

**ANNUAL REPORT TO THE GOVERNOR
AND THE GENERAL ASSEMBLY ON
THE HOLOCAUST VICTIMS
INSURANCE ACT**

H.B. 177, Chapter 117, Laws of Maryland 1999,
MD Code Ann., Ins. § 28-101 et. Seq

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Table of Contents

	<u>Page</u>
I. Introduction.....	3
II. Background.....	3
III. House Bill 177.....	5
IV. The Progress of the Commission.....	5
V. Insurer Reports.....	9
VI. Conclusion.....	10
VII. Exhibits.....	12

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 calendar year 2001 through June 30, 2002.

Subsequent to the enactment of § 28-101, regulation 31.16.07, Holocaust Victims Insurance Claims and Reports was enacted to implement the Holocaust Victims Insurance Act. Regulation 31.16.07 went into effect in 2001. **(Exhibit 2)**

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 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 property no longer existed or had been confiscated, or the policies had already been paid to European governments or other family members.

In early 1998, the National Association of Insurance Commissioners (NAIC) created a mechanism to ensure that unpaid insurance claims of Holocaust victims would be paid: the International Commission on Holocaust Era Insurance Claims, ICHEIC.

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 United States 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.

The MOU called for ICHEIC to have a “claims driven” approach that would establish a claims process to settle and pay out individual claims at no cost to claimants. Relaxed standards of proof acknowledged the passage of time and the practical difficulties of claimants being able to locate relevant documents. Any postwar restitution program payments were taken into account to offset ICHEIC payments. A two-year window for filing claims was set to expire on February 15, 2002, but was extended in January 2002 to September 30, 2002 because of problems related to finalizing a complete list of policyholders, which was to be provided by German insurance companies. **(See Progress of the Commission... Other Unresolved Issues)**

The six original signatory companies are all major insurance holding companies composed of the large groups of insurers, including American companies, a number of which operate in Maryland. The signatory companies are Allianz AG (Munich, Germany), Assicurazioni Generali (Rome, Italy), AXA (Paris, France), Winterthur Laben (Switzerland), Zurich Financial Group (Switzerland), and Basler/Laben (Switzerland). (This company left ICHEIC shortly after its creation.)

Insurance companies both domiciled in Maryland and licensed to do business in the state that are believed to be affiliates of the signatory companies are listed in exhibit 3. **(Exhibit 3)**

Initially these companies contributed \$90 million to fund the start of the process and originally expressed a commitment to contribute the necessary funds to pay whatever claims are ultimately established. As time has moved on, however, the companies have balked at what that commitment should be. Negotiations continue on this subject.

Current members of ICHEIC:

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

Tom Gallagher, *Insurance Commissioner, State of Florida*

Harry W. Low, *Insurance Commissioner, State of California*

Arie Zuckerman, *Prime Minister’s Office, Israel/Bobby Brown, The Jewish Agency for Israel*

Roman Kent, *Chairman, American Gathering of Jewish Holocaust Survivors*

Moshe Sanbar, *Chairman, Centre of Organizations of Holocaust Survivors in Israel*

Herbert F. Hansmeyer, *CEO, Allianz North America, Allianz AG*

Matthias Landholt, *Zurich Financial Group*

Giovanni Perissinotto, *Director General/Chief, Operating Officer, Assicurazioni Generali*

Philippe Ferras, *Executive Vice President, Administration & Coordination, AXA*

Ulrich E. Thalmann, *Senior Vice President, Winterthur Lebeusversicherungs-Gesellschaft*

Dr. Eric J. Fiacher, *General Manager, Verband van Verzekeraars (Association of Dutch Insurers – joined ICHEIC in 2000)*

III. HOUSE BILL 177

In 1999, the Maryland General Assembly adopted H.B. 177, the Holocaust Victims Insurance Act. See MD Code ANN., Ins. § 28-101. In general, this statute (a) provides a tax exemption for any sums recovered by victims of the Holocaust, including their heirs, in connection with the 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 work of the Commission. 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. Only if this does not transpire would the regulatory provisions of the bill become effective.

IV. PROGRESS OF THE COMMISSION

The ICHEIC held its first meeting in New York on October 21, 1998 and has met periodically since in London, New York, Jerusalem, and Washington, D.C. A claims process was established by 2000 and ICHEIC actively began to solicit and receive claims from all over the world. In addition, several activities were begun to assist the Commission in concluding work its work on claims and providing humanitarian aid as an alternative to Holocaust era insurance claims. Those activities included a fast track claims process, worldwide outreach, a review of Nazi documents, the pursuit of slave labor claims, and the creation of the General Settlement Fund.

Fast Track Claims – ICHEIC selected several hundred claims for “fast track” treatment. These are claims for which there exists clear evidence of the existence of a specific insurance policy. Most of these claims involve Eastern European policies that were nationalized in the post-war era. Since the companies and all their assets were nationalized in the late 1940’s or early 1950’s, the surviving companies have consistently disavowed continued responsibility.

The theory of the fast track treatment was to try to get readily provable claims paid first, those that the companies should be able to readily pay without elaborate investigation or further proof. As of May 2002, 909 claims had been handled through the fast track process. Of those, more than half, 499, were declined and 294 resulted in offers valued at \$3.1 million. In February 2002, Chairman Eagleburger established a

monitoring group to look at 91 documented fast track claims that had been declined. They determined that 80 percent required corrective action.

Outreach – In order to publicize the ICHEIC process and solicit claims, the Commission created a comprehensive world-wide publicity and advertising campaign at a cost of \$9 million. The campaign included newspaper and magazine advertising all over the world, press conferences, and the creation of a website, www.icheic.org which lists the names of potential claimants.

Review of Nazi Documents – ICHEIC has retained experts to evaluate Nazi documents and asset lists that Jews were required to file during the Nazi era. These asset lists sometimes contain insurance policies. Identified names will be put on the ICHEIC website as another source of potential claims.

Slave Labor Case – This case, in Federal court in New York, concerned the use of slave labor during the Holocaust era. It is estimated that 1.2 million aging former laborers are still alive. Survivors who were held in camps or ghettos as slave laborers are eligible for \$7,000 each. Those forced to work in factories without pay are entitled to \$2,200 each. The case was settled with the German government in 2000 for \$8 billion. Of this amount, \$75 million was designated to cover insurance claims and expenses of ICHEIC.

In addition, \$175 million was earmarked as Humanitarian Funds to be distributed by ICHEIC. The Humanitarian Fund was setup to provide relief to claimants who believed they have policies but don't know through which company, the insurance company no longer exists, the company was nationalized after the war, or the policies were stolen by a governmental authority. A separate section of the Fund is to be used to benefit needy victims or other Holocaust-related humanitarian purposes.

To this end, the State of Florida is trying to determine how many Holocaust victims in the United States currently need or will need home health care services. In December 2001, at a meeting of the National Association of Insurance Commissioner's (NAIC) International Holocaust Commission Task Force, members unanimously voted to endorse Florida's long-term home health care plan for Holocaust survivors in the United States. Data collected by the states will be compiled and a national program will be created if funds become available. **(Exhibit 4)**

General Settlement Fund – This Fund was created under a settlement with Austria and numerous Austrian companies. Under the settlement, which is multifaceted, \$210 million was set aside for unpaid Austrian insurance claims.

Dutch Insurance Assets - The Sjoa Foundation in the Netherlands, made up of the Dutch Association of Insurers and the Dutch Central Jewish Board, is a national program

to settle Jewish unclaimed insurance assets with Dutch financial institutions and the government. The Sjoa Foundation became a member of ICHEIC in May 2000. Since that time they have published 750 names on the ICHEIC website and have paid out more than \$450,000 to more than 200 entitled parties. The payments are tax-exempt in the Netherlands and no income tax is due on the amount.

Other Unresolved Issues:

Audits – ICHEIC retained a firm in London to conduct audits of the signatory companies to ensure that ICHEIC can locate as many records and other documents as possible supporting the existence of policies. The audit firm would also be responsible for being sure the companies would pay the claims. It was understood that the audit in each country would employ local personnel with local historical and cultural insights, fluency in the language, and knowledge of local insurance practices. Although well-intentioned, this process has not worked. The German insurance companies have not agreed to an auditing procedure and, in fact, are suggesting the head of the German insurance regulatory agency be the chief arbiter on audits. This is not acceptable to other members of ICHEIC and continues to be negotiated.

Policy Lists – The six original signatory companies were supposed to produce a list of unpaid policies as expeditiously as possible. The companies are required to search their records for policies and all reasonable efforts are to be made to identify potential claimants. As lists are produced, some are sent to Yad Vashem in Jerusalem, the Israeli Holocaust Museum, to verify whether those on the lists were, in fact, victims of the Holocaust. **(Exhibit 5)** Once lists are produced, they are put on the ICHEIC website where survivors and heirs can check to see if they or their relatives had a known or an unknown unpaid policy. ICHEIC has listed more than 59,000 names on its website.

Unfortunately, this process has not gone smoothly. The non-MoU German companies have refused to summarily turn over lists of Holocaust-era policy holders, claiming some of the names were not Jews, were already paid, or were not applicable. After tense negotiations that lasted more than a year, they have agreed to turn over approximately four million policy names. This covers all policies in force from that era, Jewish and non-Jewish, paid and unpaid. It is estimated there may be a half-million Jewish names on this list. Those names, most of which are not available electronically, now have to be processed. That process could take years. But, it is ultimately up to the individual companies to check each claim throughout their records, whether electronically stored or on paper.

In addition, the German government has just volunteered a new list of names of German Jews from the Holocaust era that they will turn over to ICHEIC. All names will be posted to the ICHEIC website with disclaimers stating that not all people had insurance policies or may have had policies that have already been paid.

Claims Process – ICHEIC has received 85,445 inquiries or claims to date. The claims processing office is in London and claims from around the world are sent there. A claims

form and information packet is distributed to anyone who requests it either in writing, through the website, or by calling the toll-free telephone number (800-957-3203) established in February 2000. **(Exhibit 6)** Prior to the launch of the toll-free number, claims were sent to each state, which forwarded them on to ICHEIC. Maryland forwarded 94 claims to ICHEIC. Once people could send in the claims themselves, some states dropped out of the loop. In Maryland, claimants were encouraged through a publicity campaign to file directly with ICHEIC once the toll-free telephone number was created. What has unfortunately happened is that by encouraging people to file on their own directly with ICHEIC, the state regulators no longer have the right to check on a particular claim or find out if a claim has been paid. ICHEIC holds to a strict privacy policy, even dismissing inquiries by regulators without a signed affidavit from the claimant.

After three years, ICHEIC insurance companies have paid fewer than one percent (.6%) of the 85,445 claims sent to them. Only 1,324 offers have been made to claimants worldwide, for a total of \$20 million, and of that, only 486 claimants have actually been paid; fewer in the United States. **(Exhibit 7)** Part of the problem is that 80 percent of the claims don't name a company. Although relaxed standards were agreed upon as part of the MoU, ICHEIC is now saying they can't locate policies without documentation. In addition, approximately 25 percent of the claims are not valid because what the claimant thought he or she had was not insurance, the claim actually was a slave labor claim, or the claim covered confiscated property, which is not part of ICHEIC's mission.

In addition, the companies have argued they deserve reimbursement for their expenses connected to paying out claims and have proposed a \$76 million pay-out. The Chairman and other ICHEIC members do not agree.

In September 2001, following the more than two years of frustration on stalled lists and claims processing, the NAIC unanimously passed a resolution calling on states to take individual actions in order to bring pressure on both the MoU and non-MoU insurance companies. **(Exhibit 8)**

“It is hereby resolved... That until this matter is resolved, individual states should, as appropriate, take any or all of the following steps as allowed by law: reevaluate the formal or informal “safe harbor” provisions given to affected insurers; hold hearings about the German Foundation-ICHEIC negotiations and also, about the progress made by ICHEIC member companies in processing and paying legitimate claims; and make filings in relevant court cases involving the matter of unpaid Holocaust-era insurance claims...”

The German Foundation – In July 2000, German law established the German Foundation, “Rememberance, Responsibility and the Future.” The U.S. government was actively involved in negotiating its creation. Under the Foundation, approximately \$100 million was set aside for the settlement of unpaid insurance claims as determined by ICHEIC, with approximately \$175 million additional to be provided for Humanitarian claims. Negotiations with the German Foundation, speaking for the non-MoU companies, have not resolved the issues of the names of policyholders to be published on

the ICHEIC website or the ICHEIC auditing process of company records. This has resulted in claims not being processed and claimants not being paid.

Illinois Director of Insurance Nathaniel S. Shapo has been involved in ICHEIC's negotiations with the German Foundation and related his concern to the Committee on Government Reform of the U.S. House of Representatives on November 8, 2001. **(Exhibit 9)** In his statement, Director Shapo explained that negotiations with the German Foundation had dominated ICHEIC activities for more than a year and a half.

“The Chairman and the Commission have been forced to divert attention and resources from the basic task of implementing the MoU as we negotiate with the Foundation. This has delayed many important aspects of ICHEIC business...

“...and I acknowledge that ICHEIC is probably not without blame of its own in these lengthy as yet unsuccessful negotiations, but I still feel comfortable expressing the view that the German insurance companies and the ICHEIC companies have been primarily responsible for the problems we have encountered.”

The information available to the MIA indicates that the insurance companies, whether signatories of the original MoU or companies that later signed-on as Commission participants, have also not been forthcoming in their negotiations with Chairman Eagleburger. It was only after the Chairman quit in January 2002 that the insurance company members of ICHEIC finally agreed to negotiate in good faith, giving him “unfettered authority to conclude negotiations with the German Foundation” and support on future decisions. He agreed to return as Chairman 24 hours later. The filing deadline was extended to September 30. **(Exhibit 10)**

V. INSURER REPORTS

To date, the MIA has not required any insurers to file reports under § 28-105. These reports were not deemed appropriate because the MIA had no reason to determine that the insurers were not fully participating in the work of ICHEIC. That position is also consistent with United States foreign policy, outlined in a letter dated March 7, 2001, from J.D. Bindenagel, Ambassador and Special Envoy for Holocaust Issues for the United States, to Christopher Bateman, Chairman of the Banking and Insurance Committee of the New Jersey General Assembly, which stated that not requiring insurer reporting before there is reason to believe companies are not cooperating fully is in accordance with the position of the U.S. State Department.

“Now is not the time for sanctions or other measures that divert attention from cooperation to confrontation. Although based on legitimate concern for Holocaust survivors, some state-level actions could undermine the work of the German Foundation, the ICHEIC and the Austrian settlement Fund, and provide a disincentive for those companies that would explore participation in these processes. Threats interfere with the conduct of international business, especially

in the cases of insurance companies that have agreed to cooperate fully with the ICHEIC to pay outstanding claims from the National Socialist era. Revocation of licenses and other punitive actions will shift the focus away from the claims resolution we all desire to a debate over those actions.” **(Exhibit 11)**

In 2001, the MIA received correspondence from six insurance companies doing business in Maryland, which independently reported that either their company did not do business in Europe during the Holocaust period or they are not associated with any international insurer who did.

VI. CONCLUSION

The Maryland Insurance Administration, in accordance with HB 177, has allowed the International Commission of Holocaust Era Insurance Claims to do its work unfettered. It was with full support of the ICHEIC relaxed claims process that Maryland citizens were encouraged to file claims, even if they had no documents to substantiate the claim or if they only “believed” a family member must have had a policy during that period. However, after more than four years of filing claims, first through the MIA and then directly with ICHEIC, not one Maryland resident has received any money.

As of May 24, 2002, there had been 456 claims by Maryland residents with only three offers made from non-ICHEIC companies, for a total of \$5,000.

456 claims

230 sent to MoU companies

155 awaiting responses

71 declined

0 offers from MoU companies

4 MoU companies have claims they haven’t decided on

3 offers made from non-MoU companies

223 claims not sent to companies

41 non-MoU companies

96 from Soviet Union, not insurance

40 being researched

46 repeat claims

During this time, however, ICHEIC administrative expenses have exceeded \$40 million, according to a report from the United States House of Representatives Committee on Government Reform.

Considering:

- the ongoing apparent stalemate on serious claims issues, including verification of lists of potential claimants,
- the reality that no Maryland citizen has ever been paid resulting in the loss of public confidence in the process endorsed and promoted by this Administration and Maryland law,
- the continuing inability of ICHEIC to move the process along more expeditiously,
- and the fact that ICHEIC has been operating for three years,

it seems apparent that ICHEIC is not moving efficiently toward the swift and equitable resolution of insurance claims by Holocaust victims as the statute requires.

However, the benefits to be gained from the statutory reporting requirement must be balanced against the concerns raised by the U. S. Department of State, as set forth in their letter to the New Jersey Assembly in 2001 (**Exhibit11**).

To balance these interests, the MIA intends to defer triggering the reporting requirement until December 31, 2002. If no appreciable progress is made before that date, the MIA will take all available steps to implement all provisions of § 28-105 *et seq.*

Exhibits List*

**These exhibits are not available electronically. Please submit a written request to the Holocaust Task Force Representative, Debbie Rosen McKerrow, for a full copy of the report.*

- Exhibit 1 Title 28 Insurance Article
- Exhibit 2 Title 31.16.07 COMAR
- Exhibit 3 ICHEIC Signatory Affiliates
- Exhibit 4 Florida Commissioner Gallagher letter re: home health care –12/01
- Exhibit 5 Yad Vashem information - 12/01
- Exhibit 6 Claims packet
- Exhibit 7 Total claims filed by state – 12/01
Summary of claims by state – 2/02
- Exhibit 8 NAIC resolution – 9/01
NAIC press release – 9/01
- Exhibit 9 Congressional testimony - Illinois Commissioner Nathaniel Shapo– 11/01
- Exhibit 10 Statement from companies after Chairman quit – 1/02
Filing deadline extension announcement - 1/02
- Exhibit 11 Letters from Ambassador Bindenagle - 3/7/01, 3/12/01
- Exhibit 12 MIA news release on deadline approaching – 1/02
- Exhibit 13 Selection of news articles
 - Slave Labor Article – 5/01
 - Holocaust Insurers Want Expenses Paid – 7/01
 - Eagleburger Quits – 1/02
 - Deadline Extended – 1/02
 - Baltimore *Sun* article – 2/02
 - Regulators Threaten Lawsuit 4/02
 - Threat From Illinois Gets Alliances to Yield – 4/02