

110TH CONGRESS
1ST SESSION

H. R. 1746

To require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2007

Ms. ROS-LEHTINEN (for herself, Mr. WEXLER, Mr. CANTOR, Mr. PENCE, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Foreign Affairs and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Insurance
5 Accountability Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Holocaust, an event in which millions
2 of people endured enormous suffering through tor-
3 ture and other violence, including the murder of
4 6,000,000 Jews and millions of others, the destruc-
5 tion of families and communities, and the theft of
6 their assets, was one of the most heinous crimes in
7 human history.

8 (2) Before and during World War II, millions
9 of people purchased insurance policies to safeguard
10 family assets, plan for retirement, provide for a
11 dowry, or save for their children's education.

12 (3) When Holocaust survivors or heirs of Holo-
13 caust victims presented claims to insurance compa-
14 nies after World War II, many were rejected because
15 they did not have death certificates or physical pos-
16 session of policy documents that had been con-
17 fiscated by the Nazis or lost in the devastation of
18 the Holocaust.

19 (4) In many instances, insurance company
20 records and records in government archives are the
21 only proof of the existence of insurance policies be-
22 longing to Holocaust victims.

23 (5) Holocaust survivors and heirs have been at-
24 tempting for decades to persuade insurance compa-
25 nies to settle unpaid insurance claims.

1 (6) In 1998, the International Commission on
2 Holocaust Era Insurance Claims (in this section re-
3 ferred to as the “ICHEIC”) was established by the
4 National Association of Insurance Commissioners in
5 cooperation with several European insurance compa-
6 nies, European regulators, the Government of Israel,
7 and non-governmental organizations with the prom-
8 ise that it would expeditiously address the issue of
9 unpaid insurance policies issued to Holocaust vic-
10 tims.

11 (7) On July 17, 2000, the United States and
12 Germany signed an Executive Agreement in support
13 of the German Foundation “Remembrance, Respon-
14 sibility, and the Future”, which designated the
15 ICHEIC to resolve all Holocaust-era insurance poli-
16 cies issued by German companies and their subsidi-
17 aries.

18 (8) On January 17, 2001, the United States
19 and Austria signed an Executive Agreement, which
20 designated the ICHEIC to resolve all Holocaust-era
21 insurance policies issued by Austrian companies and
22 their subsidiaries.

23 (9) Between 1998 and the closing of the
24 ICHEIC claims deadline on December 31, 2003, few
25 names of the Jewish policy holders from Eastern

1 Europe were published, though more than two-thirds
2 of the Jewish population of the territory occupied by
3 the Nazis and their allies were from Eastern Eu-
4 rope.

5 (10) The ICHEIC is scheduled to close in 2007
6 without the disclosure of thousands of names of poli-
7 cies sold to Jewish residents of Europe prior to
8 World War II as of February of 2007.

9 (11) With the ICHEIC process essentially com-
10 pleted, companies holding Holocaust-era insurance
11 policies continue to withhold names of owners and
12 beneficiaries of thousands of insurance policies sold
13 to Jewish customers prior to World War II.

14 (12) Experts estimate that the value in 2006 of
15 unpaid life, annuity, endowment, and dowry insur-
16 ance theft from European Jewry from the Holocaust
17 and its aftermath ranges between \$17,000,000,000
18 and \$200,000,000,000.

19 (13) As of the latest report by the ICHEIC on
20 February 20, 2007, the value of claims paid in rec-
21 ognition of victims' policies was approximately
22 \$250,000,000 and fewer than 5 percent of the poli-
23 cies estimated to have been sold to Jews at the be-
24 ginning of World War II have been paid through
25 ICHEIC.

1 (14) As of 2006, ICHEIC has not provided the
2 State Department with the information required by
3 paragraphs (3) through (7) of section 704(a) of the
4 Foreign Relations Authorization Act, Fiscal Year
5 2003 (Public Law 107–228), which requires the Sec-
6 retary of State to report to the appropriate congres-
7 sional committees on the status of the implementa-
8 tion of the Executive Agreement between Germany
9 and the United States.

10 (15) In *American Insurance Association, Inc.,*
11 *v. Garamendi*, the United States Supreme Court
12 held that under the supremacy clause of the Con-
13 stitution of the United States, executive agreements
14 and Federal Government policy calling for insurance
15 claims against German and Austrian companies to
16 be handled within ICHEIC preempted State laws
17 authorizing State insurance commissioners to sub-
18 poena company records and require publication of
19 the names of Holocaust era policy holders.

20 (16) In the *Garamendi* case, the Supreme
21 Court stated that Congress, which has the power to
22 regulate international commerce, and prescribe Fed-
23 eral Court jurisdiction, had not addressed disclosure
24 and restitution of Holocaust victims' insurance poli-
25 cies.

1 (17) Subsequent court decisions have dismissed
2 survivors' suits against Assicurazioni Generali,
3 S.p.A., even though there is no executive agreement
4 between the United States and Italy.

5 (18) Congress believes that United States
6 courts do currently have jurisdiction to entertain ac-
7 tions by Holocaust victims and heirs of Holocaust
8 victims to recover insurance proceeds sold to their
9 families before the Holocaust.

10 (19) Due to lower court interpretations of the
11 Garamendi case, this Act expresses the intent of
12 Congress to legislate to the maximum extent allowed
13 by the Constitution regarding the rights of Holo-
14 caust survivors and the heirs and beneficiaries of
15 Holocaust victims to obtain information from insur-
16 ers and to bring actions in United States courts to
17 recover unpaid funds from entities that participated
18 in the theft of family insurance assets or the affili-
19 ates of such entities.

20 (20) The ICHEIC either chose not to pursue or
21 did not put forth sufficient effort to investigate or
22 obtain restitution for forms of insurance other than
23 life, annuity, endowment, or dowry insurance sold to
24 Holocaust victims, despite documentation that other
25 forms of insurance benefits such as property and

1 casualty insurance, disability insurance, health in-
2 surance, transport insurance, and marine insurance
3 were also improperly withheld from Jews, nor did
4 the ICHEIC make sufficient effort to investigate the
5 records of reinsurers who provided coverage for
6 Jews' policies prior to World War II, despite evi-
7 dence that reinsurers and reinsurance played a sig-
8 nificant role in the theft of the family assets of Hol-
9 ocaust victims.

10 (21) Disclosures in 2006 concerning the vast
11 Nazi archives at Bad Arolsen Germany, which have
12 been closed to direct access by Holocaust survivors,
13 families of Holocaust victims, and researchers since
14 1955, underscores the necessity a comprehensive
15 opening of all archival sources of information for
16 Holocaust victims and their families.

17 (22) Insurance payments should be expedited to
18 the victims of the most heinous crime of the 20th
19 Century to ensure that justice is served.

20 (23) States should be allowed to collect Holo-
21 caust-era insurance information from any insurance
22 companies that want to do business in such States.

23 (24) Tens of thousands of Holocaust survivors
24 around the world, including in the United States,
25 live below or near the poverty level, and cannot meet

1 their basic day-to-day needs for food, medicine, shel-
2 ter, and other necessities.

3 (25) This Act will enable survivors, heirs, and
4 beneficiaries to obtain compensation commensurate
5 with the real monetary value of their losses, and to
6 penalize unjustly enriched insurers for their fraudu-
7 lent, deceptive, and unfair practices, which continue
8 to the present day, and to deter such conduct in the
9 future.

10 (26) Holocaust victims and their families should
11 be able to recover claims arising from Holocaust era
12 insurance policies and the Federal Government
13 should be able to recover for the unjust enrichment
14 of insurers in Federal court when they consider it
15 necessary to seek redress through the judicial sys-
16 tem.

17 (27) Under the circumstances faced by Holo-
18 caust victims and their families, the courts of the
19 United States should be open to Holocaust victims
20 and their families for a reasonable number of years
21 after enactment of this Act, without regard to any
22 other statutes of limitation.

1 **SEC. 3. HOLOCAUST INSURANCE REGISTRY.**

2 (a) ESTABLISHMENT AND MAINTENANCE.—Chapter
3 21 of title 44, United States Code, is amended by adding
4 at the end the following:

5 **“§ 2119. Holocaust Insurance Registry**

6 “(a) ESTABLISHMENT.—The Archivist shall establish
7 and maintain a collection of records that shall—

8 “(1) consist of the information provided to the
9 Archivist under section 5 of the Holocaust Victims
10 Insurance Relief Act of 2007;

11 “(2) be known as the Holocaust Insurance Reg-
12 istry.

13 “(b) PUBLIC ACCESS TO THE RECORDS.—The Archi-
14 vist shall make all the aforementioned records accessible
15 to the public and searchable by means of the Internet and
16 by any other means the Archivist deems appropriate.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 at the beginning of chapter 21 of title 44, United States
19 Code, is amended by adding at the end the following:

“2119. Holocaust Insurance Registry.”.

20 (c) AGREEMENTS WITH EUROPEAN COUNTRIES.—

21 (1) AGREEMENTS.—The Secretary of State
22 shall seek to enter into agreements with European
23 countries to make available to the Holocaust Insur-
24 ance Registry information on covered policies that is

1 stored in the archives or other government reposi-
2 tories of such countries.

3 (2) REPORT.—Not later than 6 months after
4 the date of the enactment of this Act, and every 6
5 months thereafter, the Secretary of State shall sub-
6 mit to Congress a report on efforts to carry out this
7 subsection.

8 **SEC. 4. DISCLOSURE OF HOLOCAUST-ERA POLICIES BY IN-**
9 **SURERS.**

10 (a) REQUIREMENT.—An insurer shall file, in an elec-
11 tronic format, with the Secretary of Commerce the fol-
12 lowing information:

13 (1) The first name, last name, date of birth,
14 and domicile of the policyholder of each covered pol-
15 icy issued or reinsured by the insurer or a related
16 company of the insurer.

17 (2) The name of the entity that issued the cov-
18 ered policy.

19 (3) The name of the entity that is responsible
20 for the liabilities of the entity that issued the cov-
21 ered policy.

22 (b) FILING.—Information under subsection (a) shall
23 be filed not later than 90 days after the date of the enact-
24 ment of this Act.

1 **SEC. 5. PROVISION OF INFORMATION TO ARCHIVIST.**

2 The Secretary of Commerce shall provide to the Ar-
3 chivist of the United States any information filed with the
4 Secretary under section 4(a) promptly after the filing of
5 such information.

6 **SEC. 6. PENALTY.**

7 The Secretary of Commerce shall assess a civil pen-
8 alty of not less than \$5,000 for each day that an insurer
9 fails to comply with the requirements of section 4, as de-
10 termined by the Secretary.

11 **SEC. 7. USE OF AMOUNTS RECEIVED AS CIVIL PENALTIES.**

12 To the extent or in the amounts provided in advance
13 in appropriation Acts, the Archivist of the United States
14 may use amounts received by the Government as civil pen-
15 alties under section 6 to maintain the Holocaust Insurance
16 Registry.

17 **SEC. 8. NOTIFICATION.**

18 (a) INITIAL NOTIFICATION.—Not later than 180 days
19 after the date of the enactment of this Act, and periodi-
20 cally thereafter, the Secretary of Commerce shall notify
21 each State's commissioner of insurance of the identity of
22 each insurer that has failed to comply with the require-
23 ments of section 4 or has not satisfied any civil penalty
24 for which the insurer is liable under section 6.

25 (b) REQUESTS BY STATES.—On request by the com-
26 missioner of insurance of a State concerning an insurer

1 operating in that State, the Secretary of Commerce shall
2 inform the commissioner of insurance whether the insurer
3 has failed to comply with the requirements of section 4
4 or has not satisfied any civil penalty for which the insurer
5 is liable under section 6.

6 **SEC. 9. STATE HOLOCAUST INSURANCE STATUTES.**

7 (a) PREEMPTION.—Nothing in this Act preempts—

8 (1) any State law requiring an insurer in such
9 State to disclose information regarding covered poli-
10 cies sold or for which reinsurance was provided; or

11 (2) any rights or remedies available to a claim-
12 ant under State law relating to a covered policy.

13 (b) SENSE OF CONGRESS.—It is the sense of the
14 Congress that if any litigation challenging any State law
15 described in subsection (a) is dismissed because the
16 State’s commissioner of insurance chooses to rely on this
17 Act and therefore no longer seeks to enforce the State law,
18 each party should bear its own legal fees and costs.

19 **SEC. 10. FEDERAL CAUSE OF ACTION FOR COVERED**
20 **CLAIMS.**

21 (a) FEDERAL CAUSE OF ACTION.—

22 (1) IN GENERAL.—There shall exist a Federal
23 cause of action for any claim arising out of or re-
24 lated to a covered policy against any insurer or re-
25 lated company.

1 (2) EFFECT ON OTHER CAUSES OF ACTION.—

2 An action under paragraph (1) shall be maintainable
3 in addition to any cause of action arising under
4 State or international law.

5 (3) STANDING.—A claim under paragraph (1)
6 may be brought by the person who purchased such
7 covered policy, a beneficiary or heir of such person,
8 or an assignee of such person or a beneficiary or
9 heir of such person.

10 (4) TREBLE DAMAGES; INTEREST.—In an ac-
11 tion under this subsection, the measure of damages
12 shall be not less than three times the amount of—

13 (A) the claim under the covered policy in
14 United States dollars as of December 31, 1938;
15 and

16 (B) interest at a rate of 6 percent per year
17 compounded annually from the date when the
18 claim for which an action exists under this sub-
19 section could have first been made until the
20 date of judgment under this subsection.

21 (5) ATTORNEYS FEES.—In an action under this
22 subsection, a court shall award a successful claimant
23 reasonable attorneys fees and costs incurred in in-
24 vestigating and prosecuting the claim.

1 (b) SUBJECT MATTER JURISDICTION.—The district
2 courts shall have original jurisdiction of any civil action
3 arising out of or related to a covered policy (whether
4 brought under subsection (a) or otherwise).

5 (c) PERSONAL JURISDICTION.—Notwithstanding any
6 provision of Rule 4 of the Federal Rules of Civil Procedure
7 to the contrary, in a civil action arising from or related
8 to a covered policy (whether brought under subsection (a)
9 or otherwise) commenced in a district where the defendant
10 is not a resident—

11 (1) the court may exercise jurisdiction over
12 such defendant on any basis not inconsistent with
13 the Constitution of the United States; and

14 (2) service of process, summons, and subpoena
15 may be made on such defendant in any manner not
16 inconsistent with the Constitution of the United
17 States.

18 (d) RETROACTIVE APPLICATION.—This Act shall
19 apply retroactively to any claim arising out of or related
20 to a covered policy to the fullest extent permitted by the
21 Constitution of the United States, including claims pre-
22 viously dismissed on the ground of executive preemption
23 and claims for which class action settlements occurring
24 prior to the effective date of this Act purport to effect
25 a release of claims not accompanied by an actual payment.

1 (e) STATUTE OF LIMITATIONS.—Any action brought
2 under this Act shall be filed not later than 10 years after
3 the effective date of this Act.

4 **SEC. 11. DEFINITIONS.**

5 In this Act:

6 (1) COMMISSIONER OF INSURANCE.—The term
7 “commissioner of insurance” means the highest
8 ranking officer of a State responsible for regulating
9 insurance.

10 (2) COVERED POLICY.—The term “covered pol-
11 icy” means any life, dowry, education, property or
12 other insurance policy that was—

13 (A) in effect at any time after January 30,
14 1933, and before December 31, 1945; and

15 (B) issued to a policyholder domiciled in
16 any area that was occupied or controlled by
17 Nazi Germany or by any ally or sympathizer of
18 Nazi Germany at any time during the period
19 described in subparagraph (A).

20 (3) INSURER.—The term “insurer” means any
21 person engaged in the business of insurance (includ-
22 ing reinsurance) in interstate or foreign commerce,
23 if the person or a related company of the person
24 issued or reinsured a covered policy, regardless of

1 when the related company became a related company
2 of the insurer.

3 (4) RELATED COMPANY.—The term “related
4 company” means an affiliate, as that term is defined
5 in section 104(g) of the Gramm-Leach-Bliley Act
6 (15 U.S.C. 6701(g)).

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