THE INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS

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November 21, 2000

Professor Burt Neuborne
40 Washington Square South, room 307
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Dear Professor Neuborne,

The following information regarding the ICHEIC is in response to your October 30, 2000 letter to Chairman Lawrence Eagleburger.

BACKGROUND

The International Commission on Holocaust Era Insurance Claims ("ICHEIC") was established pursuant to a Memorandum of Understanding (the MOU) dated August 25, 1998, executed by several European insurance companies (the Member Companies)[1], non-government Jewish organizations, the State of Israel, and state insurance regulators[2]. The purpose of the ICHEIC was to "expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust." A copy of the MOU is attached hereto as Exhibit 1.

- [1] Assicurazioni Generali S. p. A (Generali), organized pursuant to the laws of Italy;
- Allianz Lebensversicherungs—AG (Allianz), organized pursuant to the laws of Germany;
- AXA, (AXA), organized pursuant to the laws of France;
- Zurich Insurance Company (Zurich), organized pursuant to the laws of Switzerland; and
- Winterthur, also organized pursuant to the laws of Switzerland.

The Swiss company, Basler Lebens-Versicherungs-Gesellschaft, was also a signatory to the MOU, but withdrew from the ICHEIC in January 1999.

The ICHEIC is a private, non-profit entity organized as an association (Verein) under the Swiss Civil Code. Lawrence S. Eagleburger, former U.S. Secretary of State, serves as Chairman, and Geoffrey Fitchew, who is also Chairman of the Building Societies Commission in England, is ICHEIC's Vice-Chairman. Its offices are maintained in Washington, D.C. and London, England.

In accordance with the MOU, ICHEIC has established a claims handling and valuation process to settle and pay individual claims, which is free of charge to the claimant. All applications must be filed with the ICHEIC by February 15, 2002.

Additionally, the MOU provides that ICHEIC will establish and administer a special fund consisting of two sections. One such fund described in Section 8A of the MOU is dedicated for claims on policies that (1) cannot be attributed to a particular insurance company, (2) relate to policies of companies no longer in existence, or (3) cover payments on policies of member companies that were either nationalized or paid, under Nazi-sponsored law, to a governmental authority that was not the named beneficiary of the policy.

The second Humanitarian Fund, described in Section 8B of the MOU, is for more general humanitarian purposes and is to be used for the benefit of needy victims of the Holocaust, or for other Holocaust-related humanitarian purposes.

Discussions within the ICHEIC on the possible uses of this 8B fund are still at a very preliminary stage, although it is anticipated that it will be used in part to provide help to Holocaust survivors along the lines of home care, food, and medical treatment. In any event, guidelines for the use of the humanitarian 8B fund will be established by ICHEIC, hopefully in the near future.

THE CLAIMS PROCESS

ICHEIC has instituted a claims process designed both to attract potential claimants and ensure that claims are fairly evaluated and resolved.

The fundamental components of this process are as follows:

- a global advertising and outreach program designed to make potential claimants aware of how claims can be filed with the ICHEIC, and assist them in filing claims where required;
- cost-free telephone lines, through which claimants can request claims forms with explanatory information and, once a claim is filed, obtain status reports;
- claims are registered with ICHEIC, through its "claims handling" agent (based in Gloucester, England), which distributes them to the appropriate insurance company, which, in turn, decides upon the validity of the claim based on relaxed standards of proof promulgated by ICHEIC;
- the claims-handling and investigation systems established by the MOU companies are being examined by independent auditors to determine whether they are in compliance with ICHEIC-promulgated standards;
- those who file claims against a named MOU insurer will have the right to appeal the company's decision to an independent arbitrator or panel of arbitrators.

The ICHEIC has published on its website lists of names of known policyholders, believed to be Holocaust victims, who may have unpaid policies with specific companies. These lists combine names submitted by the five MOU insurers and names of policyholders collected by ICHEIC researchers from external governmental archives (such as asset declarations by Jewish families). The website presently contains over 18,000 names and an additional 20,000 names from German archives will be posted shortly. ICHEIC will continue to update the lists as the ICHEIC independent research program continues.

THE OUTREACH PROGRAM

In February 2000, ICHEIC launched a worldwide claims process, through global advertising and outreach, whereby it invited Holocaust victims, their survivors, heirs or beneficiaries with claims on unpaid insurance policies from the Holocaust era to submit claims to the ICHEIC. The outreach program had three main components. First was the effort to contact Jewish organizations around the world that could assist the ICHEIC in making sure that their constituents were well informed about the claims process and how to contact ICHEIC. Second, the earned media component concentrated on the launch itself and immediate follow-up with news articles and answers to queries. Press conferences were held in Washington, DC; Budapest, Hungary; Tel Aviv, Israel; Buenos Aires, Argentina; and Sao Paolo, Brazil. These conferences were enhanced with widespread press notices and press briefings. Additionally, a phased advertising campaign followed the launch, pursuant to which advertisements appeared 1,000 times in mainstream and Jewish publications, promoting the ICHEIC process in 32 countries. Importantly, these outreach efforts were enhanced through extensive television and radio advertising in Israel.

SUPPORT FOR CLAIMANTS

ICHEIC provides free telephone lines, through which claimants can request a Claim Form and Claims Information Pack (Attached, Exhibit 2.) These materials are available in nine languages.

ICHEIC has retained D.F. King, of New York City, to operate a call center on its behalf. As of November 11, 2000, the call center had received 148,449 calls, including over 95,000 requests for information packs and claim forms.

ICHEIC's website (www.icheic.org), which is available in 23 languages, has received over 83,000 "hits" since the February 2000 claims launch. Nearly 13,000 claim forms have been downloaded from ICHEIC's website.

In addition, there has been considerable interest in the lists of dormant Holocaust-era insurance policies found on the website. The first lists contained the names associated with 9,000 dormant policies issued by ICHEIC insurance companies. An additional 9,500 names were obtained from the archives of state institutions, principally 1938 asset declarations of Austrian Jews (which included insurance) presently archived in Vienna.

We expect the listings on the website to increase as further policies are identified by member companies, and as our extensive research effort continues in Germany, the Czech Republic and Poland.

RESULTS OF THE CLAIMS PROCESS TO DATE

As of October 13, 2000, the ICHEIC front-end claims processor (Eastgate) had received over 53,000 claims. Of the more than 36,000 claims processed so far, approximately 2,300 identified companies participating in ICHEIC; approximately 2,700 involved non-ICHEIC companies; and approximately 31,000 named no insurance company.

The vast majority of the claimants are from Israel and the United States. Numerous claims have also been received from the Former Soviet Union, Poland, Germany, Hungary and the Czech Republic.

To date, ICHEIC companies have made approximately 300 offers, with a total value of approximately $3.7 million.

THE CLAIMS PROCEDURE

Claims, which identify an ICHEIC company, are forwarded to that company for research and investigation. If the claim does not identify the issuer of the policy, it will be circulated to those

ICHEIC companies that operated in the relevant insurance market. The companies are obligated to check the claim against their own databases. Additionally, claims are checked against the

ICHEIC's own research database, and any matching information will be sent to the appropriate company.

ICHEIC companies will investigate the claims, applying relaxed standards of proof, which are to be liberally construed in favor of the claimants. To ensure that ICHEIC procedures and standards are being honored, each company's procedures are being audited by independent auditors appointed by them. The reports of these independent auditors will be reviewed by Peer Review auditors appointed by ICHEIC.

Eastgate will notify the claimant that it has received the claim within 48 hours of its arrival. Before a claim is sent on to the relevant company or companies, in appropriate cases Eastgate will arrange for the claim to be translated into English (or the language of the company) and/or request further information or documentation from the claimant. It is ICHEIC's objective that member companies reach a decision on a claim within 90 days after they have received the claim and supporting documentation. Where this target cannot be achieved (because of the need for further research), a status report will be sent to the claimant. As discussed more fully below, negotiations for handling claims on the German companies, which have declined to join ICHEIC, are ongoing with the German Insurance Association.

The burden (albeit a relaxed one) rests with the claimant to establish the existence of a policy. Once established, the burden shifts to the member company to demonstrate that the insurance policy was cancelled before the insured event occurred (for reasons not associated with the

Holocaust), that a person other than the claimant is entitled to payment, or that the proceeds of the policy were paid, compensated, or otherwise restituted.

Any offer made by a member company will be in accordance with agreed valuation formulae set out in the ICHEIC Valuation Guidelines.

If the Member Company declines to honor the claim, the claimant will be notified accordingly.

The member company decision completes the first part of the ICHEIC decision-making process. It should also be noted that the MOU companies have agreed to pay claims emanating from Central and Eastern Europe, even though their businesses were nationalized after World War II by Communist regimes; it is understood that payment on such claims are considered to be of a "humanitarian" nature.

If claimants identify a company that no longer exists, or if a policy cannot be attributed to any particular company, ICHEIC may provide relief, using the Specific Humanitarian Section of the Special Fund created under section 8A1 of the MOU. Ground rules for the operation of this Special Fund are still under discussion.

APPEALS FRAMEWORK

The claimant has 120 days from receipt of the Member Company's decision to lodge an appeal, together with a statement of the grounds of appeal. The claimant may also submit any new information not submitted with his/her original claim form.

It is envisaged that an ICHEIC Appeals Tribunal will be constituted as an independent group of arbitrators under the supervision of the President and Vice President of the Tribunal. The ICHEIC has received expressions of willingness to serve on the Tribunal from some 80 arbitrators worldwide. The President of the ICHEIC Appeals Tribunal is the Honorable

Abraham J Gafni, from Philadelphia, USA. The Vice-President is Sir Anthony Evans, a former U.K. Appeals Court Judge and current President of the Chartered Institute of Arbitrators in London, England.

The independence and impartiality of the ICHEIC Appeals Tribunal will be ensured by robust procedures for the nomination and selection of arbitrators. Arbitrators are required to apply

relaxed standards of proof and the ICHEIC's Valuation Guidelines and other claims handling guidelines. The rules of procedure are in the final stages of preparation.

THE GERMAN FOUNDATION INITIATIVE

On July 17, 2000, the United States government and the government of the Federal Republic of Germany (FRG) entered into an agreement (the Executive Agreement) establishing the Remembrance, Responsibility and Future Foundation. The Executive Agreement provides (*inter alia*), that ICHEIC shall be the means for settling insurance claims against German companies. Specifically, it states:

> *"The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims-handling procedures adopted by the ICHEIC and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such procedures and on the basis of additional claims-handling procedures that may be agreed among the Foundation, the ICHEIC, and the German Insurance Association."*

"A Law on the Creation of a Foundation—Remembrance, Responsibility and Future" (the Foundation Law) was passed by the German Bundestag on July 13, 2000, and took effect on August 12, 2000. The underlying objective of the Foundation Law is to establish a fund for the settlement of Holocaust-era claims, including insurance claims. In return, German companies, including insurance companies, expect "legal closure" in the United States.

The Foundation Law provides for the following allocation to the ICHEIC by the German Foundation:

"*150 million Deutschmarks for the ICHEIC to compensate unpaid or revoked and not otherwise compensated insurance policies of German insurance enterprises, including the costs incurred in this connection.*

If additional interest is earned from the monies made available to the Foundation, except for the monies intended for the Future Fund, up to 50 million Deutschmarks of this shall be made available to the ICHEIC to compensate insurance losses [defined in the same terms as the preceding provision], *for foreign subsidiaries of German insurance enterprises and for costs incurred in this connection, as soon as the monies are available.* [The monies referred to in these two sections*] may also be used for the other purposes in each case.]*

350 million Deutschmarks for the humanitarian fund of the ICHEIC.

100 million Deutschmarks may be made available [from the monies set aside for the Remembrance and Future Fund] *for other than its intended purpose, if well founded requests are filed based on insurance claims that could not be met under* [the preceding provisions]"

Prior to the passage of the foundation law, two German insurance companies with potentially significant Holocaust-era exposure (Gerling and Munich Re) had been invited to join ICHEIC; neither accepted. Additionally, ICHEIC has invited the German Insurance Association (GDV), representing all of the German insurance industry, to sign the ICHEIC MOU. The GDV has said that while it might be willing to be an "observer" within ICHEIC, it is not prepared to join the ICHEIC.

The GDV has accepted, in principle, that its member companies will be subject to some form of an audit and appeals procedure. However, at this date no agreement has been reached on how ICHEIC procedures and standards will be applied by GDV member companies. Although discussions are continuing, mechanisms to verify claims and to gauge the effectiveness of the

company's claims handling procedures through an audit in accordance with ICHEIC standards, are not agreed.

The GDV has agreed that the initial company decision would be subject to an independent review designed to insure compliance with Foundation Law and procedure. It has objected to the ICHEIC approach to appeals, indicating only a preference for its own yet to be developed procedures.

On the basis of our experience to date, it is not at all certain that a satisfactory agreement will be reached with the GDV. Assuming a satisfactory agreement can be reached with the GDV, the ICHEIC will need to negotiate an implementation agreement with the German Foundation.

As a result of the ICHEIC outreach program, there may be claimants against German companies covered by the Foundation. The outreach program invites potential claimants to send in claims on any German company, whether or not it belonged to the ICHEIC. To date, of the 29,000 ICHEIC claims which identify a country, approximately 4,000 relate to Germany. And, there are 1,180 claims, which name specific German companies (both ICHEIC and non-ICHEIC companies). We anticipate more claims on German companies relating to policies issued outside Germany (Austria, the Czech Republic, etc.).

Any agreement will be published on the ICHEIC website, which may also serve as an additional outreach to all existing claimants who have claimed on a policy sold by a German company.

Sincerely,

Neal M. Sher

Neal M. Sher
Chief of Staff