property. They are the first beneficiaries, but not the only heirs. The Jewish way is to take care of those in need, but also to educate our children."

But as medical costs of survivors have increased as they aged — most are now about 80 — more and more people questioned the split. Just last year, Wolf Factor, chairman of the Foundation for the Benefit of Holocaust Victims in Israel, told JTA that Holocaust

commemoration and youth trips to Poland are not as immediately relevant as help for survivors.

He said he hoped that the Claims Conference and the State of Israel would "come to their senses and understand that honoring the memory of the Holocaust is not only to remember the dead, but essentially to remember the living who still need us."

The number of needy applicants approaching the foundation has increased by more than 60 percent since it was created in 1994. The foundation said that 40 percent of Israeli Holocaust survivors lived below or just barely above the poverty line. And it was reported that one-fourth of Israel's 280,000 survivors could not afford medications or the cost of a home health aide.

Just this week, the State of Israel announced that some 100,000 survivors would receive a \$285 increase in their monthly allowance. But no decision has yet been made about increased assistance for another 150,000 survivors in Israel who fled the Nazis by escaping to the Soviet Union.

Dubbin said that in 2004 there were a reported 175,000 survivors in the United States, at least 85,000 of whom were living at or below the poverty line or considered poor.

Berman, the Claims Conference board chairman, said \$18 million annually for education "is a good hunk of money" that would be sufficient to meet the "competing needs and priorities."

Since 2003, the Claims Conference's annual allocation had been \$90 million. It was increased this year to \$100 million and will jump to \$110 million next year, \$122 million in 2009 and \$135 million in 2010.

"The board usually makes its decisions year by year, but we decided that because of the [growing] needs we should tell social welfare agencies and the people that they will have more money," Berman said.

"The cost of living of a sick person is becoming astronomical," he added. "People are living longer and they are sicker and they need financial support in greater dimensions."

Menachem Rosensaft, founding chairman of the International Network of Children of Jewish Holocaust Survivors, called the Claims Conference's decision a "welcome step in the right direction.

"I've been aware that discussions were going on for years," he said. "The overriding mission of the Claims Conference is and must be to ensure that Holocaust survivors can live out their remaining years in dignity and with their basic needs met," he said. "Once that is accomplished, one can have a discussion as to how to apply remaining funds."

Asked if he supported allocations to educational projects, Rosensaft replied: "There are very legitimate Holocaust remembrance projects. Having said that, it is very clear that medical care and food for an elderly survivor trumps any cultural or educational project."

There are so many other organizations that also fund Holocaust education programs that funding from the Claims Conference is not necessary, maintains Leo Rechter, president of NAHOS (National Association of Jewish Child Holocaust Society).

He said he had just received the magazine of a major organization that is spending more than the Claims Conference on Holocaust education.

"We are very much in favor of educational efforts and we survivors go to classes and speak to high school and junior high school students" about the Holocaust, he said.

But Rechter maintained that some of the educational projects funded by the Claims Conference are nothing more than "pet projects" of board members who get them funded "for their own glorification."

He cited capital investments in St. Petersburg and Kishinev in Russia, cities in which "there were no survivors."

"St. Petersburg was not occupied by the Germans," Rechter said.

However, Eli Zborowski, another survivor and chairman of the American Society for Yad Vashem, said he supported the 80-20 mix because much of the money distributed by the Claims Conference comes from the sale of German Jewish property owned by Jews who had no heirs.

"Shouldn't part of the money go to remembering them?" he asked.

But David Mermelstein, president of the Miami Holocaust Survivors, said he believes the \$18 million annual education allocation should either be eliminated or cut in half to provide more money for needy survivors.

"The needs gets worse as we get older," he said. "Until now we didn't have to worry about wheelchairs. But today I helped a man get a wheelchair" who could not get to the synagogue without it.

"If they would only take a person who would go from state to state and visit some of the cities and see the need of the survivors, they would understand better," he said. "We tell them, but it is not the same as being there."

Asked what could be done if all \$18 million were allocated for the care of survivors, Mermelstein replied: "Just give us \$1 million and we could add to the hours of homecare" and other services.