

**ANNUAL REPORT
ON THE HOLOCAUST VICTIMS
INSURANCE ACT**

Archief Philip Staal

**(House Bill 117, Chapter 177, Laws of Maryland 1999,
MD Code Ann., Ins. § 28-101 et. seq.)**

MARYLAND INSURANCE ADMINISTRATION

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**Alfred W. Redmer, Jr.
Insurance Commissioner**

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I INTRODUCTION

During the 1999 Session, the Maryland General Assembly passed H. B. 177, the Holocaust Victims Insurance Act. See MD. Code Ann. Ins. § 28-101 et seq. (Exhibit #1). Pursuant to § 28-106 of the Act, the Maryland Insurance Administration (MIA) is required to file an annual report describing the progress of the International Commission for Holocaust Era Insurance Claims (ICHEIC). This is the report for July 1, 2002 through December 1, 2004.

II BACKGROUND

During the Holocaust era, 1933 to 1945, the Nazis seized Jewish property throughout Europe. Life, property, and other forms of insurance were a common asset in Europe at that time, but millions of policies went unpaid as Jewish policyholders were unable to cash them in, were deported, or were killed. After World War II, when survivors or family members made claims, insurance companies refused to honor the policies. Reasons given included insufficient documentation, the insured property no longer existed or had been confiscated, or the policy had lapsed or been paid to a government or other family members. The claimants had no recourse at that time.

The treaty for the reunification of Germany was interpreted by the German courts to remove the moratorium on Holocaust claims by foreign nationals. Subsequently, a number of class action lawsuits were filed in U.S. courts seeking restitution from companies doing business in Germany during the Nazi era. Lawsuits seeking payment of insurance claims were among those filed. Insurance companies were willing to negotiate a compensation fund in order to be secure from litigation.

In early 1998, the National Association of Insurance Commissioners (NAIC) created ICHEIC as a mechanism to ensure that unpaid insurance claims of Holocaust victims would be paid. A memorandum of intent was signed in May 1998 by various State Insurance Commissioners, four major insurance company groups in Europe, and representatives of international Jewish organizations. In September 1998, a formal **Memorandum of Understanding (MOU)** was signed by almost all U.S. Insurance Commissioners, six major European insurance company groups, several European insurance regulators, and the major world Jewish organizations. (Exhibit # 2)

The MOU created the 12-member International Commission. The primary mission and purpose of ICHEIC is to establish a fair, just, and expeditious process to address the issue of unpaid insurance policies issued to victims of the Holocaust between 1920 and 1945. The Commission is composed of three U.S. insurance regulators, three representatives of Holocaust victims, and six representatives of European insurance regulators and insurance companies. It is chaired by former Secretary of State Lawrence S. Eagleburger.

On July 17, 2000, the Government of the Federal Republic of Germany and the Government of the United States of America agreed to the formation of the Foundation

“Remembrance, Responsibility, and the Future.” (the German Foundation) The two governments agreed that:

the Foundation “Remembrance, Responsibility, and the Future” covers, and that it would be in their interests for the Foundation to be the exclusive remedy and forum for the resolution of all claims that have been or may be asserted against German companies arising from the National Socialist era and World War II. ... The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission of Holocaust Era Insurance Claims (“ICHEIC”) and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such procedures and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.

ICHEIC, the German Foundation, and the German Insurance Association reached an agreement on October 16, 2002.

The original six signatory companies to the MOU were Allianz AG (Munich, Germany), Assicurazioni Generali (Rome, Italy), AXA (Paris, France), Winterthur Laben (Switzerland), Zurich Financial Group (Switzerland), and Basler/Laben (Switzerland), which withdrew from the MOU shortly after signing. These are major insurance holding companies composed of large groups of insurers, including American companies, a number of which operate in Maryland. The agreement with the German Foundation expanded the reach of the ICHEIC claims process. ICHEIC has also entered into agreements with organizations in other European countries regarding the processing of Holocaust era insurance claims.

Under the MOU, ICHEIC is responsible for establishing the process for addressing Holocaust era insurance claims. ICHEIC has published the names of policyholders from the period provided by companies and other databases on its websites. The responsibility for resolving claims rests first with the individual insurance companies. Relaxed standards of proof take into account the passage of time and the practical difficulties of producing relevant documents. Any postwar restitution payments are taken into account to offset payments. ICHEIC established the formulae used to value the policies. The valuation process takes into account currency reforms, currency conversions, and interest. In addition to the payment of individual claims where an unpaid policy could be identified and confirmed, Section 8A of the MOU provided ICHEIC with the means to make humanitarian payments to claimants where the policy could not be attributed to a specific company or was attributed to a company no longer in existence. There is also a general humanitarian fund.

Current members of ICHEIC:

Mr. Lawrence S. Eagleburger

Dr. Shavit Matias, Director, International Agreements and International Litigation Department, Office of the Prime Minister

Mr. Bobby Brown, The Jewish Agency for Israel

Dr. Eric J. Fischer, General Manager, Verbond van Verzekeraars (Association of Dutch Insurers)

Dr. Herbert Hansmeyer, Allianz AG

Mr. Matthias Landolt, Zurich Financial Services

Mr. Roman Kent, Chairman, American Gathering of Jewish Holocaust Survivors

Mr. Gregory V. Serio, Superintendent of Insurance, State of New York

Mr. Tom Gallagher, Insurance Commissioner, State of Florida

Mr. Giovanni Perissinotto, Managing Director, Assicurazioni Generali

Mr. John Garamendi, Insurance Commissioner, State of California

Mr. George Stansfield, Central Legal Department, AXA

Mr. Moshe Sanbar, Chairman, Centre of Organizations of Holocaust Survivors in Israel

III HOUSE BILL 177

In 1999, the Maryland General Assembly enacted H.B. 177, the Holocaust Victims Insurance Act. See MD Code Ann., Ins. § 28-101 et seq. In general, this subtitle (a) provides a tax exemption for any sums recovered by victims of the Holocaust, including their heirs, in connection with Holocaust era insurance claims; (b) requires insurers to promptly and diligently investigate and resolve any insurance claims filed by Holocaust victims and their heirs; (c) waives the statute of limitations in any case involving an insurance policy of a victim of the Holocaust; and (d) establishes relaxed evidentiary rules for Holocaust era insurance claims. (Exhibit #1)

In addition, § 28-105 of the law authorizes the Commissioner to direct authorized insurance companies to file a detailed report containing information about the activity of all entities within the holding companies during the Holocaust era (between January 1, 1920 and December 31, 1945), as well as information about possible claims. The law does not require these insurer reports unless ICHEIC proves to be ineffective in resolving unpaid insurance claims, or the Commissioner determines the company is not meaningfully participating in the ICHEIC process. The presumption in the statute is that

ICHEIC will be successful, that insurers involved will cooperate in good faith, and that all claims will finally be paid.

There is a question as to whether the Commissioner would be able to take the action authorized by § 28-105 of the Act. California also passed a Holocaust Victim Insurance Relief Act in 1999. The California Insurance Commissioner issued administrative subpoenas pursuant to that act, requiring any insurer doing business in California to disclose information about all policies sold in Europe between 1920 and 1945 by the company itself or a related company. Insurers sought an injunction against the Commissioner. The ensuing litigation culminated in the Supreme Court's decision in *American Insurance Association et al. v. Garamendi, Ins. Com'r, State of California*, Sup. Ct. (2003). The Supreme Court held that the California statute interfered with the President's conduct of foreign policy and was therefore preempted. It appears likely that, if the Commissioner were to take the steps authorized by § 28-105 of the Act, he would meet with a similar legal challenge.

IV PROGRESS OF THE COMMISSION

ICHEIC CLAIMS PROCESSING

The deadline for filing claims with ICHEIC was December 31, 2003. As of November 12, 2004, ICHEIC had received 79,947 claims (Exhibit #3). ICHEIC is responsible for forwarding these claims to the appropriate processor to be reviewed in accordance with agreed-upon standards.

Most claims submitted to ICHEIC do not name a specific insurance company. Claims that do not name a specific insurance company are forwarded to companies for review. ICHEIC maintains a database of names and policies to which claims may be compared. A soundex system is used for comparison, so that differing spellings of a name will result in a match. Dates of birth and the places of residence at the relevant time are also used to verify identity. High probability and exact matches are then distributed to the companies for review.

Companies that have agreed to the ICHEIC process under the MOU or the German Foundation agreement have systematic methods for researching their archives to identify company documents relevant to a claim. Company documents may include name cards, life policy registers, reserving registers, correspondence, and compensation files. The search should include any records likely to contain details about the policyholders of life insurance policies, whether paid or unpaid, in force between 1920 and 1945. Unfortunately, many records from the era no longer exist. When a claim comes to a company, the company is to use relaxed standards of proof and the materials in their archives to determine if the claim should be paid. If a policy cannot be found to match a claim, then the claimant may be eligible for a humanitarian payment.

The relaxed standards of proof are intended to establish a review process that takes into account evidence that may be unofficial or non-documentary. (See Exhibit #4)

Many claims were denied in the post-War period due to a lack of a death certificate, a copy of the policy, or other formal documentation of an in-force policy and the death of the insured. This documentation may have been impossible to obtain at the time. Even if documentation was available immediately after the War, it may have been lost or destroyed in the intervening years.

The relaxed standards of proof require companies:

1. Not to reject any evidence as being insufficiently probative of any fact necessary to establish the claims;
2. Not to demand, unreasonably, the production of any document or other evidence which has likely been destroyed, lost or is unavailable to the claimant; and
3. To consider all information submitted by the claimant together with all information recovered by the insurers and the ICHEIC during their search of the insurer and other appropriate archives. (Holocaust Era Insurance Claims Processing Guide, pages 20 – 21)

Even if a company determines that there was a policy, a claim may still be denied. If a policy was the subject of a decision under the German Federal Compensation Law, it will generally not be eligible for compensation under the ICHEIC process. If a policy was paid during the Holocaust era, there must be evidence that it was paid voluntarily to the policyholder for the claim to be denied. If the policy was paid during the Holocaust era, but there is no evidence that it was paid voluntarily to the policyholder, the claim may be payable. There are other reasons a claim may be paid or denied under the claims processing guidelines, and insurance companies are required to research their records and supply the claimant with the basis for their determination.

If a claim is determined to be payable, then a value must be assigned to the claim. Changes in currency, inflation, and devaluation of the currencies in which the policies may have been denominated can make it difficult to arrive at a present value of the claim. Also, there may be records of the existence of a policy, but not of its value. ICHEIC has established valuation procedures for specific regions and circumstances. The applicable valuation procedures may depend on the country of issue, and any agreements between ICHEIC and the authorities or insurance companies in a specific country. (Exhibit #5)

If a claimant named an insurance company, or if a claim was matched to a company through the ICHEIC process, then the claimant may appeal a denial of the claim, depending on the identity and nationality of the company that issued the policy or where the policy was issued. Claims concerning companies domiciled in, or policies issued in, Belgium, Austria, or the Netherlands are not subject to the ICHEIC appeal process. Claims involving Generali are also not subject to the ICHEIC appeal process. In the appeals process, a claimant must prove that it is plausible that the insurance company issued the policy in question and that the claimant is entitled to the proceeds. A claimant may appeal whether valuation guidelines were correctly applied. Appeals from

determinations made after the date of the agreement with the German Foundation are heard by an Appeals Panel consisting of three members. Earlier claims are subject to a review by a different Appeals Tribunal.

An ICHEIC report on claims to date is attached as Exhibit #3. Of these, Maryland residents have made a total of 172 ICHEIC claims known to the Administration. This total includes incomplete and duplicate claims. The claims have, so far, resulted in 10 offers. The total dollar value of the offers is \$64,000.00. Fifty-six complete claims have been declined. Although we do not know the specific reasons each claim was denied, common reasons include an inability to match the claim to a policy or a previous payment on the policy. The remaining claims are awaiting responses. ICHEIC anticipates that all claims will be decided by the end of 2005, and a period for appeals will extend into 2006.

SECTION 8A PAYMENTS

ICHEIC recognizes that the passage of time makes it impossible for some claims to meet even the relaxed standards of proof. If these claims cannot be matched to a company, then they may be eligible for a humanitarian payment under section 8A of the MOU. These payments arise from the filing of an ICHEIC claim, but they are intended to be humanitarian payments that acknowledge the injustices of the Nazi era, not insurance payments. Former National Security Advisor Samuel R. Berger developed criteria to be used in determining the eligibility for an award. ICHEIC began distributing awards of \$1,000.00 per claimant under this program in the spring of 2004. ICHEIC had made 15,890 payments through this process as of August 6, 2004. Sixteen Maryland residents have received these payments so far. Additional humanitarian 8A payments will be made as progress is made on claim determinations.

OTHER HUMANITARIAN FUNDS

The German Foundation provided ICHEIC with \$197 million for humanitarian purposes, including section 8A payments. Additional funds for humanitarian aid will become available as the claims payment process winds down, and funds allocated, but not paid, for claims are shifted to humanitarian funds. (See Exhibit #6) The first year's allocation of payments by ICHEIC has already been made.

There has been debate on the selection criteria for humanitarian projects. The debate centered on whether the humanitarian funds should be used solely for the needs of surviving Nazi victims or whether projects devoted to reviving Jewish culture in areas where the Nazi regime sought to eradicate Jewish culture should also receive payments. A decision was made that some cultural activities should receive funding, but no hard and fast pre-determined proportion of funds would go to one type of activity or the other.

ICHEIC has committed to providing \$132 million over nine years for social service benefits. The payments are going to local social service agencies in areas with concentrations of Nazi survivors. The payments are to be used for services, including

home care, to Nazi victims. The 2003 payments totaled \$15 million. Maryland agencies received \$45,600. Jewish Family Service of Central Maryland, in Baltimore, received \$34,200, and Jewish Social Service Agency, in Rockville, received \$11,400.

SUMMARY

ICHEIC plans to conclude all claim determinations by the end of 2005. If this goal is achieved, it will conclude a long process attempting to bring some justice to the survivors of the Holocaust and their descendants. Commissioner Redmer has written to the Chairman of ICHEIC, Lawrence Eagleburger, for assurances that ICHEIC will be able to meet this schedule.

ICHEIC has been heavily criticized during its existence. Most of the claimants are elderly, and a swift process with prompt resolution of their claims is necessary if they are to see justice before they die. The ICHEIC process has not been swift. Negotiations to establish contracts with companies beyond those that signed the MOU were slow and came close to breaking down. Most claims do not name an insurance company, and the process of establishing a system to match claims to insurers took a long time. Once the companies receive a claim, a thorough search of the records can be time consuming. If the claim does not name a company, and is circulated among multiple companies, the time is further extended. European companies have not been responsive to the concerns of American regulators.

ICHEIC is now in the final stages of its mission. All claims should have an initial determination by the end of 2005. ICHEIC will continue with its operations, including appeals on claims determinations, into 2006. Progress is being made on the processing of claims and humanitarian payments.

Commissioner Redmer is continuing to monitor the performance of ICHEIC. Maryland participates in the NAIC Task Force on Holocaust Era Claims. ICHEIC makes regular reports to the Task Force on issues of concern to American citizens and state governments. There does not appear to be a reason to take the actions authorized by § 28-105 of the Insurance Article, particularly in light of the legal impediments to doing so.