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

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

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

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

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

<u>The Search for Family Insurance Policies</u>

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

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

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

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

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

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

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

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

ICHEIC History

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

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

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

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

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

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

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

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

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

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

ICHEIC Was Not A Fair Forum For Holocaust Survivors and Heirs

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

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

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

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

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

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

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

Relaxed Standards of Proof

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

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

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

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

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

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

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

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

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

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

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

The United States Never Promised Insurers Immunity From Litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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