



**INSURANCE
ADMINISTRATION**

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**Annual Report on the Holocaust
Victims Insurance Act for 2005**
(House Bill 117, Chapter 177, Laws of Maryland 1999,
MD Code Ann., Ins. § 28-101 et. Seq.)

R. Steven Orr
Insurance Commissioner

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 December 1, 2004 through December 31, 2005.

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.

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. Howard Mills, Director of NAIC and State of New York Insurance Department

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. Chapter 117 of the Laws of 1999

In 1999, the Maryland General Assembly enacted H.B. 177, Chapter 117 of the Laws of 1999, 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.

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

ICHEIC was responsible for forwarding claims to the appropriate processor to be reviewed in accordance with agreed-upon standards. Almost two-thirds of the claims submitted to ICHEIC did not name a specific insurance company. Claims that did 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 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. 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.

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.

The deadline to complete initial processing of claims was December 31, 2005. This means that all claims a company had were reviewed against the company's records for a match, and a decision on all claims for which there was a match ("matched claims") was made. It appears that companies met this target deadline. The sending of letters to inform claimants of the decisions lagged behind the decision making process. All letters should be sent out by July 1, 2006. At that time, the ICHEIC claims offices will close. The appeals offices will remain open through the completion of the appeals processes, which should be the end of 2006. ICHEIC received 90,845 claims that were eligible to go through the ICHEIC process.

ICHEIC has made offers or awards totaling approximately 163 million dollars. As of November 25, 2005, 7890 offers had been made to claimants. Over \$151,000 on 22 claims was paid to Maryland residents who filed their claims with the assistance of the Insurance Administration.

SECTION 8A PAYMENTS

ICHEIC recognizes that the passage of time makes it impossible for some claims to meet even the relaxed standards of proof. There were also cases where the claims were against companies that were subsequently nationalized or liquidated in the post-war era and there is no successor company. If claims cannot be matched to a company, then they may be eligible for a humanitarian payment under section 8A1 of the MOU. Claims against nationalized or liquidated companies are paid under section 8A2 of the MOU. The humanitarian claims process paid approximately \$34.49 million in awards through December 15, 2005.

Payments under Section 8A1 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. ICHEIC began distributing awards of \$1,000.00 per claimant under this program in the spring of 2004. Through December, ICHEIC paid approximately \$26.83 million on 26,933 claims through this process. The final tranche of 8A1 payments will be made in 2006. Nineteen claimants who filed with the assistance of the Insurance Administration received 8A1 awards by the end of 2005.

Payments under 8A2 are made on a per-policy basis for documented policies and are calculated according to ICHEIC valuation guidelines. ICHEIC has distributed \$7.8 million to approximately 700 beneficiaries under this process. Additional tranches of payments are to be made in 2006.

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. 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 been cautious in committing to funding humanitarian efforts, because it wants to be certain that all claims can be paid before funds are diverted to the humanitarian projects. Currently, four projects have received these types of funds: ICHEIC Service Corps, Initiative to Bring Jewish Cultural Literacy to Youth in the Former Soviet Union, Vad Yashem Program, and March of the Living. In 2005, ICHEIC allocated \$22 million in social welfare benefits to provide for needy Jewish victims of Nazi persecution. These funds are entirely from the German Foundation, "Remembrance, Responsibility, and Future."

The ICHEIC Service Corps is a pilot project to link university students to local Holocaust survivors. The program is funded through the end of the 2006-2007 school year. Students are able to provide services to those in need while also learning more about the Holocaust and strengthening their Jewish identity.

The Jewish Agency for Israel organizes the initiative in the former Soviet Union to teach Jewish youth about their cultural traditions. Education is provided on pre-war Jewish communities in Eastern Europe; students are introduced to Holocaust survivors and learn their stories; and participants experience Jewish and Israeli culture to develop their own form of Jewish expression. This program has been operating in St. Petersburg. In 2006, it expands to Moscow.

In 2005, ICHEIC approved a proposal for a pilot program by Yad Vashem with the goal of preserving the memory of the Holocaust and fighting anti-Semitism. The funding for the pilot year is \$1.1 million. ICHEIC also provided a one-time grant of \$500,000 to March of the Living, a symbolic march from Auschwitz to Birkenau to honor those who perished in the Holocaust.

SUMMARY

ICHEIC has now met its goal of having all participating companies complete their claim determinations by the end of 2005. The Commissioner will continue to monitor

whether future goals are met. ICHEIC has projected that companies will finish sending determination letters by July 1, 2006, and resolve all appeals by the end of 2006.

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.