

Compensating the unimaginable

MEGAN HOEY reports on the work of the International Commission on Holocaust Era Insurance Claims.

Since the end of World War II, Holocaust survivors and the heirs of Holocaust victims have sought ways to obtain compensation or restitution for the devastation of their lives and the theft or illegal distribution of their assets by the National Socialist (Nazi) regime. Claims have been made against individuals, governments, Swiss banks, insurance companies and corporations that profited from slave labour. Claims continue to be made now — 60 years since the end of the war.

Prior to and during the war, members of Jewish communities throughout Europe purchased insurance policies and annuities (sometimes referred to as 'poor man's Swiss bank accounts') including life, property, travel, fire, education, and dowry, as a means of achieving future financial security for their families. In some cases these insurance policies were confiscated by the Nazi regime or paid into blocked accounts; that is, paid into an account in the name of the beneficiary but for the benefit of the Nazi regime. In other cases policies were cancelled by insurance companies when policyholders who had been detained by the regime stopped paying their premiums.

Following the end of the war, those who attempted to claim on these policies were often turned away. Some claimants were told that the insurance companies no longer existed as legal entities or had otherwise been nationalised in Eastern Europe. Others were informed that records had been destroyed or that the policies had been cancelled. Still others were advised that in order to collect on legitimate policies they required death certificates — an appalling request to make of survivors and heirs.

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was created in 1998 after negotiations among European insurance companies, United States' insurance regulatory authorities, representatives of international Jewish and survivor organisations, and the State of Israel. The aim of ICHEIC was to provide a means for addressing the shortfalls of post World War II compensation and restitution programs of the 1950s and 1960s and has since provided an opportunity for thousands of Holocaust survivors and the heirs of Holocaust victims to submit insurance claims for the first time.

A number of European insurance companies (Generali, Zurich Insurance, Allianz, AXA, and Winterthur) have signed a Memorandum of Understanding which commits them to cooperating

fully with ICHEIC to expeditiously resolve all unpaid claims by:

- providing access to their relevant books, files, records, and archives
- contributing to the establishment of a humanitarian fund administered by ICHEIC
- contributing to the costs of investigations and audits by ICHEIC.

There are two key innovations: the valuation framework and the relaxed standard of proof demanded of claimants.

ICHEIC has universalised various European claims processing procedures to ensure consistency of approach by insurance companies. Detailed valuation guidelines, as determined by ICHEIC representatives from among Jewish groups, United States' insurance regulators, and companies, have been agreed by the participating companies. Claims are evaluated according to ICHEIC's valuation guidelines. To arrive at a present value for the original insured sum ICHEIC and its member companies apply complex multipliers to the individual policy's base value (taking into account the terms of the contract, the history of premium payments and the circumstances of the insured event). Claimants who do not know the value of the original policy are paid according to a table of averages.

Obviously survivors and the heirs of Holocaust victims do not have much, if any, documentation to substantiate their claims. Within the ICHEIC framework, insurance companies have accepted a relaxed standard of proof that takes into account the unique situation of Holocaust-era claimants. In assessing claims, insurance companies do not reject any evidence as being insufficiently probative of any fact necessary to establish the claim if the evidence provided is plausible in the light of all the special circumstances involved, including the destruction caused by World War II, the Holocaust, and the effluxion of time since the insurance policy was obtained. Where an insurance company cannot find any written record of a policy, the burden on the claimant to establish that a policy existed remains an onerous one, even when the burden is to establish that the assertion is 'plausible' rather than 'probable'. In that situation, to credibly support the assertion that a policy was issued by the company against which the claim is

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