UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: ASSICURAZIONI GENERALI S.p.A HOLOCAUST INSURANCE LITIGATION	)	MDL 1374 (GBD) M21-89
This Document Applies to:	)	
CORNELL v. ASSICURZIONI GENERALI, S.p.A.	)	97 Civ. 2262 (GBD)
SCHENKER v. ASSICURAZIONI GENERALI, S.p.A	)	98 Civ. 9186 (GBD)
SMETANA v. ASSICURAZIONI GENERALI, S.p.A.	)	00 Civ. 9413 (GBD)

OBJECTIONS TO PROPOSED CLASS ACTION SETTLEMENT

These objections to the proposed class action settlement are filed on behalf of class members Jack Rubin, Alex Moskovic, David Mermelstein, Irene Mermelstein, Fred Taucher, Hans Lindenbaum, Hanna Hareli, and David Grinstein.[1] The Objectors are all Holocaust survivors who applied for insurance benefits through the International Commission for Holocaust Era Insurance Claims (ICHEIC), and whose claims were denied or ignored for several years. Ms. Hareli and Mr. Grinstein join the six other Objectors who objected to the original settlement on January 16, 2007. This filing incorporates by reference the previous filings by Objectors Rubin, et al., and will submit additional information, much of which post-dates the

[1] Mr. Moskovic and Mr. Rubin testified on October 3, 2007, before the House of Representatives Committee on Foreign Affairs, Europe Subcommittee, on HR 1746, the Holocaust Insurance Accountability Act of 2007. The legislation, which passed the Foreign Affairs Committee on unanimous consent on October 23, 2007, would require insurers to disclose all names of policy holders from the pre-Holocaust era, and clarify the rights of insureds, heirs, and beneficiaries to bring civil actions in U.S. courts against insurers who failed to pay family policies. Their written statements are attached hereto as Exhibits 1 and 2. The webcast of the entire hearing can be viewed at http://foreignaffairs.house.gov/sub_europe.asp.

court's February 28, 2007 approval of the original settlement agreement, further supporting the survivors' objections.[2]

A. Introduction

The settlement is likely to leave unpaid over 100,000 of the 110,000 life/annuity/endowment policies Generali and its affiliates sold to Jewish customers who became Holocaust victims.[3] Therefore, the overwhelming majority of the class, which by definition includes *all* purchasers, beneficiaries, and heirs of those 100,000-plus unpaid policies, will have their rights foreclosed without any chance to receive a compensation for policies Generali sold to their parents, grandparents, aunts, uncles, and other loved ones before the Holocaust. The conservative estimated value of the sum Generali will pocket via the settlement is $2 billion. Zabludoff Affidavit, Exhibit 3.[4]

The settlement is based, and adopts as legally final, the results of the International Commission for Holocaust Era Insurance Claims (ICHEIC), which was originally created as a non-binding, voluntary, "nonadversarial" tribunal for survivors and heirs to recover pre-war

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[2] The prior filings include the January 16, 2007 Objections to Proposed Class Action Settlement, January 29, 2007 Notice of Filing Supplemental Authority; January 30, 2007 Objectors' Reply to Class Counsel and Generali Responses to Survivors' Objections; February 2, 2007 Letter to the Honorable George B. Daniels; and February 26, 2007 Objectors' Response to Proposed Amendment to Settlement Agreement. This filing also incorporates the appendices filed in the Second Circuit Court of Appeal in Appeals No. 07-1350 and 05-5612.

[3] The 110,000 estimate is based on ICHEIC economist Sidney J. Zabludoff's calculation that Generali had between 10% and 15% of the European Jewish insurance market. It represents 12.5% of the 875,000 life/annuity/endowment policies estimated to have been sold to European Jews that were in force in 1938. Mr. Zabludoff's sworn declaration and supporting calculations are attached hereto as Exhibit 3.

One of ICHEIC's working documents from Generali indicates that the relevant number of policies for this analysis is 150,000, *excluding* policies sold by its subsidiaries and affiliates. ICHEIC Annex 5 – Claims Handling Procedures – Generali.

[4] The $2 billion figure is based on conservative estimates of policy values and multipliers. It is also a fraction of the value owed survivors and heirs based on the likelihood that Generali was, or was substantially, a mutual enterprise in which case the policy holders have a claim on

insurance policies if they did not want to litigate. ICHEIC was a private, unregulated, secret enterprise that companies created, financed, and controlled between 1998 and 2007 while courts desisted in handling survivors' insurance claims. It rebuffed Congressional inquiries into its claims handling practices, despite broad dissatisfaction among Holocaust survivors, and heirs of Holocaust victims, widely reported scandals, failure to publish more than a fraction of East European policy holders, denials not documented by companies whose records supposedly justified the denials, an other failures to effect its originally advertised promises. At its expiration, ICHEIC paid less than 3% of the insurance policies and values belonging to its customers who were victimized by the Nazis.[5] Zabludoff, Exhibit 3.

According to ICHEIC reports and Generali's court filings, Generali and the Generali Trust Fund in Israel ("GTF") had processed some 50,000 claims or inquiries between 1997 and 2007. They issued formal denials to 5,069 individuals, and made offers to 4,429. The 5,069 denials include cases in which Generali admits that the claimant or his or her relative had indeed purchased a Generali policy, but the company nonetheless rejected the claim. Many of these denials were based on information contained in its records which it did not provide to the claimants. Many other denials were based on "negative evidence," i.e. Generali asserted that the policy lapsed or was paid out prior to 1936, but also contended that the company no longer has

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the company's total assets. See Exhibit 4.

[5] According to Congressman Henry Waxman, "I was surprised and disappointed by the response of ICHEIC Chairman Lawrence Eagleburger during the hearing to questions regarding the administration of ICHEIC itself. When I pressed Eagleburger for more information about ICHEIC's $40 million in expenditures on salaries, office space, meetings and outreach, he became angry and said, 'I'm not going to sit here and spend my time to tell you something that is frankly none of your business.'" Exhibit 5. In addition, ICHEIC repeatedly refused to provide Congress with reports on its operations required by the Foreign Relations Authorization Act, FY 2003 (as enacted in Public Law 107-228). Exhibit 5.

the records to document what actually happened to the policy.[6] The 5,069 claimants who Generali denied despite clear evidence of a family policy have no chance to benefit from the deal forged by class counsel, which makes Generali's prior denials final and legally binding.[7]

Generali also handled another 40,000 claims and inquiries that without providing any formal answer or denial.[8] In many of those cases, despite the fact that the claims were for all practical purposes closed, ICHEIC sent those claimants sent letters stating that it was "continuing to look" for a family policy. If any of these applicants' families had Generali insurance, their claims would also be released under the settlement.[9]

Similarly, under the terms of the Settlement Agreement, any other Holocaust survivors or heirs or beneficiaries of insurance policies Generali sold to a Holocaust victim would have their claims released under the settlement if they do not opt out. This in principle, would include the heirs of the tens of thousands of policy holders whose families bought policies who never filed with ICHEIC – either because they did not hear about ICHEIC, because the relevant names were not posted on the ICHEIC website, or maybe the names were posted on the eve of the last filing deadline in 2003, long after the major official outreach had been completed, and after the companies had succeeded in dragging out the ICHEIC process to the point of such frustration

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[6] Mrs. Hareli, whose summary and correspondence is attached hereto as Exhibit 6, is a survivor whose claim was denied based on the practice of denying payment on known policies based on "negative evidence."

[7] In theory, claimants who have obtained "new evidence" to support their claim after it was previously denied might be able to recover the reduced ICHEIC value in the settlement. However, such new evidence is virtually impossible for ordinary survivors to obtain after their lives were destroyed, especially as the primary source of such information, Generali's records, remain closed.

[8] Objectors' Alex Moskovic's claim was in fact handled and rejected by Generali, but he was not provided with any formal denial notification by Generali or ICHEIC.

[9] As Objectors noted at the Court's status conference on the notice, Generali had received numerous inquiries from Holocaust survivors in the 50 years following WWII prior to the institution of ICHEIC. These individuals were entitled to individual notice and Objectors

and disillusionment among survivors and family members that it had become something of a cruel joke.[10]

Therefore, tens of thousands of class members stand to gain no benefit from the settlement which would nevertheless require them to release their rights against Defendant Generali. Their due process and Rule 23 rights are violated by the settlement either because (1) their ICHEIC/Generali denial would become fixed in law without their having any possible right to benefit, or (2) they never knew their family members who were murdered in the Holocaust owned a Generali policy for which they might be a beneficiary or heir, yet their right would also be foreclosed without any possible benefit. Such a result violates the doctrine of this Circuit set forth in *National Super Spuds, Inc. v. National Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981).

B. The Settlement Violates Due Process and Rule 23 By Compromising Claims For No Consideration and Failing to Give Adequate Notice to Class Members.

1. The Settlement Compromises the Rights of Tens of Thousands of Class Members With Possible Generali Policies For No Consideration.

The scope of the releases to be granted is significantly broader than the scope of the possible benefits and beneficiaries of the settlement, in violation of class members' Rule 23 and due process rights under *National Super Spuds, Inc., v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981).

In the original settlement, Objectors argued that the term "new claims" meant just what it said – only people who had not previously been filed with ICHEIC or Generali could make a claim under the settlement. Logically, it was inescapable that class members such as Appellants

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reserve the right to argue that failure to notify this population is grounds for reversal.

[10] Under *Amchem Products, Inc., v. Windsor*, 521 U.S. 591 (1997), it is doubtful that even the new notice ordered by the Second Circuit could be effective as to this "amorphous and

whose claims were denied or ignored would have had no opportunity to participate in the settlement. In response to the Objections, class counsel and Generali took the position that "new claims" could also include previously denied claims. But, they admonished, *without new evidence*, newly filed old claims would also be rejected again.

As a practical matter, the scope of benefits from the revised settlement remains unchanged, and it violates *Super Spuds*. The proposed scheme would release claims versus Generali by individuals such as Objectors who applied to ICHEIC in good faith and whose claims were arbitrarily denied without any opportunity for them to rebut Generali's denials unaccompanied by evidence they may have had in their records. It makes ICHEIC legally binding even though previous ICHEIC claimants did not agree to be bound by ICHEIC. The class action mechanism is not designed nor allowed to impose by compulsion that citizens be bound by a private, secret, foreign-based, star chamber system controlled by the entities who profited from betraying the families of the plaintiffs and unregulated by any court of governmental authority.

2. The Notice Violates Due Process and Rule 23 Because it is Confusing and Misleading.

The Notice fails to satisfy due process and Rule 23 because it does not fairly and accurately apprise potential class members of their rights under the settlement, including the right of class members to object, to exclude themselves, and that they will be bound by the settlement if they do not exclude themselves, etc. *See, e.g. Weinberger v. Kendrick,* 698 F.2d 62 (2d Cir. 1982). *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977)("notice must also contain information reasonably necessary to make a decision to remain a

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undefined" group.

class member and be bound by the final judgment or opt out of the action."). The confusion sown by the settlement and the class notice here is similar to the situation in *Super Spuds*, 660 F.2d at 20.

Objectors argued that the new Notice devised by the settling parties was confusing to the members of the class who will be releasing Generali if the settlement is approved, because most would not understand that prior ICHEIC denials will be legally binding on them if this Settlement is approved. Objectors urged the Court to require a statement immediately after the sentence about new claims on the summary page, stating: "If your previous claim was denied or you received a "humanitarian payment" of $1,000 from ICHEIC, and you do not have any new information to support a new claim, your rights against Generali will likely be terminated under the settlement unless you follow the steps to exclude yourself." Exhibit 7.

In addition, Objectors urged the Court to require the following sentences on the long form notice immediately after the "Settlement Terms," and before the "Bad Arolsen" section:

> IF YOU PREVIOUSLY APPLIED TO THE INTERNATIONAL COMMISSION FOR HOLOCAUST ERA INSURANCE CLAIMS (ICHEIC), GENERALI, OR THE GENERALI TRUST FUND (GTF) AND YOUR CLAIM WAS DENIED, OR IF YOU DID NOT RECEIVE A FINAL DECISION ABOUT A FAMILY POLICY, AND YOU DO NOT HAVE ANY NEW EVIDENCE OF A POLICY TO SUBMIT AS PART OF A NEW CLAIM, YOUR RIGHTS AGAINST GENERALI WILL BE TERMINATED UNLESS FOLLOW THE STEPS TO EXCLUDE YOURSELF FROM THIS SETTLEMENT.
>
> SIMILARLY, IF YOU RECEIVED A "HUMANITARIAN PAYMENT" FROM ICHEIC, AND YOU DO NOT HAVE ANY NEW EVIDENCE OF A POLICY TO SUBMIT AS PART OF A NEW CLAIM, YOUR RIGHTS AGAINST GENERALI WILL BE TERMINATED UNLESS YOU FOLLOW THE STEPS TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

Objectors also argued that the language of the Claim Form implied that claims may be validated based on anecdotal information, even though Generali's practice under ICHEIC had

been to deny claims unless both (a) the applicant or Generali has documentary record of a claim, and (b) Generali determines that the claim is "valid" under its interpretation of ICHEIC rules, i.e. a policy was listed in the 1936 Stato Fine files. The discussions below about the "phantom rule" and the "negative evidence rule" demonstrate that Generali's practice, eventually condoned by ICHEIC's Chairman, was *not* to approve claims based solely on anecdotal evidence.[11]

Another shortcoming of the Notice is that it, without the clarifying language suggested by Objectors, it gives the impression, with the "New Claim" forms attached to the Notice, that the Court itself is endorsing the settlement and encouraging recipients to file "New Claim" forms. Yet the filing of a new claim form is participation in the settlement, which will be prejudicial to the overwhelming number of class members who are relying on Generali to validate a claim.

Further, as described by Objector David Grinstein, the Hebrew language notice received by class members in Israel is biased in favor of promoting joinder in the settlement because it only contains only a *claim form* but not an opt-out form or a form for lodging objections. Exhibit 9. And, according to social worker Rizy Horwitz of NACHAS Healthnet, which serves a large segment of the Brooklyn Holocaust survivor community, survivors who received the Generali notice there were naturally inclined to file claims even though they have no evidence of a policy, because the nature of the process itself suggests that they will receive a payment, which most believe will be $1,000. These assumptions are contrary to the reality of the situation, but the result is that many class members, like Ms. Horwitz's clients, who are overwhelmingly poor and not fluent in the English language, will lose their rights against Generali despite having no

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[11] The blockbuster disclosures by ICHEIC Arbitrator and former New York Superintendent of Insurance Albert Lewis in the spring of 2007, see Exhibit 8 and discussion, *infra*, reinforce Objectors' observations that it is misleading to suggest Generali would approve a claim based solely on anecdotal evidence.

chance to benefit from the settlement. Exhibit 10.

3. Expansion of Settlement Class Does Not Justify Releases.

In addition to the points raised in previous filings, it is now apparent, as emphasized by class counsel at oral argument in the Second Circuit, that the settling parties decided that it would be appropriate to use the settlement mechanism to strip Jewish Holocaust survivors and their heirs and beneficiaries of their rights against Generali, with ICHEIC being the last and determining word, in order encourage Eastern European populations, primarily non-Jewish, who class counsel says was excluded from the ICHEIC process, to make a "new claim" to the Generali policy information center and have their "claims" adjudicated based on ICHEIC standards.[12]

Ironically, many of the current Objectors, and the survivor groups they have been elected to lead, consistently *opposed ICHEIC's focus on only Jewish policy holders.* In a letter to U.S. Attorney General Janet Reno in September 2000, filed in this record by Generali's counsel, the undersigned counsel, representing the South Florida Holocaust Survivors Coalition, stated:

> We do not support limiting recoveries to Jewish Holocaust victims, the underlying rationale for using the Yad Vashem database [to screen company policy holder lists]. Why shouldn't every policyholder or beneficiary or heir recover from these companies if they were denied their families' insurance benefits?

September 18, 2000 Letter from Samuel J. Dubbin to Attorney General Janet Reno, at page 11.[13]

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[12] The effort to create a new class of beneficiaries in Eastern Europe who class counsel believed had not been served by ICHEIC is also evident in the heavy orientation of the original A.B. Data Notice Plan in Eastern European countries.

[13] Similarly, Dr. Thomas Weiss, a child of survivors' who opted out of this settlement and whose appeal is pending with those of other opt-outs in Appeal No. 05-5612, et al., consistently opposed the limitation of insurance recoveries to only Jews who companies did not pay after

Nevertheless, this additional original limitation of ICHEIC does not warrant, legally or morally, a settlement where ICHEIC's failures are imposed on the tens of thousands of Jewish survivors and heirs whose families bought Generali insurance that ICHEIC failed to recover. This settlement does not gain validity by imposing legal releases on the original class by offering supposed benefits to a new group of individuals. Under *Super Spuds, Kendrick, Auction Houses, Amchem,* and *Ortiz,* the claims of the original plaintiff class can not be sacrificed arbitrarily under the guise of extending "benefits" to a wholly different group of people.[14]

C. The Alleged Safeguards of ICHEIC, Cited as Support for the Settlement Agreement, Are Not Supported By the Record.

The underpinning of the proposed settlement is that the ICHEIC regime and Generali's information systems are so thorough that their outcomes represent an honest basis to conclude that class members should be satisfied and bound by their results over the past several years. The Settlement Agreement Preamble and the operative provisions refer effusively to ICHEIC's origins, its purposes, membership, and its promises as cornerstones of the settlement itself. Among these factors was that ICHEIC's membership "included organizations representing the interests of victims of the World War II Holocaust, established 'auditing standards and procedures pursuant to which each of the company members, including Generali, have been audited," had "an appeal mechanism allowing ICHEIC claimants who wish to appeal the offers or responses made to them on their inquiries or claims by Generali or ICHEIC," and conducted an "extensive and world-wide publicity and notice campaign to announce ICHEIC's existence

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WWII. *See* Weiss Plaintiffs' Memorandum of Law In Opposition to Generali Motion to Dismiss, December 5, 2000, at 33 and note 29.

[14] Not surprisingly, after the first notice under the original settlement, Generali admitted that it received thousands of claims from residents of Russia, it did not sell any insurance prior to WWII. Joseph Treaster, "Appeals Court Extends Time for Suit on Holocaust Insurance

and its services in identifying possible insurance claims related to policies issued in Europe between 1920 and 1945."

ICHEIC's failures and inadequacies have been extensively documented in this Court, as well as in the media and in Congressional hearings. These objections present additional details of ICHEIC's failures alluded to in Objectors' prior filings, as well as relevant evidence that has come to light after the Court's February 28, 2007 decision approving the initial settlement, as amended. [15]

1. Audits

Not only are the "audits" relied upon in the Settlement Agreement itself, but Class Counsel and Generali repeatedly referred to the audits conducted in ICHEIC in the 2007 Fairness Hearings as support for approval of the settlement. Mr. Swift even purported to have seen the audit that gave him such confidence in the efficacy of the process. (Transcript of January 31, 2007 Hearing, at 13). As Objectors argued at the Fairness Hearing, as of that date, January 31, 2007, none of the ICHEIC audits had been made public as of that date, so there was no way for

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Payments" *The New York Times*, October 3, 2007, Exhibit 11.

[15] In response to the initial Objections, the Court urged and the settling parties agreed to amend the agreement to allow for claims arising from the Bad Arolsen, Germany, archive of the International Tracing Service of the Red Cross. Unfortunately, at this time, it is impossible to tell if relevant documents will be available to survivors and heirs within this time frame. Although the controlling countries finally ratified the amendment to allow the archive to be "opened," it will be years before all of the Bad Arolsen records are digitized and readily available to survivors and family members.

The obstacles faced in the opening of the Bad Arolsen archive, and the fact that it was maintained for the purposes of tracing and is not organized, nor digitized and sufficiently available, in a way to allow individuals readily to access the full scope of records there to determine whether or not it contains evidence of a Generali policy, is a reason that the entire concept of settling Holocaust victims' material claims without access to all relevant information is unprincipled and improper. In the case of Generali, the principal source of relevant information is and remains the company's archives, *which to this day remain hidden from claimants or any independent examiners. See* Thane Rosenbaum, "Losing Count," *The New York Times*, June 14, 2007, Exhibit 11.

class members or anyone else outside the newly formed settlement alliance, including the District Court, to ascertain exactly what those "audits" said or meant. However, it came as no surprise to Objectors that, as *was made public three weeks after this Court approved the settlement agreement*, the Generali Trust Fund (GTF), which handled all of the Generali ICHEIC claims between 2001 and 2004, was found to be *not in compliance with ICHEIC standards and rules* when audited in April 2005. The defects in the GTF were never corrected, yet class counsel and Generali relied on the "audits" to urge this Court to approve the settlement.

The errors identified included the revelation that many cases, the GTF failed to obtain the applicants' actual "water copy" records from Generali's headquarters even when the computer-generated matching score called for such a review. It found: "Failure to obtain and use the [policy] water copy in the matching process could lead to failure to identify a match and therefore to a claim being incorrectly rejected as 'No Match'." Exhibit 12.

Moreover, even the audits that "passed" under the extremely limited ICHEIC mandate do not offer a basis for approving the settlement. For example, the Deloitte & Touche LLP Stage 2 audit "passing" Generali Trieste, which was not even issued until March of 2007, states: "Our opinion . . . is not in any way a guarantee as to the conduct of Insurer in respect of any particular insurance policy or claim thereon at any time or in any particular circumstances." Exhibit 13.

2. Inadequate Publication of Names and Incomplete Archival Research

The Settlement Agreement boasts that ICHEIC conducted "extensive and world-wide publicity and notice . . . and identification of possible insurance claims related to policies issued in Europe between 1920 and 1945." However, it failed in the most elementary of these goals. Only a fraction of the names of the policyholders from that period of time published from Generali's major market countries, about 20%. January 16, 2007 Objections, at 14-15. Of the

names that were published, the vast majority were posted in late 2003, after the deadline for filing claims had been extended twice and a few months before the filing deadline. *Id.* And, ICHEIC did not evidently publish the names of any policy holders of Generali's subsidiaries and affiliates, even though the settlement purports to release claims against those entities as well.

Using the most conservative estimate of Jewish owned policies, ICHEIC published less than 60,000 of the names of more than 5 million Jews who lived in the countries where Generali sold most of its policies. *See* Statement of Congressman Henry Waxman, Committee on Government Reform, September 16, 2003. As noted in Objectors' January 16, 2007 filing, Generali provided a disk with 330,000 policy holder names to ICHEIC in 1998 which, by the summer of 2003 had yielded only 8,740 names on the ICHEIC website identified as having been sold by Generali. Later in the year, months before the filing deadline, and long after major publicity about the ICHEIC had ceased, another 36,142 names were added.

Why weren't all of the 330,000 policy holder names published? Objectors argued that allowing Generali to control which names were published on the ICHEIC web site was intended to, and did, inhibit the filing of claims by survivors and heirs. The Objection of class member David Grinstein explains in graphic detail the unexplained shortfall in the publication of policy holder names from Poland, as only some 11,000 policies from Poland were published despite the millions of Jews who lived in that country, and the tendency of Jews to occupy many professional and managerial positions in that country. Exhibit 9. Further, the Claims Handling Procedures Submitted by Generali to ICHEIC, included in the record in the underlying cases ("Annex 5 – Generali"), states that even the "Stato Fine" Generali claims to represent the entirety of its remaining data between 1936 and 1944 is incomplete for Poland: "For Poland, complete Reserve Registers exist for the period 1936 and 1939 only." Exhibit 14.

Similarly, as noted previously, the settlement also fails because it purports to cover not only Generali's main office and branches, but its operating subsidiaries and affiliates prior to the War, as well as companies Generali acquired after the end of WWII. Yet the ICHEIC only published names Generali provided from its Policy Information Center, which does not contain the names of policy holders from its subsidiaries and branches. The fact that ICHEIC did not have access to the records of Generali subsidiaries and affiliates was illustrated once again by Mr. Rubin's case, in which the claim was denied because Generali had not supplied the records of subsidiaries such as Generali Moldavia, whose plaque Mr. Rubin remembered, along with the name of the agent, being attached to his family's property. *See also* Letter of Victor Gluck, Exhibit 15.

Although it is true that ICHEIC established a mechanism to augment the list of names that the companies provided for publication, the research was inconsistent and incomplete. Unfortunately, this was inconsistent and incomplete. As noted in the January 16, 2007 Objections, at 15-16, researchers examined the Slovakian Central Property Office, which contained "more than 700 boxes of records dealing with the 'aryanization' of Jewish firms in Slovakia," including information about "the assets of the firms and of their Jewish owners . . . declared on a special form." However, the researchers searched only "a small sample" of those 700 boxes, which provided information about "18 policies." Final Report on External Research commissioned by the International Commission on Holocaust Era Insurance Claims, April 2004, available at www.icheic.org. Several of the Objectors families, and tens of thousands of class members who were or were related to Generali customers who lived in the Slovakia region and had businesses and therefore were likely to have had insurance, yet ICHEIC failed exhaustively

to search the relevant files[16]

In addition, the ICHEIC research report states that a section of one major archive in Berlin "comprises declarations on property belonging to the enemies of the Reich submitted by insurance companies and various custodians. Some 10,000 of about 1,000,000 existing files were researched and contributed 11,067 insurance policies." The obvious question from the report is why didn't ICHEIC look at the other 990,000 files? According to the reported finds, these unreviewed files likely have evidence of hundreds of thousands of insurance policies, based upon the yield for the 10,000 files examined. *Id.*, at 6.

It is also important to note that these files were, according to the Report, "submitted by insurance companies and various custodians." So, this information raises many important points, including not only the fact that the ICHEIC process failed to review a huge amount of relevant information for claimants, but contradicting Generali's and class counsel's continuous denials that there is any evidence that Generali or other insurers turned over customer information to the Nazis.

3. Appeals Were Biased Against Claimants.

After this Court approved the original settlement in February 2007, one of the ICHEIC appellate judges, former New York State Insurance Superintendent Albert Lewis, disclosed that he was pressured by the ICHEIC legal office to deny appeals by survivors and heirs that he considered to present valid claims, based on a "phantom rule" that violated the published ICHEIC rules. He disclosed, for the first time, and in the wake of ICHEIC's official closure, that he was pressured by ICHEIC's legal office that even survivors with persuasive anecdotal

[16] The same report notes that all of its investigations in Israeli archives yielded evidence of *no policies,* even though Israel's Yad Vashem Holocaust Museum has one of the most extensive collections of Holocaust information in the world.

evidence must overcome a "heavy burden" in order to be awarded money for a policy where the claimant could not produce documentary evidence. This "phantom rule" was first disclosed in *New York Jewish Week.* Exhibit 11.

Mr. Lewis filed an *amicus curiae* brief in the Court of Appeals stating not only that he witnessed a bias against claimants in ICHEIC appeals from the ICHEIC London office, but that it led to the *de facto* adoption of an unduly restrictive burden of proof on survivors by other Arbitrators as well. In that brief, he stated:

> In my experience as an arbitrator I witnessed bias against the claimants by ICHEIC's London office and especially as manifested by the administrator, Ms. Katrina Oakley. She demanded that ICHEIC arbitrator apply an erroneous and phantom burden of proof rule in deciding appeals, a rule that would force ICHEIC's arbitrators to deny an otherwise valid claim.

Lewis *Amicus* Brief, at 3. Mr. Lewis's Second Circuit submission is attached hereto as Exhibit 8.

Mr. Lewis explained that in at least two of the appellate decisions he reviewed, he concluded that the claimant had given plausible evidence that his family had an insurance policy, based on the "relaxed standards of proof" published in the ICHEIC manual and in the rules provided to claimants who interacted with ICHEIC. Yet, when he provided a draft opinion to the ICHEIC legal office to have it reviewed for administrative form, he was pressured to deny the claim. He wrote:

> She claimed in her E-mail of 11/26/03 that my awards would set a "precarious precedent" and that the claimant had not shown that it was plausible that a policy was issued. She quoted the following burden of proof rule that I was to use for determining the appeals as though it was a bona fide rule that was adopted by ICHEIC:
>
> When no written record of a policy is produced by the Claimant and the Company which is stated to have issued it can find no record of its existence, the

> burden of proving that a policy existed is a **heavy one** for the claimant. (Emphasis by Mr. Lewis).
>
> The direction and instructions to arbitrators are contained in the International Commission for Holocaust Era Insurance Claims BRIEFING MANUAL. It contains the Memorandum of Understanding signed by ICHEIC and the insurers including Assicurazioni Generali (Generali) that encompassed their agreement that described the method for the handling of claims of Holocaust survivors. **This document contained no rule that resembled in any manner or form that where no record of a policy is produced by the claimant and the company that the claimant's burden of proof is a heavy one. This rule is contrary to the intent of the MOU.**

Lewis Amicus Brief, Exhibit 8, at 4 (Emphasis by Mr. Lewis).

It is not widely known outside of the small circle of ICHEIC insiders and company lawyers and lobbyists, that even under the ICHEIC rules, *the companies themselves* were the entities that decided whether or not a claim met the "relaxed standards of proof" for the existence of a valid policy. There was a time when ICHEIC itself was supposed to provide independent reviews of the companies' decisions, but that check and balance was dispensed with at an early date.

The second level of protection for claimants was supposed to be the "independent" appeals process. Mr. Lewis's disclosures reveal that the appeals arbitrators were not in fact independent. No published rule, nor any policy or protocol known by the state regulators who were ICHEIC members, suggested that the legal office would play any role in the Arbitrators' decisions whether or not to uphold a claim or a denial. Moreover, in theory the Arbitrators' decisions were not "precedential" as Ms. Oakley suggested.

Mr. Lewis reported that the legal office sent him several other arbitrators' decisions that had adopted and applied the "heavy burden" standard notwithstanding that it was not present in any of the published ICHEIC rules and standards, and even though in the cases he was judging it

ran contrary to his decisions to give credence to the anecdotal evidence supplied by survivors regarding family policies. As Mr. Lewis explained:

> Ms. Oakley was improperly attempting to influence my deliberations as an arbitrator and was in violation of her position as an objective administrator. This conduct is not only improper and prejudicial to the claimants but it is an insidious influence that affects the appeals process. It is evident that this phantom rule has caused the denial of claims that could have resulted in monetary awards.

Lewis *Amicus* Brief, Exhibit 8, at 7.

Mr. Lewis's extensive recitation of the ICHEIC rules as published, as compared to the pressure applied by the ICHEIC headquarters for Arbitrators to apply the severely restrictive "phantom rule," is spelled out in detail in Exhibit 8. At a minimum, his blockbuster disclosures show that the "appellate process" cited by the Settlement Agreement as a basis for the supposed reliability of ICHEIC as a forum for this Court to rely on for a legal settlement was in fact administered, secretly and to the detriment of survivors and other claimants, in a way that made a mockery of the "relaxed standards of proof" advertised in the ICHEIC launch and subsequent public relations efforts.

> In sum, Ms. Oakley's rule was never accepted or promulgated by ICHEIC and she had no authority to promulgate any of ICHEIC's rules. Her "phantom rule" is a gross misstatement of the rules adopted by ICHEIC on the burden of proof. It places an erroneous and insurmountable burden on a claimant. It is materially and substantially different from the rules adopted and promulgated by ICHEIC and dooms the vast majority of the claimants who had no policy documentation.

Id.

4. <u>The Phantom Rule Was Applied to Deny Jack Rubin's Claim.</u>

It is now apparent that Objector Jack Rubin's claim was denied due to the "phantom rule" disclosed by Mr. Lewis from the ICHEIC legal office. Mr. Rubin filed a claim with ICHEIC stating that the building that housed his family home and his father's general store in

Vari (Czechoslovakia, later Hungary) had a sign affixed stating the building and premises were insured by "Generali Moldavia." Mr. Rubin's family was forcibly removed from their home in April of 1944 and taken to the Beregsastz Ghetto, and then deported to Auschwitz. His parents perished in the Holocaust but he survived. Mr. Rubin filed two claims with the ICHEIC, which named his parents Rosa Rosenbaum-Rubin and Ferencz Rubin, with their years of birth. He noted that when he returned from the camps, his family home and business were destroyed and he could not locate any records. His even noted that "[t]he agent's name was Joseph Schwartz. He did not survive the Holocaust."

In February 2004, he received a letter from the Generali Trust Fund in Israel which acknowledged that Generali Moldavia was a property insurance subsidiary of "the Generali Company" in Hungary, but denied any payment in the absence of a document proving the insurance. The letter stated that it could find no evidence of a life insurance policy in the main company's records for his parents or himself, but acknowledged that "the archives of the Generali company did not contain the water copies of the policies issued by subsidiaries." The appellate arbitrator held he lacked jurisdiction to review the property insurance denial.

The Arbitrator also upheld the denial of the life insurance claim based on Generali's representation that there was no evidence in its records pertaining to Mr. Rubin's family. He did not demand any actual evidence from Generali's records pertaining to Mr. Rubin's family, such as data on common customers between Generali Moldavia and any life insurance branch or subsidiary, or whether or not it had an agent named "Mr. Schwartz" in the region where Mr. Rubin's family lived.

The ICHEIC arbitrator stated the following in rejecting Mr. Rubin's claim:

> Where no written record of a policy can be traced by the Member Company, *the burden upon the Appellant to establish that a policy existed is a*

> *heavy one,* even when the burden is to establish that the assertion is "plausible" rather than "probable." Where the Appellant is not able to submit any documentary evidence in support of the claim, as in this case, the Appellant's assertions must have the necessary degree of particularity and authenticity to make it entirely credible in the circumstances of this case that a policy was issued by the Respondent.

The Arbitrator concluded that "Mr. Rubin has not met his burden of proof that the Respondent issued life insurance to his parents. As noted above the Appellant's submissions and recollections concern only property insurance and he makes no reference to life insurance an any point." The Appellate Arbitrator's decision is attached to the Declaration of Marco E. Schnabl in Connection with the Objections to Proposed Class Action Settlement, dated January 26, 2007.

Clearly, the Arbitrator's use of the "heavy burden" of proof imposed upon Holocaust survivors such as Mr. Rubin is contrary to the ICHEIC rules, and the adoption and application of this extraordinary "phantom rule" that was not only never formally adopted by ICHEIC, but in fact was contrary to the rules "relaxed standard of proof" that were supposed to be applied. Mr. Rubin's experience demonstrates the unfairness of the settlement.

5. ICHEIC Failed to Apply "Relaxed Standards of Proof" in Allowing Generali to Deny Claims Based on "Negative Evidence."

Objector Hanna Hareli's experience with ICHEIC is described in detail in her letter to the Court and attachments, which are Exhibit 6 to these objections. Mrs. Hareli's letter and the supporting documents demonstrate a classic example of the "negative evidence" rule. In Mrs. Hareli's case, she found her uncle Jakob Weisz's name on the ICHEIC web site and submitted a claim for his policy. The claim was forwarded to Generali which acknowledged that her uncle owned a 50,000 Czech Crown Generali policy, but concluded that it was either cancelled or surrendered prior to 1936 because it was not visible in the 1936 "Stato Fine" register. Generali

rejected the claim based on the "negative evidence" rule that was apparently approved by Chairman Eagleburger in June 2003.

As Mrs. Hareli eloquently describes, the "negative evidence" rule violates the supposed ICHEIC rules calling for "relaxed standards of proof." Under the Relaxed Standards of Proof, the existence of an insurance policy will be considered adequately substantiated by any one of the following . . . [including] an original or a copy of an insurance policy. . . ." (ICHEIC Guidelines C.2, at page 21). The policy produced for Mr. Weisz, Mrs. Hareli's uncle, clearly satisfies this guideline. With this information, the burden shifts under ICHEIC rules to the company to disprove the existence and terms of the policy: "Once a claimant substantiates the existence of a policy, the burden shifts to the company to show the status of the contract or to prove that the value of the contract has been adjusted or the contract has been paid." Important Note to Rule C.3, page 22 of ICHEIC Rules.

The rules further provide: If, in the face of evidence that a policy existed, a company is unable to demonstrate that a policy has been paid or that the value should otherwise be adjusted, the company should offer full payment of the sum insured under the policy...." When a company denies a claim, as Generali did with Mrs. Hareli, under the appellate guidelines, if a survivor establishes (i) that the insurance policy was issued by a Member company; and (ii) that the Claimant is the person entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled to pursuant to the Succession Guidelines," the burden shifts to the insurer to provide documentation that the policy was paid or lapsed.

Mrs. Hareli's rebuttal of the logic and morality behind the negative evidence rule are explained in detail in her attached letter of objection, Exhibit 6. The letter need not be summarized at length herein, though the following excerpt demonstrates the clarity her objection

will provide the Court on this additional failure of ICHEIC, particularly as it pertains to Generali. She writes:

> Generali's central argument (reflected and upheld also in the Arbitrator's decision), was the superior validity of the Stato Fine 1936 ledgers as negative evidence for denying claims concerning insurance policies absent from the ledgers. This validity is formalistically excused by claiming, that the ledgers have been audited by the ICHEIC process and therefore can be regarded as complete in order to be used as negative evidence. There is no indication about the way the audit was performed and there is no explanation how it can preclude the possibility of a policy's absence being caused by reasons other than surrendering or cancellation.

6. No authorized claimants' representatives served on ICHEIC

The Settlement Agreement relies in its Preamble that ICHEIC's membership "included organizations representing the interests of victims of the World War II Holocaust." This is not true. No survivors with claims, and no heirs with claims, were present. No chosen representative of claimants was present. The "Jewish" organizations on ICHEIC were the World Jewish Congress, the World Jewish Restitution Organization, the Claims Conference, and the State of Israel. None of these entities represents Holocaust survivors. In fact, none of them are even "survivor organizations." They do not and never did have the legal or moral authority to speak for or resolve issues involving survivors' insurance claims. See Moskovic Testimony, Exhibit 1, and Rubin Testimony, Exhibit 2. *See also* April 24, 2000 Letter from David Mermelstein, et al., to Deputy Secretary Stuart Eizenstat; and September 18, 2000 Letter from Samuel J. Dubbin to Attorney General Janet Reno. The Settling Parties have not produced any legal documentation that would support the proposition that any of these groups had the legal authority, either by statute or private agreement, to represent Holocaust survivors, heirs, or beneficiaries with Generali policies.

The Claims Conference has 24 board member organizations, only two of which are

survivor organizations. The board is not accountable to Holocaust survivors either legally or in fact. The WJC is a worldwide Jewish membership organization, and the WJRO is nothing more than an aggregation of the Claims Conference, and the WJC, and other non-survivor organizations. The State of Israel, despite its importance to Jews everywhere and to certainly to Holocaust survivors, has a multitude of national interests and is by no means authorized to represent the interests of survivors with insurance claims.

Even though nearly 100 people attended the ICHEIC meetings, there was no room for those whose rights were being decided. There were two survivors allowed in these meetings, but they were in the room because they are part of the Claims Conference. They were not elected or authorized by Survivors or claimants to decide their insurance rights.

There was room in these meetings for about dozens of the insurance companies' lawyers, publicists, and lobbyists from each of the insurance companies. Lawyers like Kenneth Bialkin, former President of the Anti Defamation League, are in the meetings, representing Generali. ADL's former lobbyist ADL lobbyist Harry Wall, who has served as Generali's lobbyist, was also in the meetings. But not claimants or their representatives.

Further, recent news reports cast serious doubts on the probity of many of these participants to serve in the role of negotiator of holy money such as survivors' claims. Minutes that Objectors have been able to obtain of the ICHEIC meetings indicate that the leading "voice" for the "Jewish side" on ICHEIC was Israel Singer, who simultaneously held the positions of Chairman of the World Jewish Congress, President of the Claims Conference, and President of the WJRO. In 2006, Mr. Singer was debarred from participating in financial decisions for the World Jewish Congress by the New York Attorney General due to his mishandling of the organization's finances. In 2007, he was dismissed by the President because of alleged financial

improprieties. In June of 2007, Mr. Singer was forced to decline to seek reelection as Claims Conference President. Exhibit 11.

The Claims Conference played several different and often conflicting roles on ICHEIC, leading one state commissioner to question the group's actions because of the conflict of interest. Further, the organization has now admitted that it paid an organization over $700,000 to pay a "consultant" friend of Mr. Singer's for work that the consultant cannot recall performing. Exhibit 11. And, an internal memorandum and news articles report that for several years, the organization failed to properly disclose its real estate holdings obtained from "heirless" German property. Exhibit 16.

7. The Settlement Does Not Require Generali to Disgorge Information It Provided About Its Jewish Customers to Axis Authorities.

ICHEIC never required the companies to produce their files of correspondence with Nazi and Axis authorities in which they turned over names and policy information about their Jewish customers. [17] In order to convince the District Court to approve the settlement, Class counsel ignored the well-documented collaboration of insurers including Generali in the forced redemption of Jews' insurance policies and other practices whereby the companies assisted in the pauperization of European Jews. They have also embraced Generali's untenable view that there is no way for the company to reconstruct records of policies sold to Jews, or to identify Jewish customers. The settling parties' arguments fly in the face of a mountain of historical evidence that the German Reich "prepared and retained in its files the names of all Jewish

[17] Objectors' prior filing, the still-unanswered complaints in the underlying cases, and a large number of documents filed therein, document Generali's active participation in the "Aryanization" of its customers' policies, as it provided Nazi and Axis authorities with information about their Jewish customers as part of the Axis powers twin program to annihilate the Jewish people and absorb their assets in the unparalleled depravity that was the Holocaust.

families in the Reich and persons having any Jewish ancestry. . . . These files were used for enforcing discriminatory measures against Jews and preparing transport lists of Jews to be taken from Germany and the occupied countries to the extermination camps in the East. Black, *War Against the Weak: Eugenics and America's Campaign to Create a Master Race*, 2003 (Excerpt is Exhibit 17).

Evidence of Generali's collaboration with the Nazi and Axis authorities was submitted previously with the earlier objections, and in the underlying cases. For the settling parties to suggest to this Court, with no support and in the face of specific evidence in this record and substantial historical evidence to the contrary, that Generali had and has no way of identifying its Jewish customers, is another insult to the victims and to history that this settlement would seek to sweep under the carpet.[18]

Conclusion

For the foregoing reasons, as well as for the reasons advanced in Objectors' prior submissions and arguments, the Settlement Agreement should not be approved by this Court.

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[18] Generali's participation in the confiscation of Jewish policies should not be surprising in that it dismissed its long-time President Edgardo Morpugo in 1938 due to the fact that he was Jewish, raising the ire of at least one United States insurance regulator. There has to date been no accounting of what happened to all of Generali's Jewish owners and their shares from 1938. Further, the evidence that Generali or many of its subsidiaries and affiliates were mutual companies in the 1930s and 1940s, such that Plaintiffs in the class are entitled not to just ICHEIC scrapings but are actually the owners of the company should give this Court pause about the fairness, adequacy, and reasonableness of the settlement. Instead it should be asking: "Who really owns Generali today?"

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail to Robert A. Swift, Esquire, Kohn Swift & Graf, P.C., 1 South Broad Street, 21st Floor, Philadelphia, PA 19107, rswift@kohnswift.com; Lawrence Kill, Esquire, Anderson, Kill & Olick, P.C., 1251 Avenue of the Americas, New York, NY 10020, lkill@andersonkill.com; Marco Schnabl, Esquire, Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, NY 10036, ; mschnabl@skadden.com; Morris Ratner, Esquire, Lieff, Cabraser, Heimann & Bernstein, LLP, 780 Third Avenue, 48th Floor, New York, NY 10017, mratner@lchb.com; Nancy Sher Cohen, Heller Ehrman, LLP, 333 S. Hope Street, Los Angeles, CA 90071, nancy.cohen@hellerehrman.com; and Yisroel Schulman, Esquire, New York Legal Assistance Group, 450 W. 33rd Street, 11th Floor, New York, NY 10001, yshculman@nylag.org, this 26th day of December, 2007.

Samuel J. Dubbin, P.A.

By: Samuel J. Dubbin, P.A.