

TESTIMONY OF JACK RUBIN

SENATE FOREIGN RELATIONS COMMITTEE SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS

MAY 6, 2008

My name is Jack Rubin, and I live in Boynton Beach, Florida. I want to thank our own Senator Bill Nelson for holding this important hearing and for inviting me, as a Holocaust survivor, to speak my own mind about these issues of great concern. I would like to begin by stating how honored I am to be able to address this committee of the United States Senate. It is very humbling and historic, as I realize that I am one of a very small number of Holocaust survivors, which includes Elie Wiesel, who has ever had this privilege.

Last Thursday, May 1, was the 63rd anniversary of the day I was liberated. It was also Yom Hashoah, the Day of Remembrance, when Jews all over the world say a prayer for the 6 million martyrs, our loved ones and the loved ones of millions, who perished at the murderous hands of the Nazis and their collaborators. Today, the fact that I, a survivor of that indescribable hell now known as the Holocaust, will have my words become a part of the official record of this body is an honor and privilege I never imagined.

I am here, on behalf of thousands of Holocaust survivors and family members of Holocaust victims, to ask you to pass a companion to HR 1746, the Holocaust Insurance Accountability Act of 2007, without any further delays.

First, I would like to tell you about my life in the United States, and my activities over the years as an integral part of the local and national Holocaust survivor community. I was liberated as I said on May 1, 1945, from hell, by the U.S. Army. I then spent two years in a Displaced Persons Camp in Germany. In 1947, I was fortunate to come to America, and I settled in Connecticut. I learned the trade to become a furrier and was fortunate to be able to earn a living as a furrier and raise a beautiful family in Fairfield, Connecticut. I worked hard was able to retire in 1995, and in 1998 I moved to Boynton Beach. I have been very active in several Florida survivor groups, as well as my synagogue and other Jewish organizations in Palm Beach County. Over the years I like many survivors who have been dedicated to Holocaust education, having spoken to thousands of young people in public and private schools about the tragedy our people endured in the Holocaust. I also volunteer as a member of the Holocaust survivors' advisory committee of the Jewish Family and Children's Services of Palm Beach County, which serves the needy Holocaust survivors in our

community. In addition, I am a member of the Executive Committee of the Holocaust Survivors Foundation USA, Inc., which represents thousands of Holocaust survivors from all over the United States.

But I am here today to talk about the part of my family history that isn't so happy, our brutal treatment at the hands of the Nazis and their Hungarian puppets. 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. I was given a pail to go around and collect all valuables. We were then deported to Auschwitz, and that was the last time I saw my parents. 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. Our home and

business was destroyed.

After ICHEIC was created, I applied because of the esteemed individuals and 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 under 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 any policies in my family. This is absurd, because I know we had insurance. Yet Generali did not produce one piece of paper to justify its decision, and ICHEIC did not require the company to produce any proof. They did not even ask the company to give records from Generali Moldavia, a known subsidiary, and he did not require Generali to produce information about Mr. Schwartz, the agent from our town. Don’t you think Generali, which even then was a global giant, would have kept information about its insurance agents, and about its subsidiaries? That’s what big insurance companies do. But

ICHEIC just took Generali's word and my claim was denied.

Then, ICHEIC added insult to injury. They sent me a \$1,000 check and called it a "humanitarian payment." Really they were calling me a liar. They tried to give us \$1,000 to keep quiet, instead of giving what we demanded all along – the dignity of controlling our own rights, and finding out the truth, and getting what my father was promised when he trusted Generali with his family's security as his insurance company.

Other Holocaust survivors, who I speak with every day, are also beyond disappointed by the way ICHEIC treated us. We are outraged. If you want to get an angry reaction from survivors or their children or grandchildren, just mention ICHEIC. So many people I know had the same humiliating experience. Not only are we disgusted with the way our claims were handled, but we cannot believe ICHEIC took money and used it for ridiculous programs such as summer camp programs and paying college students to keep survivors company. Who made ICHEIC the king of our families' legacies?

Let's face it, ICHEIC was controlled by the insurance companies. Sure, there were Jewish organizations present but we never asked for them or anyone else to represent us. We, the survivors, did not ask the Claims Conference or Mr. Kent, or Mr. Eizenstat, or Mr. Eagleburger, to handle our

affairs. We can speak for ourselves, but ICHEIC denied us even that obvious level of respect. We question the “deals” that everyone talks about. But remember this – survivors did not agree to any deals, and did not agree to any legal peace. The fact that some groups took it upon themselves to pretend like they had that authority is not acceptable to us and never was.

ICHEIC was also conducted in secret. Why? To protect the companies, that’s why. 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. The companies betrayed us and up until now, 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 know ICHEIC was flawed because I know we had insurance but it wasn’t acknowledged. But I am fighting for this bill to honor my parents, because my father bought insurance to provide for us if something happened. I owe this to my parents. I can’t understand how anyone can even think we should be willing to settle for less.

And there is another thing. What about the millions of insurance

policies that went up in flames at Auschwitz, Dachau, and thousands of killing fields? I was one of the few who survived that hell. What about the millions who died? What about their insurance? Why should the insurance companies be the heirs of their Jewish customers? The survivors and the second generation agree on this point as well —there should be no legal peace for the companies until the Holocaust survivors have moral peace. We are far from that today, Mr. Chairman.

This is why I was one of several Holocaust survivors who appealed the recent “class action settlement” of the litigation against Generali. In 2006, the “class action lawyers” who were supposed to be representing us agreed to a settlement with Generali. Under the settlement, Generali’s obligations would have been limited to what was done by ICHEIC. The benefits from the settlement are very small in my opinion, but for those of us who tried ICHEIC and were denied, the impact of the settlement is clear. We get nothing. We are finished. ICHEIC decisions would be final.

Since I personally witnessed how ICHEIC did its business in secret, and allowed companies like Generali to deny claims without any supervision and oversight, and didn’t do any independent investigation and didn’t require the company to produce records to us, I believed this settlement would be a terrible disservice to survivors. Those of us who were denied in

ICHEIC would have no opportunity whatsoever to benefit from the settlement. Therefore, I joined several of other survivors and objected to the settlement. When the Judge approved it anyway, we appealed.

What else could we do? If the class action settlement is approved, our rights against Generali will truly be lost forever. I know my father had Generali insurance, but ICHEIC said no. ICHEIC said Generali behaved properly but I know it isn't so. I believe our appeal is valid because we know that ICHEIC did not serve the Holocaust survivors properly and the settlement embracing ICHEIC can't be correct. But if we lose the appeal, then Generali will be able to perpetrate the lie that we did not have insurance with that company. I felt we needed to do everything in our legal rights to protect our ability to get the truth one way or another.

So if this Congress does not act quickly to pass HR 1746, I am afraid that all the survivors' rights against Generali might be lost. I am not a lawyer but one sure way to restore our ability to get the truth from Generali or the other companies is to change the law *immediately*. If the Court of Appeals decides the class action appeal before Congress acts, I am afraid it will complicate matters. That decision could come any day. Please move swiftly and make it clear that the U.S. Congress does not endorse the denial of basic rights to survivors.

I want to remind this Committee that the legislation would not cost companies anything unless we prove our family had insurance. In that case, the companies would have to pay us and pay our lawyer too. If we lose, we get nothing and our lawyer would get nothing. This legislation would restore our ability to make decisions for ourselves with the advice of our own counsel. That is all we are asking for, Mr. Chairman.

Mr. Sid Zabludoff, an independent economist, has testified several times in Congress. He said the amount of money owed by the companies is at least \$17 billion. That is 17 billion, with a “b.” That is a conservative estimate of what the companies stole. Yet at the same time tens of thousands of needy Holocaust survivors in these very United States are suffering without the care they need. I see many of them in Palm Beach County, and my HSF colleagues see this problem all over America. The local Jewish Family and Children’s Services, where I volunteer, never has enough funds to meet the needs of the poor survivors. They cannot afford their medical expenses, or their medicines, eyeglasses, home care, nutrition, walkers, or dental care. They cannot afford their rent or utility bills. There are 80,000 survivors in the U.S. in this condition. Where is the justice in this?

It is now 2008. The companies succeeded in stonewalling us for 50

years. Then, in 1998, there was ICHEIC. To most of us, that has meant another 10 years of frustration and delay. Let's not get bogged down in obsessing over ICHEIC's successes or failures. It is over. Please focus on the companies' conduct, and on Holocaust survivors' rights to a full accounting of the companies' behavior.

I attended the House Financial Services Committee meeting and I wish every citizen in America could have seen it. Every person at that committee, including Chairman Barney Frank, showed such passion and respect for the rights of Holocaust survivors and showed that they truly understand the meaning of justice. They all ridiculed the arguments we are hearing today again from non-representative groups pretending to speak and act for Holocaust survivors. The Financial Services members insisted on a full accounting for the companies. They did not care about judging ICHEIC. They did not care about protecting reputations. They all said, simply, that the survivors should have our human rights restored by the Congress of the United States. Period. That is also how the survivors feel, Mr. Chairman.

Involvement in Other Restitution Matters

As a Holocaust survivor, I have witnessed first-hand many of the restitution proceedings over the past 10 years. This has not been a joy for

me, but it has been a solemn responsibility. From my standpoint, and I know my views are shared by many survivors, most of what has transpired has not been good. Only in rare instances have the survivors been treated with dignity and respect.

Because of the Holocaust, all of us were financially injured by several businesses and governments. The Nazi terror was so extensive that I and most survivors I know were victimized by so many Nazi collaborators and other profiteers that we have had a legal, economic, and moral stake in several “Holocaust restitution” matters. This includes German manufacturers using slave labor, Swiss banks profiting from dormant accounts and fencing looted assets, and insurance companies failing to pay their customers who entrusted them with their savings. In my case, since my home was annexed by Hungary during the war, I was one of about 60,000 Hungarian survivors now living whose property might have been on the Hungarian Gold Train and illegally taken by the United States Government after the end of the war.

Hungarian Gold Train Case.

The Gold Train case, *Rosner v. United States of America*, was filed in the United States District Court for the Southern District of Florida, in Miami. I was one of about 15 survivors who attended every hearing in that

case before the Honorable Patricia Seitz. We had the chance to see and hear for ourselves the kinds of legal and factual issues the Judge was taking into account. This gave us a concrete understanding about how our prospects were faring. Sometimes developments were good, and sometimes they weren't so good. But we were kept informed and had a great deal of input into the way the case was handled by our lawyers.

After nearly five years of litigation, the Gold Train case was settled with a cash payment of \$25.5 million to be used over a five (5) year period for social services for Hungarian survivors in need, the creation of an archive to collect and document the history of the Gold Train and Hungarian Jewry, and the issuance of an apology by the U.S. Government. Truthfully, we had all hoped for a larger financial recovery from the United States Government after all those years. But having sat through the case for almost five years, we understood that the Judge was doing her best to hear us as survivors and the children of prosperous families who had no way to prove in the year 2004 what the U.S. Government did with our property in the late 1940s.

Not that we didn't try. Our lawyers and the historians they hired spent over a year and a half going through documents in the National Archives, the Clinton Presidential Library, and archives in Israel and

Hungary to prove our connections to the property on the Gold Train. The Judge ordered the Government to open its records to our lawyers, and they found several smoking guns that helped our case a lot. Our lawyers took sworn depositions of the Army's historians and the Government's experts and obtained damning information about the Government's case. Our lawyers persuaded the Court to require the Government to submit for mediation with a prestigious mediator (current White House Counsel Fred Fielding) who could get the parties to the table. And, we the survivors and the clients were kept informed all the time.

Eventually, we decided to settle the case with \$25.5 million in cash, which would be distributed over a 5-year period to provide vital social services to Hungarian survivors in need all over the world. This wasn't an easy decision because each survivor believed he or she had a right to direct compensation, but the difficulty of proof made it risky to go to a trial. But those of us involved believed that to be able to get funds to supplement the desperate shortfall in social services for Hungarian survivors over a 5 year period, and to have a complete public archive of the Gold Train events, and to receive an apology from the strong but humble U.S. Government, was worth giving up our individual rights.

It was important that every class member was given a clear, complete

notice about the settlement and an opportunity to opt out of it if his or her own conscience dictated. Our lawyers insisted that every survivor be told the truth about the settlement in advance of the notice. Everyone was told that they might not receive any money themselves. Yet, only 100 Holocaust survivors chose to opt out. I firmly believe the overwhelming majority of survivors accepted the settlement because they knew the process had been fair, they were told what was going on along the way, and they had confidence in their own lawyers to do what was right, with our input. In other words, the survivors were treated as adults, with dignity and respect for our rights and ability to choose for ourselves what kind of legal and moral result was acceptable to settle the theft of our families' property and legacies.

I had the chance to address Judge Seitz to speak in favor of the settlement. Here is a part of the transcript from that hearing where I and my fellow Hungarian survivors spoke in favor of the settlement in September 2005.

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

I know whatever the settlement will be given to us, it will give me much satisfaction that we will be able to help the needy Hungarian survivors.

. . . .

First, we survivors and our families had the opportunity to seek justice against the United States Government in this court of law under that government's very own laws. And to receive a fair hearing in that process. I have watched your honor preside over these hearings and although we didn't always agree with you we know you have been just and fair and tried to apply the law the best way you can.

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

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

Third, after reaching a settlement we had the chance to speak directly to this court about what it meant to us. And we had the chance to shake the hand of the Government's lawyers, and thank the United States for rescuing civilization in World War II, and providing many refugees such as ourselves with a home and a chance for a new life. And finally to thank the Government for finally being accountable for the Gold Train.

Thank you very much Judge Seitz in the name of all the Hungarian Holocaust survivors for your fairness and honesty.

57-58.

I was very proud to have been a part of the Gold Train case, especially after Judge Seitz announced her decision approving the settlement. She told the parties how proud she was to have presided over a case in which the plaintiffs and defendants were so well informed and able to make prudent judgments about the merits of the litigation.

Here, because of the outstanding work of the lawyers, we have been able to not only resolve the conflict, but to begin a healing process and bring closure. So this is one in which – it is the unusual case in which there is a compromise where I think that the whole of the compromise is better than the sum of the parts that any of us could have hoped for. I am just very proud of everyone in this courtroom and I thank all ... to have had the opportunity to meet all of you, to work with you, and to be part of this historic moment. God bless you all and God bless the United States.

Transcript of September 26, 2005 *Rosner* Final Fairness Hearing, at 147-48.

Mr. Chairman and members of this Committee, please look at the difference between what happened in the Gold Train case and what happened with our insurance policies. In the Gold Train case, we the survivors were represented by advocates of our own choosing. This never happened in ICHEIC, because surrogates not of our choosing were the ones at the table. We did not ask them to handle our insurance rights.

In the Gold Train case, our chosen representatives had the opportunity, under court supervision, to inspect all of the defendant's records. This never happened under ICHEIC. The companies kept all their documents and only showed us what they wanted to. ICHEIC had no authority to demand production of the kinds of files that would have given claimants the ability to see if the companies were lying or not.

In the Gold Train case, we could observe the decision maker at work – a United States Federal Judge who operated in open court, “in the sunshine” as we say in Florida. In ICHEIC, everything was secret and all survivors ever received were impersonal letters with mechanical denials, denials which came from a “claims process” we now know ICHEIC did nothing to supervise. In fact we now know from Albert Lewis that ICHEIC had an internal policy that without any documentation, claimants had a ‘heavy burden.’ This has been called a “phantom rule” because it is opposite of the “relaxed standard of proof” that was promised. You get the picture.

So my experience in the Gold Train case should be instructive to this committee. What survivors want and deserve are fairness, transparency, due process, respect, and the ability to make our own decisions about our families' financial legacies. If that happens, even outcomes that do not meet our most optimistic expectations will be acceptable and accepted. It

is simply disrespectful for the one group of people who suffered the unique crime now known as the Holocaust should have any less rights than any other consumer who is defrauded or cheated by corporations who exploit one or more catastrophes to deny us our rightful funds. This dignity and respect is precisely what ICHEIC denied us, and what the U.S. courts up until now have denied us. Please don't allow Congress to fall into that same column.

Swiss Bank Looted Assets Class Allocations.

In the Swiss Bank Class Action, I was among several dozen survivors and survivor groups from throughout the United States who objected to the district court's allocation of the Looted Assets Class portion of the settlement. So far that has been \$205 million. Judge Korman ruled that 75% of the Looted Assets class settlement funds should be given to the Former Soviet Union, while only 4% of the Looted Assets Funds were earmarked to help poor survivors in the United States. He concluded the FSU survivors were "poorer" and stated that the tens of thousands of admittedly indigent and elderly American survivors should look to the wealthy Jewish community in the U.S. for help.

We opposed this allocation because the U.S. represents 20% of the world's survivor population and nearly 30% of the world's death camp

survivors. We appealed the court's decision because we believed it was unfair and out of character with the basic notion of fair play of the U.S justice system. The Holocaust Survivors Foundation USA opposed the allocations because they stripped American survivors of their legal rights, providing nothing in return except insult.

The U.S. Survivors do not deny that there are needs in the FSU, but we think it is wrong for an American Judge to become a philanthropist with Survivors' money from a legal settlement. Remember, unlike what happened in the Hungarian Gold Train case, the Court and the lawyers did not tell the Holocaust survivors in the Swiss Bank case how the money would be distributed at the time of the settlement notice. Everyone was in the dark but somehow we were supposed to decide what was fair as a settlement with the Swiss banks without this basic knowledge. This was outrageous and remains a very sore spot for American survivors and our families.

The district court's allocation of the first \$205 million in Looted Assets funds was, unfortunately, affirmed by the appellate court.

Today, there is almost \$400 million from the Swiss settlement that has been sitting in the bank for over 8 years. It is

waiting to be distributed under a formula the Judge is supposed to reconsider. But how many survivors have died suffering without food, medicine, and home care while the Judge has been sitting on all this money? This has been a great tragedy that survivors cannot forget.

We also cannot understand why the U.S. Congress has not investigated this highly unusual set of judicial actions.

Claims Conference

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. I am sure you have seen the news stories year in and year out, including a major article in the Associated Press last week, about how survivors everywhere are desperate for a more serious accounting by all these institutions including the Claims Conference. The needy survivors do not deserve to suffer again.

I hope you will require all institutions to make 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.

Senator Nelson, you were one of the first public officials to recognize

the problems survivors were facing with long term care and other health care needs. You tried to help back in 1998 and 1999. Our community was and is grateful for the concern you showed for our fellow survivors in need. But the truth today is that not enough has been done. Not by the corporations and governments who injured us and stole from us, and not by the institutions who are supposed to be responsible for helping us.

When I hear Mr. Kent and the Claims Conference and its affiliated groups and clients echo the threats of the German Government to withhold additional support for Holocaust survivors because of HR 1746, it makes me very angry. How dare these groups come here and try to hold our rights hostage to such a threat from Germany. The German Government! Should Holocaust survivors be punished for standing up for our constitutional rights? God forbid. It is a shame, Mr. Kent, and shame on the German Government, and shame on the groups who are lobbying you behind the scenes pretending to have the interests of survivors at heart. They have no brief to interfere with our rights.

I have a simple question for Mr. Kent, and the other Claims Conference acolytes who are now opposing HR 1746. Putting aside the gross violation of our constitutional rights, if the reason HR 1746 shouldn't pass is to preserve the Claims Conference's negotiating status, what has the

CC actually done worth preserving? If 40,000 survivors in the U.S. live in poverty, and another 40,000 are so poor they cannot afford basic food, medicines, health care, home care, and the like, what has the CC really accomplished? What about the thousands of needy survivors in Israel, Europe, Canada, and South America.

We are supposed to give up our insurance rights Mr. Kent so you and your colleagues (most of who belong to organizations that get money from the Conference) can continue to beg for a few thousand dollars here and a few thousand dollars there from Germany? Meanwhile, tens of thousands of Holocaust survivors are suffering with enough food on their tables, heat in the winters, or medical care or medicines for their injuries? I am on the front lines, Mr. Chairman. I am the one out there having to tell needy survivors at the Jewish Family and Children's Services that there is not enough funds to pay for their medicines or their wheelchairs or their dental work or for someone to simply come clean the home of an elderly, frail survivor so they can live in dignity.

Common Theme

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. We need Congress to give meaning to the words “never again” that we always hear. We need Congress to take action to respect the rights of Holocaust survivors.

We are lucky in South Florida that nearly all of our representatives – led by Ileana Ros-Lehtinen and Robert Wexler, and joined by Ron Klein, Tim Mahoney, Debbie Wasserman-Schultz, Alcee Hastings, Kendrick Meek, and Lincoln Diaz-Balart, have co-sponsored HR 1746. They are willing to stand up to the powerful companies and the German Government and the State Department and confront this scandal head-on. All of the money the companies stole should be paid to the survivors or their legal heirs, or if there are no heirs, the money should be used to help needy Holocaust survivors. But we need a lot more support and we are counting on this Committee to move this legislation to passage in the Senate.

One of the things I heard in February in the Financial Services Committee is the idea for an extended process where the companies are once again trusted to pay claims without any judicial or governmental oversight. Mr. Eizenstat even suggested that the State Department be charged with reporting the results of this extended new ICHEIC-style process. Now we are hearing about a similar plan involving the State of New York Claims

Processing Office. PLEASE DO NOT FALL FOR THIS TRAP. Those who believed the companies would act honorably without the threat of legal liability had their chance, and it was called ICHEIC, and it is over. Let it stay over. Please, no more commissions, no more monitors, no more toothless reporting standards that are never honored and never enforced. No more weak substitutes for justice. We want our rights back, and nothing more will do in the year 2008.

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

Thank you very much.