

No. 02-722

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**In the Supreme Court of the United States**

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AMERICAN INSURANCE ASSOCIATION, AMERICAN  
RE-INSURANCE COMPANY, *ET AL.*,

*Petitioners,*

v.

JOHN GARAMENDI, IN HIS CAPACITY AS COMMISSIONER  
OF INSURANCE FOR THE STATE OF CALIFORNIA,

*Respondent.*

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**On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit**

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED NOVEMBER 7, 2002

CERTIORARI GRANTED JANUARY 10, 2003

## TABLE OF CONTENTS

Appendix	Page
A. Relevant Docket Entries: United States District Court for the Eastern District of California . . . . .	1
B. Relevant Docket Entries: United States Court of Appeals for the Ninth Circuit . . . . .	13
C. Order Granting Certiorari (January 10, 2003) . . . . .	23
D. Declaration of Rabbi Abraham Cooper (April 24, 2000) . . . . .	24
E. Declaration of Arthur P. Stern (April 25, 2000) . . . . .	29
F. Declaration of Leslie Tick (May 3, 2000) . . . . .	32
G. Statement by Deputy Treasury Secretary Stuart E. Eizenstat (June 12, 2000) . . . . .	50
H. Letter from National Security Adviser Samuel R. Berger and Counsel to the President Beth Nolan to National Security Assistant Michael Steiner (June 16, 2000) . . . . .	52
I. Letter from National Security Assistant Michael Steiner to National Security Adviser Samuel [R]. Berger (July 5, 2000) . . . . .	55
J. Deputy Secretary of the Treasury Stuart E Eizenstat, Remarks at the 12th and Concluding Plenary on the German Foundation, Berlin, Germany (July 17, 2000) . . . . .	57
K. Harry Schweid, <i>Armitage Speaks on Holocaust Claims</i> (AP July 18, 2001) . . . . .	69

**TABLE OF CONTENTS — Continued**

<b>Appendix</b>	<b>Page</b>
L. Supplemental Declaration of Frank Kaplan (August 13, 2001) .....	71

**NOTICE**

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari:

A. Opinion of the United States Court of Appeals for the Ninth Circuit, filed July 15, 2002 (amended September 9, 2002) .....	1a
B. Opinion of the United States Court of Appeals for the Ninth Circuit, filed February 7, 2001 .....	34a
C. Opinion of the United States District Court for the Eastern District of California, filed October 2, 2001 .....	61a
D. Opinion of the United States District Court for the Eastern District of California, filed June 9, 2000 ...	85a
F. Letter from Deputy Treasury Secretary Stuart E. Eizenstat to the Honorable Gray Davis (November 30, 1999) .....	123a
G. Deputy Treasury Secretary Stuart E. Eizenstat, Special Representative of the Secretary of State and the President on Holocaust-Related Issues, Senate Foreign Relations Committee (April 5, 2000) ....	126a
H. The Executive Agreement on the German Foundation (July 17, 2000) .....	153a

**TABLE OF CONTENTS — Continued**

<b>Appendix</b>	<b>Page</b>
I. Joint Statement by President George W. Bush and Chancellor Gerhard Schroeder on a Transatlantic Vision for the 21st Century (March 29, 2001) . . . .	169a
J. Statement by Ambassador Randolph M. Bell, Special Envoy for Holocaust Issues, U.S. Department of State, Washington, DC, to the U.S. House of Representatives, Committee on Government Reform, Subcommittee on Governmental Efficiency, Financial Management and Intergovernmental Relations (September 24, 2002) . . . . .	174a

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Respondent’s Brief in Opposition:

D. Testimony of Leslie Tick, California Department of Insurance, United States House of Representatives Government Reform[’s] Subcommittee on Governmental Efficiency, Financial Management and International Relations (September 24, 2002) . . . . .	23
E. Statement of Representative Henry A. Waxman, Ranking Minority Member, Committee on Government Reform, at the Subcommittee on Governmental Efficiency, Financial Management and International Relations Hearing on H.R. 2963 (September 24, 2002) . . . . .	31
F. Prepared Statement of David S. Waldman, Vice President-Chief Operations Counsel, MONY Life Insurance Company, for the House Committee on the Government Reform’s Sub-committee on Government Efficiency, Financial Management and	

## TABLE OF CONTENTS — Continued

<b>Appendix</b>	<b>Page</b>
Inter-Government Relations Hearing on H.R. 2963 (September 24, 2002) .....	35
G. Order of U.S. Court of Appeals for the Ninth Circuit denying petition for rehearing and petition for rehearing <i>en banc</i> filed on March 29, 2001, in <i>Gerling Global Reinsurance Corp. of American, et al. v. Low, No. 00-16163, et al. (Gerling I)</i> .....	42
H. Cover page and pages 6-9 of Brief for Amicus Curiae the United States of America served on or about September 20, 2000, in <i>Gerling Global Reinsurance Corp. of American, et al. v. Low, No. 00-16163, et al. (Gerling I)</i> .....	44
I. Cover page and page 11 of Brief for Amicus Curiae the United States of America served on or about March 9, 2001, in <i>Gerling Global Reinsurance Corp. of American, et al. v. Low, No. 00-16163, et al. (Gerling I)</i> .....	50
J. An unofficial translation of the Bundestag resolution, adopted on May 30, 2001, dealing with the German Foundation; obtained from the United States Department of State .....	53
K. Cover page and page 6 of Motion of the Federal Republic of Germany for Leave to File Brief Amicus Curiae and Brief Amicus Curiae supporting affirmance of summary judgment for plaintiffs- appellees/cross-appellants, served on or about March 15, 2001, in <i>Gerling Global Reinsurance Corp. of American, et al. v. Low, No. 01-17023, et al. (Gerling II)</i> .....	55

**TABLE OF CONTENTS — Continued**

<b>Appendix</b>	<b>Page</b>
L. Investigative Subpoena for Records issued In the Matter of Holocaust Victims Insurance Enforcement Proceeding Case No. 31393-99-SC .....	58
N. Cover page and excerpt from pages 41-42 of Memorandum of Law in Support of Azzicurazioni Generali S.p.A.'s Motion to Dismiss, Strike, and/or for Judgment on All Plaintiffs' Claims, on Choice of Law and Related Grounds, dated November 15, 2002, in <i>In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation</i> (S.D.N.Y. 2002) (No. MDL 1374 M 21-89 (MBM)) .....	71

**APPENDIX A**

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UNITED STATE DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

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Nos. 00-CV-506, 00-CV-613,  
00-CV-779, 00-CV-875

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GERLING GLOBAL REINSURANCE CORP.  
OF AMERICA, *ET AL.*,

*Plaintiffs,*

v.

CHUCK QUACKENBUSH, IN HIS CAPACITY AS COMMISSIONER  
OF INSURANCE FOR THE STATE OF CALIFORNIA,

*Defendant.*

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RELEVANT DOCKET ENTRIES\*

DATE	#	DOCKET ENTRY
		<i>[entries from the Docket in 00-CV-506 (Gerling)]</i>
3/9/00	1	COMPLAINT by the Gerling plaintiffs.
3/9/00	7	NOTICE OF MOTION AND MOTION for preliminary injunction by plaintiffs.
3/9/00	8	MEMORANDUM OF POINTS AND AUTHORITIES by plaintiffs in support of motion for preliminary injunction.

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\* For the Court's convenience, the docket entries have been revised and reworded to reflect more clearly the actual entries in the district court's docket. Separate dockets were maintained for the four cases filed by petitioners and Gerling until October 16, 2000, when the district court ordered the cases consolidated.

3/27/00	20	NOTICE OF MOTION AND MOTION to dismiss by defendant.
3/27/00	21	MEMORANDUM OF POINTS AND AUTHORITIES by defendant in support of motion to dismiss.
3/27/00	22	DECLARATION of Frank Kaplan in support of motion to dismiss.
4/10/00	29	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION by plaintiffs to motion to dismiss by defendant.
4/10/00	30	NOTICE OF COUNTER-MOTION AND COUNTER-MOTION for summary judgment by plaintiffs.
4/10/00	32	MEMORANDUM OF POINTS AND AUTHORITIES by plaintiffs in support of counter-motion for summary judgment.
5/8/00	55	RESPONSE by defendant to motion for summary judgment by plaintiffs, and to motion for preliminary injunction by plaintiffs.
5/8/00	57	OBJECTIONS by defendant to evidence submitted by plaintiffs in support of motions for summary judgment and preliminary injunction.
5/8/00	60	DECLARATIONS in opposition to motion for preliminary injunction and motion for summary judgment.
5/15/00	73	BRIEF of the Federal Republic of Germany as amicus curiae.
5/17/00	77	OPPOSITION by defendant to motion for summary judgment by plaintiffs, and to

motion for preliminary injunction by plaintiffs.

5/22/00 78 REPLY BRIEF by defendant in support of motion to dismiss complaint.

5/22/00 80 REPLY by plaintiffs in support of counter-motion for summary judgment.

5/22/00 85 RESPONSE by defendant to brief of Federal Republic of Germany as amicus curiae.

6/2/00 92 NOTICE OF MOTION AND MOTION to file amicus brief by the People of the State of California.

6/6/00 94 MINUTES of hearing \* \* \*: motion to file amicus brief by the People of the State of California SUBMITTED, motion to dismiss by defendant SUBMITTED, motion for preliminary injunction by plaintiffs SUBMITTED, motion for summary judgment by plaintiffs SUBMITTED; order to be prepared by the court.

6/9/00 95 ORDER that motions for leave of court to file amicus curiae briefs are GRANTED.

6/9/00 96 ORDER that defendant's motion to dismiss plaintiffs' constitutional challenges to Cal. Ins. Code sections 13800-13807 and to dismiss plaintiff American Ins. Association is DENIED; it is further ordered that defendant's motion to dismiss Gerling's constitutional challenges to Cal. Code of Civil Procedure section 354.5 and Cal. Ins. Code section 790.15 is GRANTED, without prejudice.

6/9/00	97	MEMORANDUM AND ORDER that plaintiffs' motions for a preliminary injunction are GRANTED; pending final judgment in these actions, defendant is enjoined from enforcing the provisions of the Holocaust Victims Insurance Relief Act.
6/14/00	98	INTERLOCUTORY APPEAL by defendant.
10/16/00	111	STIPULATION AND ORDER that case 00-CV-506 is CONSOLIDATED with cases 00-CV-613, 00-CV-779, 00-CV-875.
4/9/01	123	CERTIFIED COPY of judgment from 9th Circuit: the decision of the District Court is AFFIRMED and REMANDED for further proceedings.
4/16/01	125	NOTICE OF MOTION by defendant for summary judgment or, in the alternative, for summary adjudication.
4/16/01	126	MEMORANDUM OF POINTS AND AUTHORITIES by defendant in support of motion for summary judgment or, in the alternative, for summary adjudication.
4/16/01	127	STATEMENT OF UNDISPUTED FACTS by defendant in support of motion for summary judgment or, in the alternative, for summary adjudication.
8/3/01	170	NOTICE OF MOTION AND MOTION for summary judgment by all plaintiffs that the HVIRA is unconstitutional under the Due Process Clause.
8/3/01	171	MEMORANDUM OF POINTS AND AUTHORITIES by all plaintiffs in SUPPORT of motion for summary

judgment that the HVIRA is unconstitutional under the Due Process Clause.

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| 8/3/01  | 172 | STATEMENT by all plaintiffs of Undisputed Facts in support of motion for summary judgment.   |
| 8/3/01  | 173 | DECLARATIONS of all Plaintiffs in support of motion for summary judgment that the HVIRA is unconstitutional under the Due Process Clause.  |
| 8/3/01  | 176 | NOTICE OF MOTION by defendant for summary judgment or, in the alternative, summary adjudication, and to dissolve or vacate preliminary injunction.   |
| 8/3/01  | 177 | STATEMENT by defendant Harry Low of Undisputed Facts in support of motion for summary judgment * * *.  |
| 8/3/01  | 178 | MEMORANDUM OF POINTS AND AUTHORITIES by defendant in SUPPORT of motion for summary judgment or, in the alternative, summary adjudication, and motion to dissolve or vacate preliminary injunction. |
| 8/3/01  | 180 | SUPPLEMENTAL DECLARATION of Leslie Tick and DECLARATION of Frank Kaplan in support of motions for summary judgment, and to dissolve or vacate preliminary injunction.                              |
| 8/17/01 | 190 | OPPOSITION by plaintiff Generali to motion for summary judgment or, in the alternative, for summary adjudication by defendant.   |

- 8/17/01 191 STATEMENT by plaintiff Generali of Undisputed facts in support of its opposition to the Defendant's motion for summary judgment.
- 8/17/01 192 DECLARATION of Christopher Carnicelli of Generali in opposition to the defendant's motion for summary judgment.
- 8/17/01 193 MEMORANDUM OF POINTS AND AUTHORITIES by defendant in opposition to plaintiffs' motion for summary judgment that the HVIRA is unconstitutional under the Due Process Clause.
- 8/17/01 195 OPPOSITION by plaintiffs to defendant's motion for summary judgment or, in the alternative, for summary adjudication.
- 8/17/01 196 DECLARATIONS of Dr. Hans Peter Bull, Paul M. Schwartz and Yolanta Goldstein; supplemental declaration of Frank Kaplan and second supplemental declaration of Leslie Tick in opposition to plaintiffs' motion for summary judgment.
- 8/17/01 197 RESPONSE by defendant to plaintiffs' statement of undisputed facts.
- 8/17/01 198 MEMORANDUM OF POINTS AND AUTHORITIES by all plaintiffs in OPPOSITION to defendant's motion for summary judgment or, in the alternative, summary adjudication.
- 8/17/01 199 JOINT RESPONSE by all plaintiffs to defendant's statement of undisputed facts regarding motion for summary judgment.
- 8/17/01 200 MEMORANDUM OF POINTS AND AUTHORITIES by all plaintiffs in

		OPPOSITION to defendant's motion for summary judgment or, in the alternative summary, adjudication.
8/17/01	203	MEMORANDUM OF POINTS AND AUTHORITIES of Winterthur plaintiffs in OPPOSITION to motion for summary judgment or, in the alternative, summary adjudication by defendant Harry Low.
8/17/01	205	DECLARATION of Peter Simshauser in support of Generali's opposition to the defendant's motion for summary judgment.
8/24/01	215	MEMORANDUM OF POINTS AND AUTHORITIES by defendant in SUPPORT of motion for summary judgment or, in the alternative, summary adjudication.
8/24/01	219	REPLY MEMORANDUM OF POINTS AND AUTHORITIES by plaintiffs in SUPPORT of motion for summary judgment that the HVIRA is unconstitutional under the Due Process Clause.
8/24/01	223	REPLY MEMORANDUM OF POINTS AND AUTHORITIES by Winterthur plaintiffs in SUPPORT of motion for summary judgment by all plaintiffs that the HVIRA is unconstitutional under the Due Process Clause.
9/4/01	234	HEARING on cross-motions for summary judgment.
9/7/01	235	TRANSCRIPT of hearing on cross-motions for summary judgment.
9/10/01	236	JOINT SUPPLEMENTAL BRIEF by plaintiffs.

- 9/10/01 237 DEFENDANT'S SUPPLEMENTAL brief.
- 10/2/01 238 ORDER that motion for summary judgment by all plaintiffs that the HVIRA is unconstitutional under the Due Process Clause is GRANTED; defendant is permanently enjoined from suspending the licenses of the plaintiffs to do business in California based on their failure to comply with the Holocaust Victims Insurance Relief Act and its accompanying regulations; the motion for summary judgment or, in the alternative, summary adjudication by defendant is DENIED.
- 10/2/01 239 JUDGMENT entered pursuant to order granting plaintiffs' motion for summary judgment.
- 10/10/01 240 NOTICE OF APPEAL by defendant.
- [entries from the Docket in 00-CV-613 (AIA/AmRe)]*
- 3/22/00 1 COMPLAINT for Declaratory and Injunctive Relief by AIA and AmRe.
- 3/22/00 4 NOTICE OF MOTION AND MOTION for preliminary injunction by plaintiffs.
- 3/22/00 5 MEMORANDUM OF POINTS AND AUTHORITIES in support of plaintiffs' motion for preliminary injunction.
- 3/22/00 7 DECLARATION of Jeffrey M. Klein in support of plaintiffs' motion for a preliminary injunction.
- 3/22/00 8 DECLARATION of Janet Kloenhamer in support of plaintiffs' motion for a preliminary injunction.

3/22/00	9	DECLARATION of Roger M. Singer in support of plaintiffs' motion for a preliminary injunction.
3/22/00	10	DECLARATION of Patrick J. Hughes in support of plaintiffs' motion for a preliminary injunction.
3/22/00	11	DECLARATION of Craig A. Berrington in support of plaintiffs' motion for a preliminary injunction.
3/22/00	12	DECLARATION of John J. Sullivan in support of plaintiffs' motion for a preliminary injunction.
4/7/00	20	NOTICE OF MOTION AND MOTION to dismiss by defendant.
4/7/00	21	MEMORANDUM OF POINTS AND AUTHORITIES by defendant in support of motion to dismiss.
4/7/00	22	DECLARATION of Frank Kaplan in support of motion to dismiss.
5/8/00	30	RESPONSE by plaintiffs to motion to dismiss by defendant.
5/8/00	37	RESPONSE by defendant to motion for preliminary injunction by plaintiffs.
5/8/00	38	DECLARATIONS in opposition to motion for preliminary injunction.
5/17/00	54	OPPOSITION by defendant to motion for preliminary injunction by plaintiffs.
5/22/00	56	REPLY brief by defendant in support of motion to dismiss.
5/22/00	58	REPLY DECLARATION of Frank Kaplan in support of motion to dismiss.

5/22/00 62 REPLY by plaintiffs in support of motion for preliminary injunction.

*[entries from the Docket in 00-CV-779 (Winterthur)]*

4/10/00 1 COMPLAINT for declaratory and injunctive relief by the Winterthur plaintiffs.

4/21/00 5 NOTICE OF MOTION AND MOTION to dismiss by defendant.

4/21/00 6 MEMORANDUM OF POINTS AND AUTHORITIES by defendant in support of motion to dismiss.

4/24/00 7 NOTICE OF MOTION AND MOTION for preliminary injunction by plaintiffs.

4/24/00 8 DECLARATIONS AND EXHIBITS in support of plaintiffs' motion for preliminary injunction.

4/24/00 9 DECLARATION of Lawrence S. Eagleburger in support of plaintiffs' motion for preliminary injunction.

5/2/00 17 AMENDED points and authorities in support of motion to dismiss complaint by defendant.

5/8/00 18 RESPONSE by plaintiffs to motion to dismiss by defendant.

5/8/00 20 RESPONSE by defendant to motion for preliminary injunction by plaintiffs.

5/8/00 21 APPENDIX of other authorities in opposition to plaintiffs' motion for preliminary injunction.

5/8/00 24 DECLARATIONS in opposition to motion for preliminary injunction.

5/17/00 30 OPPOSITION by defendant to motion for preliminary injunction by plaintiffs.

5/22/00 31 REPLY brief by defendant in support of motion to dismiss.

5/22/00 32 REPLY by plaintiffs in support of motion for preliminary injunction.

*[entries from the Docket in 00-CV-875 (Generali)]*

4/20/00 1 COMPLAINT for declaratory and injunctive relief by Generali.

4/20/00 4 MOTION for preliminary injunction by plaintiff.

4/20/00 5 MEMORANDUM OF POINTS AND AUTHORITIES by plaintiff in support of motion for preliminary injunction.

4/20/00 6 DECLARATION of Peter Simshauser in support of plaintiff's motion for preliminary injunction.

4/20/00 7 DECLARATION of Alberto Tiberini in support of plaintiff's motion for preliminary injunction.

5/8/00 17 RESPONSE by defendant to motion for preliminary injunction by plaintiff.

5/8/00 19 APPENDIX of other authorities in opposition to plaintiff's motion for preliminary injunction.

5/8/00 21 DECLARATIONS in opposition to motion for preliminary injunction.

5/17/00 27 OPPOSITION by defendant to motion for preliminary injunction by plaintiff.

- 5/22/00 29 REPLY memorandum by plaintiff in response to opposition to motion for preliminary injunction.
- 5/22/00 32 SUPPLEMENTAL declaration of Peter Simshauser in support of Generali's motion for a preliminary injunction.

**APPENDIX B**

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UNITED STATE COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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Nos. 00-16163, 00-16164, 00-16165, 00-16182  
and No. 01-17023

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GERLING GLOBAL REINSURANCE CORP.  
OF AMERICAN, *ET AL.*,

*Plaintiffs-Appellees,*

v.

HARRY LOW, IN HIS CAPACITY AS COMMISSIONER OF  
INSURANCE FOR THE STATE OF CALIFORNIA,

*Defendant-Appellant.*

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RELEVANT DOCKET ENTRIES\*\*

*[entries from the Docket in 00-16163]*

6/26/00	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
6/30/00	Filed Appellant Chuck Quackenbush's motion to consolidate; declaration of Andrew W. Stroud; and exhibits.

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\*\* For the Court's convenience, the docket entries have been revised and reworded to reflect more clearly the actual entries in the court of appeal's docket. The preliminary injunction appeals were docketed in No. 00-16163. The appeal of the permanent injunction was docketed in No. 01-17023.

- 7/6/00 Order: the Court, on its own motion, consolidates these four preliminary injunction appeals.
- 7/13/00 Filed Appellant's opening brief and excerpts of record.
- 7/13/00 Filed Appellant's motion for oral argument.
- 7/19/00 Filed Bet Tzedek Legal Services' motion for leave to file amicus curiae brief in support of Appellant.
- 7/19/00 Filed The People of the State of California's amicus curiae brief in support of Appellant.
- 8/25/00 Filed the Federal Republic of Germany's motion for leave to file amicus brief.
- 8/30/00 Received Winterthur International's brief and supplemental excerpts of record.
- 8/30/00 Received Gerling's brief and supplemental excerpts of record.
- 8/31/00 Received Generali's brief.
- 9/1/00 Received brief of American Insurance Ass'n and American Re-Insurance Company.
- 9/1/00 Filed The Chamber of Commerce of the United States and the Organization for International Investment's motion to file amicus curiae brief in support of Appellees.
- 9/1/00 Filed United States' motion to extend time to file amicus curiae brief.
- 9/7/00 Filed answering brief of Appellees American Insurance Ass'n and American Re-Insurance Company.

- 9/7/00 Filed Appellees Gerling's brief and supplemental excerpts of record.
- 9/7/00 Filed Appellees Winterthur International's answering brief and supplemental excerpts of record.
- 9/8/00 Filed Appellee Generali's brief.
- 9/21/00 Received Appellant Clark Kelso's reply brief.
- 9/28/00 Order: the \* \* \* clerk shall amend the docket to reflect that Insurance Commissioner Harry Low is the Appellant in these consolidated appeals. The clerk shall also amend the docket to reflect that the United States is appearing as amicus curiae in these consolidated appeals. Appellant's motion to file an oversized reply brief is granted. The motion of amicus curiae the United States for enlargement of time to file an amicus brief and the motion to exceed the word count, are granted. Accordingly, the clerk shall file the brief of amicus curiae the United States.
- 9/28/00 Filed Appellant's reply brief.
- 10/3/00 Received Appellant's submission of new evidence.
- 12/6/00 Filed Amicus United States' motion for leave to participate in oral argument.
- 12/8/00 Order: The Appellees are to file a response to the Commissioner's request for submission of new evidence. The response is to be filed within 7 days of the date of this order and is not to exceed 5 pages in length. The United States' motion for leave to participate in oral argument and that it be allotted 5 minutes to present its oral argument is granted. The 5 minutes will be

in addition to the Appellant's and Appellees' allotted time of 20 minutes per side.

- 12/8/00 Order: \* \* \* Bet Tzedek Legal Services' motion for leave to file an amicus curiae brief is granted. The brief tendered 7/19/00 is ordered filed. The Federal Republic of Germany's motion for leave to file an amicus curiae brief is granted. The brief tendered 8/25/00 is ordered filed. The Chamber of Commerce of the United States and the Organization for International Investment's motion for leave to file an amicus curiae brief is granted. The brief tendered 9/1/00 is ordered filed.
- 12/15/00 Received response of Appellees to the Appellant's submission of new evidence.
- 12/22/00 Order: The Appellant's submission of new evidence, which we construe as a request that the court consider newly submitted evidence, is DENIED. The Appellees' request to consider new evidence contained in its response to the Commissioner's request is DENIED.
- 1/9/01 ARGUED AND SUBMITTED to Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges.
- 2/7/01 FILED OPINION: Preliminary Injunction AFFIRMED and REMANDED for further proceedings.
- 2/21/01 Filed Appellees' petition for rehearing with suggestion for rehearing en banc.
- 2/28/01 Filed The Federal Republic of Germany's motion for leave to file brief of amicus curiae in support of petition for rehearing en banc.

- 3/1/01 Filed Government of Switzerland's motion for leave to file amicus curiae brief.
- 3/7/01 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The Federal Republic of Germany's motion for leave to file brief of amicus curiae in support of petition for rehearing and suggestion for rehearing en banc is granted. The brief tendered 2/28/01 is ordered filed.
- 3/12/01 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The Government of Switzerland's motion for leave to file an amicus curiae br is granted. The brief of amicus curiae Government of Switzerland Supporting Appellees' Petition for Rehearing En Banc tendered 3/1/01 is ordered filed.
- 3/12/01 Filed motion of the United States for leave to file brief as amicus curiae in support of petition for rehearing.
- 3/26/01 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The motion of the United States for leave to file brief as amicus curiae in support of the petition for rehearing is granted. The brief for amicus curiae the United States in support of Rehearing En Banc tendered 3//12/01 is ordered filed.
- 3/29/01 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The panel has voted to deny the petition for rehearing. The petition for rehearing and petition for rehearing en banc are DENIED.
- 4/6/01 MANDATE ISSUED.

- 7/2/01 Received notice from Supreme Court that a petition for certiorari was filed on 6/26/01.
- 2/4/02 Filed Supreme Court Order: The stipulation to dismiss the petition for writ of certiorari in the above-entitled case having been received by the office of the clerk and no fees due the clerk, the petition for a writ of certiorari is now hereby dismissed pursuant to Rule 45.1 of the Rules of this Court.

*[entries from the Docket in 01-17023]*

- 10/16/01 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL.
- 12/18/01 Order (GOODWIN, GRABER, and PAEZ, Circuit Judges): The panel accepts these cases as comeback cases. \* \* \*
- 1/25/02 Filed Appellant Harry Low's first brief on cross-appeal and excerpts of record.
- 2/4/02 Filed People of the State of California ex rel. Bill Lockyer Attorney General of the State of California's amicus curiae brief in support of Appellant.
- 2/4/02 Received amicus curiae brief of Mike Kreidler, Insurance Commissioner of the State of Washington, in support of Appellant.
- 2/8/02 Filed motions of Amicus Mike Kreidler and Bet Tzedek Legal Services to file amicus curiae briefs.
- 2/12/02 Filed joint motion to consolidate appeals and retain briefing and argument schedule.
- 2/25/02 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The joint motion to consolidate appeals

- and retain briefing and argument schedule is granted.
- 3/12/02 Filed Appellees Gerling's opening brief and excerpts of record.
- 3/12/02 Filed Appellees Gerling's second brief on cross-appeal.
- 3/13/02 Filed Appellees Winterthur International's second brief on cross-appeal and supplemental excerpts of record.
- 3/18/02 Filed Federal Republic of Germany's motion for leave to file amicus curiae brief.
- 3/27/02 Filed Appellees American Insurance Ass'n, American Re-Insurance Co., and Generali's second brief on cross-appeal.
- 3/28/02 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The motion of the Federal Republic of Germany for leave to file brief amicus curiae is granted. The brief received 3/18/02 is ordered filed.
- 4/10/02 Received Appellant Harry Low's third cross-appeal brief.
- 4/10/02 Filed Appellant Harry Low's answering brief and supplemental excerpts of record.
- 4/16/02 Filed joint motion of the Appellant, Appellees and amicus curiae United States for modified oral argument time periods.
- 4/22/02 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): \* \* \* Mike Kreidler's motion to file brief amicus curiae is granted. The brief tendered 2/4/02 is ordered filed. Bet Tzedek

Legal Services' motion for leave to file amicus curiae brief is granted. The brief tendered 2/5/02 is ordered filed. The joint motion of the Appellant, Appellees, and amicus curiae the United States for modified oral argument time periods is granted as follows: Appellant 30 minutes, Appellees 30 minutes, and the United State 10 minutes.

- 4/22/02 Filed Appellant Harry Low's third brief on cross-appeal.
- 4/29/02 Filed Appellees American Insurance Ass'n and American Re-Insurance's reply brief on cross-appeal.
- 5/8/02 ARGUED AND SUBMITTED TO Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges.
- 7/15/02 FILED OPINION: REVERSED AND REMANDED.
- 7/19/02 Filed motion and clerk order granting Appellees AIA/AmRe, Winterthur, and Generali's motion to extend time in which to file a petition for rehearing to 8/5/02.
- 7/19/02 Filed Appellant Harry Low's petition for rehearing.
- 8/5/02 Filed Appellees Gerling's petition for rehearing and petition for rehearing en banc.
- 8/5/02 Filed Appellees American Insurance Ass'n, American Re-Insurance Co., Winterthur International, and Generali's petition for rehearing and petition for rehearing en banc.

- 8/6/02 Filed the United States' motion for leave to file brief as amicus curiae in support of petitions for rehearing en banc.
- 8/12/02 Filed The Federal Republic of Germany's motion for leave to file brief amicus curiae in support of Appellees' petitions for rehearing.
- 8/14/02 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The motion of the United States for leave to file brief as amicus curiae in support of the petitions for rehearing en banc is granted. The brief tendered 8/5/02 is ordered filed.
- 8/20/02 Order (Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The motion of the Federal Republic of Germany for leave to file brief as amicus curiae in support of Appellees' petitions for rehearing is granted. The brief tendered on 8/12/02 is ordered filed.
- 9/9/02 Filed order and amended opinion (Judges Alfred T. GOODWIN, Susan P. GRABER, and Richard A. PAEZ, Circuit Judges): The Appellees' petitions for panel rehearing and petitions for rehearing en banc are DENIED. With the above amendment, Appellant's petition for panel rehearing is DENIED. No subsequent petitions for rehearing or rehearing en banc may be filed. REVERSED AND REMANDED.
- 9/13/02 Filed Appellees American Insurance Ass'n, American Re-Insurance Co., Winterthur International and Generali's motion to stay the mandate.

- 9/17/02 Filed Appellant Harry Low's opposition to motions to stay mandate.
- 9/20/02 Received letter dated 9/19/02 from the Appellant regarding the reply in support of the stay motion.
- 9/25/02 Order (Susan P. GRABER, Circuit Judge): \* \* \*  
The motions to stay the mandate pending review on certiorari are granted. FRAP 41(d).  
The mandate is ordered stayed for 90 days pending the filing of a petition for a writ of certiorari in the United States Supreme Court.

**APPENDIX C**

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**SUPREME COURT OF THE UNITED STATES**

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No. 02-722

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AMERICAN INSURANCE ASSOCIATION, AMERICAN  
RE-INSURANCE COMPANY, *ET AL.*,

*Petitioners,*

v.

HARRY LOW, IN HIS CAPACITY AS COMMISSIONER OF  
INSURANCE FOR THE STATE OF CALIFORNIA,

*Respondent.*

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January 10, 2003

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The petition for a writ of certiorari is granted.

**APPENDIX D**

## DECLARATION OF RABBI ABRAHAM COOPER

I, Rabbi Abraham Cooper declare:

1. I am the Associate Dean at the Simon Wiesenthal Center in Los Angeles, California. The facts set forth in this Declaration are personally known to me, and if called as a witness, I could and would competently testify thereto under oath.

2. The Simon Wiesenthal Center was founded in 1997. Today, together with its Museum of Tolerance, it is a 400,000 member international center for Holocaust remembrance and the defense of human rights and the Jewish people. The Library and Archives of the Simon Wiesenthal Center provide a comprehensive resource center on the Holocaust, antisemitism, racism and related issues. Its resources are available to researchers, media, students and the public.

3. Among many other projects, the Wiesenthal Center has been active in assisting Holocaust survivors and their heirs in obtaining information about bank accounts, insurance policies and other assets lost to their families during the Holocaust. The Wiesenthal Center has worked closely with numerous survivor organizations, the California Department of Insurance and others in assisting Holocaust survivors in those efforts.

4. Working with a consortium of genealogy groups and human rights activists, the Wiesenthal Center established a new website in September 1999 which includes a database listing over 50,000 names of Jewish victims of the Nazis who were forced to identify all of their economic holdings as a prelude to turning over bank accounts, insurance policies and other assets to the Gestapo. As discussed below, it is essential that Holocaust survivors be provided lists of family members who purchased insurance before 1945 in order to enable those survivors to determine whether and against whom they might have a claim for the recovery of insurance proceeds.

5. I am aware of a California law, which I understand to be embodied in California Insurance Code Sections 13800 through 13807, together with implementing regulations. As I understand it, these statutes and regulations require insurers currently doing business in California that sold various insurance policies, directly or through a related company, to persons in Europe, which were in effect between 1920 and 1945, to file certain information about those policies with the California Insurance Commissioner. The Simon Wiesenthal Center strongly supports the enforcement of that law.

6. Most Holocaust survivors were children or young adults when they and their families were uprooted from their homes and stripped of their possessions. Family members were separated from one another and millions were murdered. Many of those who escaped death during World War II were themselves concentration camp inmates who became refugees following their release in 1945. Many of those refugees eventually emigrated from Europe and settled in various places around the globe, including the United States.

7. Because insurance policies would have been obtained by parents, grandparents and other relatives and because of their age at the time, most Holocaust survivors would not know whether, during the period of 1920 through 1945, anyone obtained insurance on which a claim might be made by them. Nor would most survivors know the names of the insurance companies who had issued such policies. Even fewer survivors would have possession of insurance policies or other written evidence of insurance. Heirs of Holocaust survivors, of course, would be expected to have even less information about insurance policies than the survivors themselves.

8. I am aware of a number of Holocaust survivors and heirs, including California residents, who have submitted claims on Holocaust-era life insurance policies to insurance companies. There is a risk that insurance companies will reject claims because the name of the insured person listed by the

claimant (e.g. the claimant's father or grandfather) does not precisely match the name of the insured person in the insurance company's records, even though the names are similar.

9. These "near matches" may often be the result of several factors. First, the family name may have been anglicized since the survivor emigrated to the United States, and the claimant may not know the exact spelling of the name of the insured person. Second, there are many surnames that had multiple spellings in Europe in the early 20th century. Unless the claimant knows the precise name of the insured, there is a risk that he or she will misspell that name and that the claim will be denied. Production of policyholder lists by insurance companies, containing the names and addresses of policyholders, will provide a greater opportunity for survivors to search for and locate relatives who had purchased insurance and will increase their ability to successfully make claims.

10. Nor is it possible for an insurance company to prepare a narrow list of policyholders that is limited to Holocaust victims. First, the insurance companies contend that they are precluded by law from attempting to search their files for only Holocaust victims. They claim that they are not permitted to search for "Jewish" names or rely on other possible religious or racial characteristics of policyholders that might appear in their files.

11. Second, even if insurance companies were otherwise permitted to search their files for policyholders who were Holocaust victims, any list that they would compile would necessarily be incomplete. The companies have acknowledged that they could not necessarily determine from their records who was a Holocaust victim, and even organizations dedicated to Holocaust research such as Yad Vashem only have a partial list of such victims. Thus, even if an insurance company attempted to match the names of its policyholders with databases such as those maintained by Yad Vashem, the

matches would necessarily be incomplete and would not identify all policyholders who were Holocaust victims.

12. There are also disputes between the insurance companies and claimants as to what is considered an “unpaid” policy (e.g., some companies consider a policy confiscated by the Nazis to be a “paid” policy). If insurance companies were only required to provide information with respect to what they considered to be “unpaid” policies, then many of them would undoubtedly exclude policies that claimants would likely consider to be “unpaid.”

13. Through the Wiesenthal Center’s work, I am familiar with the fact that a number of European insurance companies, including Allianz and Munich Re, worked closely with, and indeed lobbied, the Third Reich to strip Jews of their insurance protection. Although there are many examples of that conduct, a well-documented example is the insurance companies’ collaboration with the Nazis to deprive Jews of insurance payments for damages they suffered during Kristallnacht.

14. Kristallnacht, or the “Night of the Broken Glass” is the name given to the organized campaign of terror carried out by Nazi street gangs on November 8 through November 10, 1938. Hundreds of Jewish businesses, residences and synagogues were destroyed. Recognizing that German insurance companies could be liable to the Jews for the damage that had occurred, Nazi leaders, including Herman Goering, Joseph Goebbels, and Reinhard Heydrich, met shortly thereafter with Eduard Hilgard, an Allianz executive and head of the Reichsgruppe Versicherungen, an insurance industry trade group.

15. From this meeting, the Nazi government and the insurance companies developed a scheme to deny payment to Jewish policyholders. The scheme involved “payment” of the claims on the books of the companies, followed by immediate confiscation of the policy proceeds by the Reich in payment of an “atonement tax” levied by the Reich against the Jews for “causing” the Kristallnacht demonstrations. There is



**APPENDIX E**

DECLARATION OF ARTHUR P. STERN

I, Arthur P. Stern declare:

1. I am Chairman of the Holocaust Insurance Restitution Committee of the Jewish Federation of Greater Los Angeles. I am also a Holocaust survivor. The facts set forth in this Declaration are personally known to me. If called as a witness, I could and would competently testify thereto under oath.

2. I was born in 1925 in Budapest, Hungary. I lived there at the time of the commencement of the Holocaust in Hungary, which began on March 19, 1944. I was sent to the concentration camp in Bergen-Belsen and ultimately gained entry to Switzerland.

3. In 1998 the Jewish Federation of Greater Los Angeles conducted a demographic survey of the Los Angeles Jewish community. That survey reveals that, as of July 1997, there are approximately 13,972 Holocaust survivors who live in Los Angeles County. The number of survivors actually may be much greater, however, since the definition[] of a "Holocaust survivor" has been expanded by California law since the study was completed to include "any person who was persecuted" and not just those who were in concentration camps.

4. The latest demographic survey also reveals that the Los Angeles Holocaust survivor population constitutes 23 percent of the total Jewish households in poverty, and children of Holocaust survivors comprise 20 percent. Both rates are roughly double the expected poverty rate found in the total Jewish community.

5. Attached hereto as Exhibit 1 is a true and correct copy of the findings from the Los Angeles Jewish Population Survey concerning Holocaust survivors.

6. Attached hereto as Exhibit 2 is a true and correct copy of the Los Angeles Population Survey Research Note on Jewish Holocaust Survivors and their children.

7. The average age of a Holocaust survivor in Los Angeles County is now over 70 years of age.

8. Based on my knowledge of the Jewish communities of California, I believe that there are over 22,000 Holocaust survivors living throughout the State. The children of Holocaust survivors in California number many thousands more.

9. A number of the Holocaust survivors living in the United States have voluntarily registered with the American Gathering/Federation of Jewish Holocaust Survivors. Understandably, many survivors are reluctant to register and have not done so. Attached hereto as Exhibit 3 is a true and correct copy of a chart listing by State the numbers of Holocaust survivors who have voluntarily registered with that organization. As reflected on this chart, California has the second largest Holocaust survivor population in the United States.

10. I am aware of a California law, which I understand to be embodied in California Insurance Code Sections 13800 through 13807, together with implementing regulations. As I understand it, these statutes and regulations require insurers currently doing business in California that sold various insurance policies, directly or through a related company, to persons in Europe, which were in effect between 1920 and 1945, to file certain information about those policies with the California Insurance Commissioner. The Jewish Federation of Greater Los Angeles strongly supports the enforcement of that law.

11. In Central and Eastern Europe during the 1920s and 1930s, the dominant way of investing and saving was through the purchase of insurance policies. Even many poor people purchased insurance policies.

12. Based on my experience dealing with Holocaust survivors, it appears that most insurance policies that were owned by Holocaust victims were lost in the course of the Holocaust or in the movements and migrations of people that took place after World War II. Most survivors who are still alive today were children or young adults during the Holocaust and were not aware that their parents had insurance or the name of the insurance company. Because of the long passage of time, other Holocaust survivors who were adults during the war have forgotten insurance information that they may have once known. Based on my experience dealing with Holocaust survivors, less than 5 percent of survivors and their families still have their insurance policies purchased in Europe prior to 1945.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in Los Angeles, California on April 25, 2000.

\_\_\_\_\_  
/s/  
Arthur P. Stern

[Exhibits omitted]

**APPENDIX F**

## DECLARATION OF LESLIE TICK

I Leslie Tick declare:

1. I am a senior staff counsel employed by the California Department of Insurance. I have been an attorney at the Department since January 1994. Since late 1997, my primary responsibility at the Department has been to work on Holocaust-era insurance issues. The facts set forth in this Declaration are personally known to me, and if called as a witness, I could and would competently testify thereto under oath.

2. The Commissioner is one of the founding members of the International Commission On Holocaust Era Insurance Claims ("ICHEIC"). I have been one of the Commissioner's representatives to the ICHEIC since that organization was founded in or about August 1998, and have actively participated in the ICHEIC since its founding. The ICHEIC is a voluntary organization consisting of five insurance companies, certain United States insurance regulatory authorities, certain Jewish and survivor organizations, and the State of Israel. Representatives from various other countries, including the United States and the Federal Republic of Germany, have observer status. The purpose of the ICHEIC is to voluntarily pursue the goal of resolving insurance claims of Holocaust victims.

3. The five insurance company members of the ICHEIC represent approximately 35.5% of the pre-World War II European insurance market.

4. The ICHEIC originally had a sixth company member, Basler Lebens, who shortly thereafter left the organization. Other companies, such as Gerling and Victoria, have been invited to join the ICHEIC but have declined to do so. There are a number of companies who wrote significant amounts of Holocaust-era insurance who are not members of the ICHEIC.

5. Participation by an insurance company in the ICHEIC does not assure that company “legal peace.” For example, the ICHEIC claims procedures specifically permit a claimant whose claim is disallowed or who is dissatisfied with the offer made to pursue his or her claim in court.

6. In 1997, the Department of Insurance developed a “Holocaust Survivor/Insurance Claims-Questionnaire.” The Questionnaire has been sent to persons, almost all of whom are California residents, who have requested them. The Questionnaires are then completed by the recipients and returned to the Department of Insurance. The purpose of the Questionnaire was to serve as a claim form once monies from European insurers are made available to settle claims of unpaid insurance benefits. A true and correct copy of a completed Questionnaire received by the Department is attached to the Nasch Declaration as Exhibit 1.

7. The Department has received approximately 2,300 completed Questionnaires to date. Almost all of them are from California residents. These questionnaires are being logged, copied and prepared for submission to the ICHEIC. To date, approximately 1,400 claim files have been forwarded to the ICHEIC by the Department. The ICHEIC requires each claimant to complete an additional form before the claim can be submitted, and the completion and execution of those forms has slowed the submission of the claims to the ICHEIC.

8. The Department has also received approximately an additional 2,000 Short Forms (requests for full Questionnaires which contain pertinent claims data) from people who have not yet formally submitted a claim. These Short Forms are filled out by potential claimants and by intake personnel who receive calls from potential claimants on a special “800” telephone number that was established.

9. Of the approximately 2,300 Questionnaires, only about 116 have some documentary evidence of insurance. The remaining 2,184 Questionnaires have varying degrees of

anecdotal evidence regarding the existence or possible existence of insurance. Most of these 2,184 claimants are not able to identify the name of an insurance company. On the few Questionnaires that do provide the name of an insurance company, the claimant often expresses some uncertainty about the identity of the company.

10. Of the approximately 116 claimants who have documentary proof of insurance, approximately 50 of those have proof of insurance issued by an ICHEIC member company or one of its subsidiaries. The other 66 have documentary proof of insurance purchased from companies that are not members of the ICHEIC.

11. Similarly, of the claimants with no documentary proof of insurance who identify the name of an insurance company, many of the claimants name insurers which are not members of the ICHEIC.

12. The ICHEIC has developed claims handling standards pursuant to which claims are to be initially evaluated by member companies who then decide whether to accept claims and, if accepted, how much money is to be offered to the claimant. According to the ICHEIC, the companies are supposed to evaluate claims based on so-called “relaxed standards of proof” and valuation guidelines developed by the ICHEIC.

13. These “relaxed standards of proof” generally require documentation to support the existence of a policy. Thus, the ICHEIC has determined that the existence of an insurance policy (but not necessarily the validity of a claim) will be considered adequately substantiated by any one of the following:

- A. An original or copy of an insurance policy;
- B. Original or copies of premium receipts for an insurance policy;

- C. Information in the records of the insurer that verifies the existence of an insurance policy;
- D. Written correspondence between the insurer or agent or representative of the insurer and the claimant that verifies the existence of an insurance policy;
- E. Records held or maintained by any governmental body that verify the existence of an insurance policy; or
- F. Records of any governmental body held by the claimant that verify the existence of an insurance policy.

14. There is also a “catch-all” provision by which member companies are supposed to consider “whether any other document or statement or combination of documents or statements are sufficient to substantiate the existence of an insurance contract.”

15. In about May 1999, it became clear that because of a number of delays caused by administrative problems and by the inability of the ICHEIC member insurers to agree to certain claims procedures and valuation standards, the ICHEIC was not going to be able to “launch” its claims process and announce that process to the world for some time. The ICHEIC then developed an interim “fast track” claims process. Pursuant to this process, States and Jewish groups which had been collecting claims were invited to submit their “best” claims (those with some documentary evidence). They were not, however, precluded from also submitting claims based on anecdotal evidence where the claimant had no documentary evidence. Pursuant to the “fast track” process, the member companies were to evaluate these claims and make offers on them pursuant to the ICHEIC valuation and claims standards that were already in place. Offers could later be increased if increases were warranted based on subsequent valuation standards approved by ICHEIC.

16. In April 2000, the ICHEIC reported on the status of the “fast track” claims. Out of 909 “fast track” claims submitted,

the member companies had made offers on 124 claims and had declined 393 claims. Another 389 claims (43% of the claims submitted) were still pending and had been pending for over 90 days.

17. In March 2000, the ICHEIC reported that during its review of claims submitted to member companies pursuant to the “fast track” process, it had “not yet come across any case submitted under [that] process where an insurance company has accepted a claim on the basis of evidence supplied by the claimant which would fall under the catch-all clause.” Instead, as far as the ICHEIC could tell, “in all cases where insurers had made an offer, evidence of a policy has been demonstrated by one or more of the six types of documentary evidence listed on the standards of proof.”

18. The ICHEIC described these rejected claims, some of which had been rejected even though the claimant had provided the actual policy number and other policy details:

A. The claimant was able to state the insurer, currency, policy value, when it was taken out, and when premium payments stopped. The claimant submitted a handwritten note written by his mother listing assets and referencing two insurance policies (without policy numbers). The insurer declined to make an offer, stating that the standards of proof require written evidence of the policy.

B. The claimant submitted an address book which listed policy numbers, amounts, insured, where and when insurance was purchased. The claim was sent to the insurer in September 1999. In February 2000, the insurer declined to make an offer saying that its records showed no evidence of a contractual relationship and that the documents submitted were inadequate.

C. The claimant submitted a letter written by the policy holder shortly before his deportation which listed his assets, including insurance policies and the cities in which they were purchased. The claimant stated that there was a separate list of

policies, including policy numbers, that was lost during the war. The claim was sent to the insurer in September 1999. In February 2000, the insurer declined to make an offer, stating that there was insufficient evidence of insurance.

19. The ICHEIC has directed its five member insurance companies to publish lists of unpaid policyholders. That directive, however, like every other aspect of ICHEIC, is based on voluntary compliance by the insurance companies. The publication of lists by the companies has thus far been inadequate and incomplete. The ICHEIC requires only lists of “unpaid” policies issued to Holocaust victims. The insurer members of the ICHEIC have admitted that their lists do not include policies confiscated by the Nazis, surrendered to the Nazis, or paid into blocked accounts. Nor do those lists include policies written by the member companies’ Eastern European subsidiaries.

20. Attached as Exhibit 1 is one of the pages of the ICHEIC list that was made available on the Internet beginning on or about April 2000. That page reflects, among others, a policy issued by Allianz, a German company. I am not aware of any objection by the German government to this publication of Allianz policyholders.

21. None of the policyholders listed on the Nasch, Bard, Rand, Rattner or Weiss California Questionnaires appear on any list published by the ICHEIC.

22. Generali wrote insurance in numerous European countries before World War II. Although it apparently had a subsidiary that wrote some life insurance policies in Germany, Generali sold most of its insurance in Eastern and Central Europe, including Poland, Hungary, Czechoslovakia, Italy and Austria. Generali also write insurance in France, Belgium, the Netherlands and Greece. The vast majority of its unpaid policies (98%) were written outside of Germany.

23. Generali has reported to the ICHEIC and to various State Insurance Commissioners, including Commissioner Quackenbush, that it has a computer disk with information regarding approximately 340,000 persons to who it issued between 1918 and 1945 in Eastern Europe and Austria. Generali has also reported that it has another disk with the names of approximately 90,000 persons in Eastern Europe and Austria whose Generali policies were in force as of December 31, 1937. These disks contain the policyholder's name, date of birth and place that the policy was issued.

24. Generali has also reported to the ICHEIC and to Commissioner Quackenbush's office that it either has prepared or will soon be completing lists of its Western European, Italian and Greek policyholders. Presumably, these lists will include only those policies that Generali considers to have been issued and unpaid to persons it considers to be Holocaust victims.

25. Generali has also admitted to the ICHEIC that it also wrote a substantial amount of insurance in Eastern Europe before World War II through subsidiary companies. Generali has refused, however, to disclose either the names of those subsidiary companies or the names of policyholders to whom insurance was issued by its subsidiaries.

26. Generali apparently delivered the 90,000-name disk to Yad Vashem sometime in 1999. I do not believe that Generali provided Yad Vashem with its 340,000 person disk. Yad Vashem has apparently attempted to match the names on the Generali 90,000-name policyholder list with Yad Vashem's list of Holocaust victims. The ICHEIC was advised by Yad Vashem that Yad Vashem does not have a complete list of Holocaust victims and that most of the persons on its lists are Jewish.

27. Yad Vashem reported on its progress with the Generali list in October and November 1999. Yad Vashem has now apparently identified approximately 8,740 names from Generali's 90,000-name policyholder list as actual or probable

Holocaust victims. Yad Vashem initially reported 10,000-20,000 matches which were reviewed to “narrow the uncertainty.”

28. Allianz has reported to the ICHEIC that it has records relating to approximately 1.3 million life insurance policies issued by it prior to 1945 in Europe. That figure does not include policies written by its subsidiaries, including RAS, who Allianz admits wrote a substantial amount of insurance in Eastern Europe prior to 1945.

29. Allianz has agreed to examine only a sampling of its total policies in order to try to establish which are unpaid and which were issued to Holocaust victims. It has continued to refuse to publish a complete list of either its or its subsidiaries’ policyholders to whom insurance was issued in Europe prior to 1945. In or about the Fall of 1999, Allianz agreed to prepare a slightly larger sampling (148,000 names) and to forward that list to Yad Vashem. The apparent purpose of that submission is to permit Yad Vashem to perform the kind of “matching” analysis done with the Generali list. That matching, if it occurs, will necessarily be incomplete, since Allianz has provided Yad Vashem with only about one-tenth of the number of policies issued by it, and Yad Vashem does not in any event have a complete list of Holocaust victims.

30. In addition, according to the ICHEIC, since about February 2000, Yad Vashem has stopped performing any “matching” analysis because [of] a contractual dispute involving the company that developed Yad Vashem’s data base. Allianz reported that Yad Vashem has not performed any “matching” analysis of the sample policyholder information it provided and therefore it will submit no further names for publication.

31. Based on Zurich’s research of its own archives, it has reported that it wrote approximately 7,000 policies during the relevant period. From that list, Zurich has prepared a list of 22

policies issued to people with names that Zurich considers to be Jewish and which Zurich has classified as “unpaid.”

32. Winterthur has created a list of approximately 15,000 policies which it wrote in Germany, France and Belgium during the relevant period. It considers that nine of these policies were written to Holocaust victims and remain “unpaid.”

33. The ICHEIC hired an archivist to do research into the Austrian Archive. The Austrian Archive contains assets registries of Austrian Jews and is widely considered to be one of the most complete archives in Europe. In late April 2000, the ICHEIC placed on its website a list of the names of people who listed insurance in their assets. The names culled from the Austrian Archive, however, do not include the name of the insurer.

34. In or about February 2000, Generali advised the California Department of Insurance that it did not intend to renew its current business in the State of California and is seeking to sell blocks of its current business.

35. Each of the plaintiffs (or in the case of the AIA lawsuit, each of the Affected Companies identified in paragraph 6 of the Complaint in that lawsuit) is a capital stock insurer. Except for Generali, each of the plaintiffs (or in the case of the AIA lawsuit, each of the Affected Companies identified in paragraph 6 of the Complaint in that lawsuit) have identified themselves with the California Department of Insurance as members of an Insurance Holding Company System.

36. Attached hereto as Exhibit 2 is a true and correct copy of an Amended Application for Certificate of Authority executed and filed by Gerling America Insurance Company with the California Department of Insurance on or about August 21, 1989.

37. Attached hereto as Exhibit 3 is a true and correct copy of an Amended Certificate of Authority issued to Gerling

America Insurance Company by the California Department of Insurance on or about July 18, 1990.

38. Attached hereto as Exhibit 4 is a true and correct copy of an Appointment of Agent for Service of Process and Stipulation As Required By Law executed by Gerling America Insurance Company on or about June 20, 1983.

39. Each applicant for a Certificate of Authority, including those who are part of an Insurance Holding Company System, must submit a sworn Organizational Affidavit as part of its application. A true and correct copy of the Organizational Affidavit form that must be completed is attached hereto as Exhibit 5.

40. Attached hereto as Exhibit 6 is a true and correct copy of the Order Denying Plaintiffs Ex Parte Application for Restraining Order filed February 18, 1998 in the case of *Assicurazioni Generali v. Quackenbush*, United States District Court for the Northern District of California, No. C98-0625 MJJ.

41. Attached hereto as Exhibit 7 is a true and correct copy of a letter dated March 24, 2000 from Rolf Huppi of Zurich Financial Services to Phillip Angelides, Treasurer of the State of California.

42. Attached hereto as Exhibit 8 are true and correct copies of both the codified and uncoded portion of California Code of Civil Procedure Section 354.5. The uncoded portion, which appears on page 2, is titled "Stats. 1998 ch. 43."

43. Attached hereto as Exhibit 9 is a true and correct copy of the Brief of the United States As *Amicus Curiae* filed by the United States in the United States District Court for the Northern District of Florida in the case titled *Gerling Global Reinsurance Corporation of America, et. al v. Bill Nelson*, No. 4:99-CV-444-RH.

44. Attached hereto as Exhibit 10 is a true and correct copy of a Statement By Treasury Deputy Secretary Stuart E. Eizenstat dated March 23, 2000.

45 Attached hereto as Exhibit 11 is a true and correct copy of a letter dated November 10, 1999 to the Commissioner from the Office of the Prime Minister of the State of Israel and a true and correct copy of a Reuters news report dated March 21, 2000.

46. Attached hereto as Exhibit 12 is a true and correct copy of a press release dated April 4, 2000 issued by the Commissioner's office, an article that appeared in the New York Times dated December 2, 1999 and a press release dated December 1, 1999 issued by the Commissioner's office.

47. Attached hereto as Exhibit 13 is a true and correct copy of pages 87-88 of the Transcript of Proceedings on December 2, 1999 in California Department of Insurance Investigative Hearing No. 1H-99-00-9060.

48. Attached hereto as Exhibit 14 is a true and correct copy of pages 153-161 of the January 13, 2000 Transcript of Hearing before Deborah Senn, Insurance Commissioner for the State of Washington.

49. Attached hereto as Exhibit 15 is a true and correct copy of pages 3938-3940 of Best's Insurance Reports, 1999 Edition.

50. Attached hereto as Exhibit 16 is a true and correct copy of a letter from Jeffrey M. Klein, Vice President of Government and Industry Affairs for Royal & SunAlliance to Glenn Pomeroy, Chair, N[A]IC Internal Holocaust Commission Task Force dated March 7, 2000.

51. Attached hereto as Exhibit 17 is a true and correct copy of pages 960-961 of Best's Insurance Reports, 1999 Edition.

52. Attached hereto as Exhibit 18 is a true and correct copy of pages 119, 120, 124 and 125 of Best's Insurance Reports, 1999 Edition.

53. Attached hereto as Exhibit 19 is a true and correct copy of pages 4963, 4964 and 4968 of Best's Insurance Reports, 1999 Edition.

54. Attached hereto as Exhibit 20 is a true and correct copy of the English translation of a letter dated January 15, 1999 from the Federal Commissioner for Data Protection to Zurich Insurance Company as well as a copy of the Swiss Federal Law on the Protection of Data.

55. Attached hereto as Exhibit 21 is a true and correct copy of Page 1 of the Management Discussion and Analysis of Generali U.S. Branch's 1998 Annual Statement filed with the California Department of Insurance.

56. Neither the Royal & SunAlliance Insurance Group nor the CGU Insurance Group are members of the International Commission On Holocaust-Era Insurance Claims.

57. Attached hereto as Exhibit 22 are true and correct copies of pages 1539-1544 and 1975-1986 of Best's Insurance Reports, 1999 edition.

58. Attached hereto as Exhibit 23 is a true and correct copy of Gerling America Insurance Company's "Management's Discussion And Analysis Of Financial Condition And Results Of Operations" dated December 31, 1998 filed with the California Department of Insurance.

59. Attached hereto as Exhibit 24 is a true and correct copy of the face page and page 130 of Gerling America's Insurance Company's 1998 Annual Statement filed with the California Department of Insurance.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in San Francisco, California on May 3, 2000.

\_\_\_\_\_/s/  
Leslie Tick

[Exhibit 5 (other Exhibits omitted)]

CALIFORNIA CERTIFICATE OF  
AUTHORITY APPLICATION

ITEM #8  
ORGANIZATIONAL AFFIDAVIT

*See affidavit instructions before completing affidavit.*

1. Name of applicant (and intended Fictitious Business name, if any): \_\_\_\_\_
  - A. Type of application: \_\_\_\_\_
  - B. Reason for application: \_\_\_\_\_
  - C. Statutory home address of applicant: \_\_\_\_\_  
\_\_\_\_\_
  - D. Primary location of books and records for applicant: \_\_\_\_\_  
\_\_\_\_\_
  - E. Applicant's state of domicile: \_\_\_\_\_
  - F. NAIC number of applicant (including group number, if any): \_\_\_\_\_
  - G. Federal employer identification number of applicant: \_\_\_\_\_  
\_\_\_\_\_
2. If applicant is part of a holding system, or has subsidiaries, or affiliates, provide a detailed organizational chart. *Place an asterisk \* by all insurers holding a Certificate of Authority in California.*
3. Name of applicant's ultimate controlling parent:
  - A. Statutory home address of applicant's ultimate controlling parent: \_\_\_\_\_  
\_\_\_\_\_

B. Primary location of books and records for applicant's ultimate controlling parent: \_\_\_\_\_  
\_\_\_\_\_

C. Ultimate controlling parent's state of domicile: \_\_\_\_\_  
\_\_\_\_\_

4. List names and titles of each of the applicant's Officers and Directors as shown in the format below.

<i>Name (Last, First, Middle)</i>	<i>Title</i>
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_____	_____
_____	_____
_____	_____

A. Under "Name", show name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate (NMN). If there is an Initial Only, indicate (IO), following the initial.

B. Under "Title(s)", indicate the title of each officer/director. *Do Not* abbreviate.

5. List the names of *all entities and/or individuals* who hold ten (10) percent or more of Applicant's capital stock utilizing the format below.

<i>Name</i>	<i>Percent of Stock</i>
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_____	_____
_____	_____

A. Under "Name", if the holder is an entity, show the name of the Corporation, and DBA. Under "Name", if the holder is an individual, show the name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate (NMN). If there is an Initial Only, indicate (IO), following the initial.

- B. Under “Percent of Stock”, show the percent of stock held by each entity or person.
- 6. Provide the names and titles of all individuals who are officers and/or directors of applicant’s ultimate controlling parent, utilizing the following format.

<i>Name</i>	<i>Title</i>
_____	_____
_____	_____
_____	_____
_____	_____

- A. Under “*Name*”, show name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate (NMN). If there is an Initial Only, indicate (IO), following the initial.
  - B. Under “*Title*”, indicate the title of each officer/director. *DO NOT* abbreviate.
- 7. Please provide the names of *all entities and/or individuals* who hold ten (10) percent or more of the capital stock of Applicant’s ultimate controlling parent, utilizing the following format. (If any of these individuals have not previously submitted an Individual Affidavit they are required to do so.)

<i>Name</i>	<i>Percent of Stock</i>
_____	_____
_____	_____
_____	_____

- A. Under “*Name*”, if the holder is a corporation, show the name of the corporation, and DBA. If the holder is an individual, show the name as follows: Last Name, First Name, Middle Name. If there is no Middle Name, indicate (NMN). If there is an Initial Only, indicate (IO).

- B. Under “Percent of Stock”, show the percent of stock held by each entity or person.
8. Provide a list, and certified copies of all criminal, civil, regulatory and administrative actions(s) taken against applicant and/or applicant’s ultimate controlling parent by any governmental body including actions outside the United States, (within the last ten (10) years) utilizing the following format:

*Date:* Show exact date of action. *Example:* 2-10-82.

*Reason for Action:* Be specific. Provide code sections if applicable. Give a brief summary of the alleged violation.

*Government Body Taking Action:* Be specific. *Do not* abbreviate. Include name, and full address of agency, including zip code.

*Case Number (Or Other Reference):* Include both the agency and court case/reference number.

*Results of Action:* Give a brief summary of the results of the action.

9. Provide the names, fictitious names, and complete addresses of all Managing General Agents utilized by applicant. If the Managing General Agent is a corporation, provide the full names of all officers, directors, producers, and stockholders who hold ten (10) percent or more of the capital stock. If the Managing General Agent is an individual utilizing a fictitious name, provide the full name of the individual and the fictitious name. Indicate in which states the Managing General Agent is acting on behalf of the applicant. Indicate the type(s) of license(s) the Managing General Agent holds in each state.



Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_ 200\_, at  
(City) \_\_\_\_\_ (State) \_\_\_\_\_

\_\_\_\_\_  
Name of Officer (Typed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Officer

## APPENDIX G

## DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE

June 12, 2000

**STATEMENT BY TREASURY DEPUTY SECRETARY  
STUART E. EIZENSTAT**

Today, we are on the verge of a historic agreement. Otto Graf Lambsdorff and Dr. Manfred Gentz will recommend approval of the agreement we have reached on the issue of legal peace for German companies. The creation and funding of the German Foundation, the wide consensus of all the victims groups and plaintiffs' attorneys, along with the Statement of Interest, Executive Agreement, Final Act and the existing legal hurdles create a high probability that all pending and future cases will be dismissed and enduring legal peace will be achieved.

The legal closure agreement will remove a major hurdle to the establishment of a German Foundation. The German Government and German industry have agreed to a 10 billion D-mark capped fund for the resolution of slave and forced labor claims and for all other wrongs committed by German industry arising out of the Nazi era. I want to thank President Clinton and Chancellor Schroeder for their leadership. We have also agreed upon the precise allocation of 10 billion D-Marks to the various types of claims and for a Future Fund.

We have one more significant step before we meet again with all the parties to sign a final act. That next step is for the German Parliament to pass the necessary legislation to establish

the Foundation, an action that members felt they could not take without an effective mechanism for legal peace.

The German Foundation, to be set in German law and based on the U.S. commitment in an Executive Agreement to file statements of interest in support of dismissal, will be part of a half century U.S. effort to bring justice for Holocaust and other victims of the Nazi era.

Our goal is for the German Foundation to be the exclusive remedy and forum for the resolution of all claims against German companies arising out of World War II.

This exclusive role for the Foundation serves the foreign policy interests of the United States. The alternative to this mechanism would be years of litigation that lasts beyond the life-spans of the large majority of survivors.

There will be many winners as a result of our agreement:

- the victims, because more than one million people can soon benefit from the Foundation promptly — otherwise, only a few thousand victims could hope to benefit from litigation in U.S. courts that, even if successful, would take years to achieve;
- the German companies, because they have taken a major step to ensure that they will not have to pay twice for the same set of facts; and,
- German-American relations.

**APPENDIX H**

THE WHITE HOUSE  
WASHINGTON, D.C.

June 16, 2000

Dear Mr. Steiner:

We are now on the verge of an historic accomplishment, for which the Chancellor's leadership has been indispensable. We have agreed upon a DM 10 billion capped fund for the resolution of slave and forced labor claims and for all other wrongs committed by German companies arising out of the Nazi-era. We have also agreed upon the precise allocation of the DM 10 billion to the various types of claims and for a Future Fund. We have now resolved the difficult issue of reparations. This letter clarifies the exchange of correspondence between the parties and states the final position of the Administration on legal closure.

Let us reiterate on behalf of the President, that the President and the Administration are committed, as provided for in the proposed executive agreement, to enduring and all-embracing legal peace for German companies, for present and for future cases, for consensual and non-consensual cases. We agreed to commit in the agreement to file U.S. statements of interest in U.S. courts, stating, among other things, the U.S. foreign policy interests in dismissal. This was in the President's December 13 letter to the Chancellor. The Chancellor accepted the President's letter as the basis for legal closure, stating that "I greatly welcome the commitment of the U.S. Administration to state that the dismissal of all ongoing and future lawsuits would be in its foreign-policy interest."

We have since strengthened this commitment to give German companies even greater comfort against future suits. Let us review these and then offer our own assurances on behalf of the President:

- We have strengthened the wording of the Elements of the Statement of Interest as Count Lambsdorff requested of Deputy Secretary Eizenstat.
- We have strengthened the language in the Elements of the Statement of Interest as German companies suggested by going beyond the President's letter so that it now reads that it would be in the foreign policy interests of the United States for the Foundation "to be" the exclusive remedy for claims against German companies, rather than that the Foundation "should be regarded" as the exclusive remedy.
- At our own initiative, to further strengthen our Statement of Interest, we have stated that the President has concluded that dismissal of cases against German companies would be in the foreign policy interests of the United States, rather than simply asserting that it was in the foreign policy interests of the United States.
- Further, at our initiative, we will have the Secretary of State issue a formal statement of U.S. foreign policy emphasizing our strong interests in the German Foundation as the exclusive remedy and forum for claims and strongly favoring dismissal of Nazi-era cases brought against German companies that could threaten it. This will be accompanied by a declaration by Deputy Secretary Eizenstat that these negotiations, which have resulted in this Executive Agreement, continue a 55-year effort by the United States government to work with the German government to address the consequences of the Nazi-era and World War II.

We want to add our assurances, on the President's behalf. We have worked together with you to develop this historic German initiative. We do not wish to take any action that would perpetuate present or future cases. Indeed, it will be the enduring and high interest of the United States to support

efforts to achieve dismissal of all World War II-era cases, and the United States will act accordingly. To do otherwise would threaten the very Foundation Initiative to which all of us, including the President and Chancellor, have devoted so much time and effort. We will state in our Statement of Interest and in the Executive Agreement that for the last 55 years the United States has sought to work with Germany to address the consequences of the Nazi-era and World War II through political and governmental acts between the United States and Germany. Because the President believes that it is in the enduring and high interest of the United States, the Department of Justice will state to a court that the dismissal of all cases is in our foreign policy interests, and will affirmatively recommend dismissal on any valid legal ground, which, under the United States system of jurisprudence is for the U.S. courts to determine. Moreover, the United States will take no legal position in U.S. courts on pending and future cases which would itself preclude dismissal of these cases, and will, in fact, enumerate the real, legal hurdles plaintiffs face.

We appreciate your confirmation on behalf of both the German Government and German companies that these assurances resolve this important issue.

Sincerely,

Samuel R. Berger  
Assistant to the President for  
National Security Affairs

Beth Nolan  
Counsel to the President

The Honorable Michael Steiner  
National Security Assistant  
Office of the Federal Chancellor  
Federal Republic of Germany  
Berlin

**APPENDIX I**

BUNDESKANZLERAMT  
Michael Steiner  
Foreign Policy and Security Advisor  
of the Federal Chancellor

Berlin, July 5, 2000

The Honorable  
Mr. Samuel [R]. Berger  
Assistant to the President for  
National Security Affairs  
The White House  
Washington, D.C.

Dear Sandy:

Thank you very much for the letter of June 16 which you together with Beth Nolan, Counsel to the President, sent to me following our telephone conversations and the talks held in Washington on June 12 between Graf Lambsdorff, Dr. Gentz and Deputy Secretary of the Treasury Eizenstat. The letter accurately reflects the agreement reached between Graf Lambsdorff, the Foundation Translation Initiative of German Enterprises and Mr. Eizenstat. I would like to thank you for your personal commitment towards resolving the difficult issues surrounding legal peace for German industry within the framework of the Foundation Initiative. We were very much aware of the constitutional problems on the American side.

I have been asked to inform you that the agreement now reached on lasting and comprehensive legal closure for German companies regarding suits in the United States relating to the involvement of German companies in the crimes committed during the Nazi era or World War II, has been accepted by both the German Government and the German companies participating in the Foundation Initiative.

The Chancellor regards the personal commitment of the President of the United States as crucial to the establishment of the Federal Foundation. The agreement now reached has

removed the most important obstacle to the completion of the Foundation Act which will most likely be adopted by the German Bundestag on July 6. The German Government remains determined to begin compensation payments to former forced laborers by the end of this year.

After the entry into force of the act on the Foundation Initiative it will largely depend on the plaintiffs' lawyers and American judges whether this objective can be achieved. The German side will do everything in its power to make the necessary preparations, including the conclusion of agreements with partner organizations so that payments can begin as soon as the pending cases have been dismissed.

Sincerely,

/s/ Yours Michael Steiner

## APPENDIX J

## DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE  
Text as Prepared for Delivery  
July 17, 2000

DEPUTY SECRETARY OF THE  
TREASURY STUART E. EIZENSTAT  
REMARKS AT THE 12th AND CONCLUDING  
PLENARY ON THE GERMAN FOUNDATION  
BERLIN, GERMANY

“Historic” is a much-abused word, used so often it has become debased. But today’s agreement is genuinely historic, marking the culmination of what is likely to be the last major multilateral negotiation with Germany for the wrongs perpetrated during Nazi Germany’s ruinous period of power from 1933 to 1945.

German companies, along with Germany’s Government, have courageously come to terms with injuries largely ignored for 55 years, which for decades they insisted were the responsibility of the German Government, if anyone, to address. In so doing, they are providing some justice, however belated and for only a small fraction of the victims, but justice nevertheless to the elderly survivors never before compensated for these historically grave wrongs — slave and forced laborers of whom some one million of more than 10 million survive; those whose property were confiscated through Aryanization; others who were subject to medical experiments and other wrongs; those whose insurance policies were never paid, and all those who suffered at the hands of German companies.

All of the countries and organizations involved represent people grievously injured by German companies and the Nazi regime. Yet in allocating funds, we largely avoided arguments over degrees of suffering. We recognized that all of those eligible deserved to be recognized and compensated. Jewish-non-Jewish ties were thereby strengthened. In point of fact, most of the funds for slave and forced laborers will go to deserving non-Jews too long forgotten.

Permit me to provide a context for what has taken us 18 months to conclude. I refer to the five Central and Eastern European Governments — Belarus, the Czech Republic, Poland, Russia, and Ukraine, the State of Israel, the German Government, representatives of the Bundestag, lawyers for the victims, representatives of German companies, and the Conference on Jewish Material Claims Against Germany.

### **THE HOLOCAUST**

One must begin with the Holocaust, probably the gravest crime against humanity in recorded history and history's greatest robbery — robbery of personal effects, art, property, insurance, the right to compensation for labor, and, ultimately, dignity. Slave Laborers, Jewish and non-Jewish, who lived in concentration camps while they were forced to work, will receive the highest per capita allocation, because they were being worked to death. The Nazis had three methods of extermination: gassing, shooting and slave labor, known in German as "Vernichtung durch Arbeit," literally "extermination through labor."

The Nazi regime, in addition to attempting to conquer Europe and subject nations to a racist ideology, also undertook a war within a war, one to exterminate the Jewish people. They often sacrificed resources for the broader war effort for this war against an entire people. As one historian described it, "the Nazi Holocaust transcends the bounds of modern historical experience ... . Never before in modern history had one people made the killing of another the fulfillment of an ideology..."

The German legislation passed by the Bundestag last week acknowledged these historical facts and accepted the responsibility for them. The preamble to the law states:

“that the National Socialist State inflicted severe injustice on slave laborers and forced laborers, through deportation, internment, exploitation which in some cases extended to extermination through labor...,”

“that German enterprises which participated in the National Socialist injustice bear a historic responsibility and must accept it, ...”

“that the German Bundestag acknowledges political and moral responsibility for the victims of National Socialism.”

The Conference on Jewish Material Claims Against Germany played a critical role in our success. The Conference was led by Israel Miller, Israel Singer, Gideon Taylor, and Karen Heilig, together with a team of attorneys, Stan Chelsey and Jeanne Geoppinger. The State of Israel, represented by Minister Rabbi Melchoir, Benjamin Shalev, Lenny Ben-David, Bobby Brown, and also with Holocaust survivors Ben Meed, Roman Kent, Noach Flug, Karl Brozik, Saul Kagan, and Ben Helfgott also played a key role. They all constantly reminded us of the moral dimension of our effort and kept all of us pointed toward the ultimate goal of justice for those who suffered, Jew and non-Jew alike. The Claims Conference is a worthy partner organization to handle the claims of Jewish slave and forced laborers.

This agreement does not end moral responsibility for the Holocaust. Nothing can erase the memory of those who died, of the culture and potential achievements lost, of the suffering of those who survived, of the lessons the Holocaust must teach us about the importance of tolerance and the rule of law, of the need for good people not to remain silent in the face of evil, of the need for prompt international response to human rights violations. All of this should remain in our hearts and minds as

long as people occupy this planet. But at the same time, this historic agreement does help to close a chapter for those who have waited so long for some measure of justice, and it does help to heal wounds left open during the lifetime of many of the survivors.

### **CENTRAL AND EAST EUROPEANS**

One of the most important achievements of our negotiations is to provide belated recognition and payments to the double victims of the 20th Century's worst evils — Nazism and Communism, some one million citizens of Central and Eastern Europe who were forced laborers and in some cases slave laborers of Nazi industry and agriculture. They were forced to keep the German economy running while Germans went to war. They received little or no compensation and lived in harsh conditions, guarded camps and, in some cases, concentration-like camps. As if this was not enough, they then lived for over four decades after World War II under the iron rule of Communist governments, denied compensation from Germany, until the programs of the 1990s. At last their suffering is being recognized.

The German Foundation has a responsibility to ensure that they are treated fairly and equitably, and that all people similarly situated are treated the same. We will do all we can to help achieve that result.

I want to applaud the representatives of the governments of Belarus, the Czech Republic, Poland, Russia, and Ukraine, led respectively by Belarus Deputy Foreign Minister Vladimir Gerasimovich, Jiri Sitler of the Czech Republic, Polish Deputy Foreign Minister Jerzy Kranz, Russian Ambassador Valentin Kopteltsev, and Ukraine Deputy Foreign Minister Olexander Maidannyk, as well as the leaders of their Reconciliation Foundations, which will handle claims in their countries. All of you made important contributions and were excellent representatives for your people. You have each written an important page in your country's histories.

## **GERMANY**

We must never forget that half of the 10 billion DM amount to reach a dignified payment level for victims came from the Federal Republic of Germany, through its Government and parliament, and thus from all of the German people. Despite the efforts of postwar German Governments to address the consequences of Nazi horrors, we found ourselves struggling with this moral issue again, 55 years after the end of Hitler's Germany. Many countries and leaders are reluctant to face the past. Here Germany's leaders were willing to recognize an important gap in past compensation and restitution programs. It is to Germany's eternal credit that your leader, Chancellor Schroeder, chose to face the wrongs perpetrated by Germany's companies during the War and the German state's own employment of forced and slave laborers and to reach out to surviving victims. The leadership and courage of Chancellor Schroeder, and his willingness and that of his government and the Bundestag and Bundesrat to contribute 5 billion DM to the German Foundation at a difficult budgetary and economic time, has been inspirational.

This adds a new dimension to Germany's collective and continuing acceptance of responsibility for Nazi wrongs, shouldering an obligation never matched by any other nation in history. Since its founding, the Federal Republic of Germany has made compensation and reconciliation for wrongs committed during the Nazi era an important part of its political agenda. The agreement we sign today is a significant new chapter in that continuing, and ongoing responsibility. You have set an example for the 21st Century other nations would do well to follow.

No one has set a better moral tone for our work than German President Rau, whose statement in December in which he "begged forgiveness" on behalf of German enterprises and the German people for the wrongs committed, remains the signature moral position in this long affair.

Yet from its inception, this has been at its heart a German company initiative. It was this generation of enlightened German industrialists and financial leaders who were willing to meet the moral responsibility for the actions of their corporate predecessors. For sure, there were practical and legal dimensions to their actions, given the pendency of class actions against them in the United States, one of their largest markets. But it would be unfair and misleading to suggest that this was their sole motivation for the actions they have taken. They have contended from the start that they bore no legal responsibility today. Indeed, there are a variety of legal hurdles to any recovery in U.S. courts.

But German companies sued in U.S. courts have clearly assumed a moral responsibility, thereby setting, a standard for good corporate citizenship. This is evidenced by their willingness to create a Foundation which will pay many more victims than those surviving laborers their companies employed or wronged — perhaps as many as a million more, those who worked for defunct German companies, those not subject to the jurisdiction of U.S. courts, SS companies, and public employees, and to permit the Reconciliation Foundation to pay agricultural workers. This moral dimension is further demonstrated by the contributions of literally hundreds of German companies who have absolutely no legal risk in U.S. courts or elsewhere. Moreover, German companies insisted on an adequately financed Future Fund within the capped 10 billion DM-plus interest fund, for the benefit of heirs and for education projects and programs to promote tolerance and human rights. We are certain that German enterprises will rise to the challenge of promptly raising their 5 billion DM contribution.

There are many German company leaders who deserve credit, including Deutsche Bank Chairman Breuer, and members of the German Foundation Initiative Legal Working Group, headed by Dr. Klaus Kohler. But the leader of the German company effort from the start has been Manfred Gentz,

the Chief Financial Officer of DaimlerChrysler. Dr. Gentz, with tremendous business responsibilities, undertook the time-consuming task of leading the corporate effort. He has been a tough but fair negotiator, a diligent defender of German corporate interests, and one who never lost sight of his dual goals of a measure of justice for victims and legal peace for German companies. Both goals are now within sight. We would not be here today without him. The legal team of German companies is ably represented by the firm of Wilmer, Cutler, and Pickering, which includes Lloyd Cutler, Roger Witten, Robert Kimmitt, Lou Cohen, and John Trenor.

#### **U.S. LAWYERS**

We must be frank. It was the American lawyers, th[r]ough the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them. The settlement we reached of 10 billion DM will help hundreds of thousands of victims, beyond those whom the lawyers represent, live out their declining years in more comfort. For this dedication and commitment to the victims, we should always be grateful to these lawyers.

But they have also worked diligently to find solutions to seemingly intractable problems and to cooperate in finding ways to achieve legal peace for German companies.

The legal fees they will receive are far less than would normally be received for such a large settlement and represent only about one percent of the total Foundation sum. This is eminently reasonable given their contribution. Their receiving from the Foundation what is negotiated with German companies and the German Government is indispensable to the implementation of this agreement, and I have pledged, together with Count Lambsdorff and Dr. Gentz, to ensure that this is achieved.

Special recognition is due Mel Weiss, Professor Burt Neuborn, Deborah Sturman, Michael Hausfeld, Martin Mendelsohn, Robert Swift, Ed Fagan, Michael Witt, Steve Whinston, Mel Urbach, Lawrence Kill, Dennis Faucher, Barry Fisher, Carey D'Avino, Linda Gerstel, Irwin Levin, Edward Millstein, Morris Ratner, and Richard Shevitz.

### **MESSAGE TO VICTIMS AND SURVIVORS**

One of the great disappointments is that this agreement comes so many years after the War and that so many who would have been eligible have died. Through this Foundation Initiative we will honor the memories of those who died during and after the Nazi period. To those who still survive, we know that no amount of money can adequately compensate you for the wrongs perpetrated against you. But we hope the dignified sums you will receive will serve as a recognition of your suffering and will enable you to live with less difficulty than would be the case without these payments.

We also hope the Future Fund, which will endure long into the future, will support projects which will remind generations still unborn of your sacrifice.

### **UNITED STATES ROLE**

Why has the U.S. Government taken such a direct role in the settlement of private lawsuits and in helping to shape the German Foundation, "Remembrance, Responsibility, and the Future"? It is because we were asked by the German Government to work as partners with them in facilitating this historic initiative, and all parties to the litigation agreed to our participation. It is because of President Clinton's determination to expeditiously help in their lifetimes those who were victims of German companies and German government injustices, many of whom are American citizens. It is because of our national interest in addressing any tensions in our relationship with Germany, one of our most important in the world, arising out of prolonged litigation and threats of sanctions.

But it is also because the United States for 55 years has supported Germany's efforts to provide justice to victims of the Holocaust and Nazi era, to Jews and non-Jews alike, wherever they lived. This effort has been a continuation of these governmental efforts. U.S. occupation forces passed the first compensation and restitution law to address the wrongs done to victims of Nazi persecution in the early postwar period. This law was later largely incorporated into German domestic legislation, which was encouraged by the United States, and reached millions of Nazi victims in the West (4.4 million claimants under the German Indemnification Law alone). Payments from the German Foundation will add another 5 billion dollars to the 100 billion (in current dollar terms) in compensation, restitution, and pensions that have been paid and will continue to be paid by Germany for acts arising out of the National Socialist period. This new Foundation will make payments to more than one million survivors of the Nazi era, and represents a fulfillment of the task of the past half-century of bringing a measure of justice to the victims.

Our role has been to work cooperatively with Germany as a catalyst and partner to help achieve some justice for far more people and far more rapidly than could ever be achieved in our courts, and to create a mechanism to help German enterprises achieve legal peace in the United States courts. The unique agreement we sign today recognizes our responsibilities, which we will meet to help achieve that result.

The importance the U.S. Government has attached to these negotiations is demonstrated by the direct involvement of President Clinton at critical times, along with his Chief of Staff John Podesta, his National Security Advisor Sandy Berger and his Counsel Beth Nolan, as well as Secretary of State Madeleine Albright and Secretary of the Treasury Lawrence Summers.

But I must single out the remarkable U.S. team who showed brilliance, imagination, determination, sound advice and

counsel, and, yes, moral support to me and to the entire enterprise. Each member of the team, without complaint, added these negotiations to an already overburdened schedule. They never found an obstacle they could not help all of us to overcome. Ambassador J. D. Bindenagel, Ron Bettauer, Eric Rosand, Basil Scarlis, Jody Manning, Richard Smith, John Becker of the State Department; Solicitor General Seth Waxman, David Ogden, David Anderson, David Buchholz, of the Department of Justice; Holly Toye Moore, my Senior Advisor at the Treasury Department, have all served their country and this great cause with unswerving dedication and deserve our praise. The U.S. Ambassador to Germany, John Kornblum, deserves special recognition as one of the fathers of this initiative and the provider of sage advice and extraordinary effort from start to finish, along with his Embassy team, in particular, Mark Scheland.

#### **OTTO COUNT LAMBSDORFF**

I have saved the best for last. Count Lambsdorff, my co-chair and long-time friend, has been the one indispensable person to our success. He has spent a lifetime of faithful service to the Federal Republic of Germany, devoting himself to strengthening the German-U.S. relationship. Count, your remarkable work here has added another chapter to a distinguished career. He has been the person most responsible for finding and brokering compromises, for motivating us at difficult moments to never forget the victims we were trying to help. He has been ever faithful, friendly even at the most difficult and tension-filled times, creative and indefatigable.

Count Lambsdorff is a great German patriot who has done yet another great deed for his country. The work of your team of Michael Geier, Otto Loeffler, Gerd Westdickenberg, Stephan Keller, and many others is appreciated.

## REMAINING TASKS

To achieve our basic goal of assisting the victims in their lifetimes, we still have work to do. Count Lambsdorff and I have exchanged letters with the plaintiffs' lawyers and representatives of Central and East European governments, and with the Claims Conference, addressing a number of outstanding issues which required clarification following passage of the German legislation, in areas such a[s] insurance, "other wrongs," and payment of attorneys fees. We are determined to see that the commitments in these letters are honored.

I would also like to stress some additional points:

It is critically important that all German insurance companies cooperate with the process established by the International Commission on Holocaust Era Insurance Claims, or ICHEIC. This includes publishing lists of unpaid insurance policies and subjecting themselves to audit. Unless German insurance companies make these lists available through ICHEIC, potential claimants cannot know their eligibility, and the insurance companies will have failed to assume their moral responsibility.

It is also critical that German companies open their archives for research on the Nazi period and World War II and for the identification of any art works they may have in their possession, which might have been looted during the Nazi era.

This is a German enterprise initiative in which they have pledged to provide 5 billion DM. We all expect this money to be provided as soon as possible in an interest-bearing account so that any delay in settlement and dismissal of cases will not further disadvantage aging victims.

The plaintiffs' attorneys are working together with defense attorneys to consolidate and dismiss pending court cases against German firms for wrongs arising out of the Nazi era.

The new Foundation should convene the board of trustees and initiate public notification so that potential recipients may begin to receive payments by the end of this year.

We all now bear a heavy responsibility to implement this historic agreement. The victims have waited 55 years for this day. We can not let them wait longer.

Thank you all for your roles in this historic endeavor.

**APPENDIX K****Wednesday July 18[, 2001;] 4:12 PM ET****ARMITAGE SPEAKS ON HOLOCAUST CLAIMS***By Harry Schweid, AP Diplomatic Writer*

WASHINGTON (AP) - Deputy Secretary of State Richard Armitage called on German insurance companies to make a fair settlement of claims by victims of the World War II Holocaust.

Armitage told Jewish leaders Wednesday the Bush administration supports efforts to “try to bring a measure of justice to the survivors.”

Some 6 million Jews were killed by Germany and its supporters during the war. More than a half-century later, survivors of the nearly successful effort to exterminate Jewry in Europe are still seeking restitution.

In a speech Tuesday to the same Claims Conference, former Secretary of State Lawrence Eagleburger accused Allianz, the large German insurance company, of failing to compensate a single claim of the 4,800 claims submitted by the international commission on Holocaust-era insurance headed by him.

“How much have they paid by July 3rd? A great big fat zero,” Eagleburger said of the claims made on behalf of prewar policy holders.

Allianz rejected Eagleburger’s criticisms, saying it had settled two claims from victims recently, outside the process established by the international commission. It cited another 18 claims paid out before the commission’s creation and a further 170 claims paid by its Italian subsidiary, RAS.

The company said 92 per cent of the claims did not name any insurance company, as survivors failed to recall where their family had held insurance policies.

Declaring “my neutrality has been sorely tested over the past two years,” Eagleburger said he doubted an agreement ever would be reached between the German Foundation and the German insurance companies.

Last July, the German Foundation was established in Berlin. Armitage said it began making payments last month to former slave and forced laborers.

Austria has made payments to some Austrian survivors and French banks have made a significant contribution to a fund soon to be distributed to victims or their heirs, Armitage said.

In all, he said, more than 500,000 Holocaust survivors in 67 countries have received about \$60 billion in compensation payments.

“The administration of George W. Bush is committed to promoting a measure of justice for victims of the Holocaust as an expression of this country’s commitment to human rights and human dignity,” the State Department official said.

**APPENDIX L**  
**SUPPLEMENTAL DECLARATION OF**  
**FRANK KAPLAN**

I Frank Kaplan declare:

1. Through my professional corporation, I am a member of the law firm of Alschuler Grossman Stein & Kahan LLP, attorneys for defendant Harry Low in his capacity as Insurance Commissioner for the State of California. The facts set forth in this Declaration are personally known to me and I have first-hand knowledge of the same. If called as a witness, I could and would competently testify thereto under oath.

2. Attached hereto as Exhibit 1 is a true and correct copy of portions of an insurance policy that Generali contends that it issued to Josef Schwarcz. This document was produced by Generali in *Babos v. Generali*, Los Angeles Superior Court Case No. BC188680.

3. Attached hereto as Exhibit 2 is a true and correct copy of a portion of an insurance policy that Generali contends that it issued to Mor Stern. This document was produced by Generali in *Stern v. Generali*, Los Angeles Superior Court Case No. BC185376.

4. Attached hereto as Exhibit 3 is a true and correct copy of the signature and errata sheet executed by Rabbi Abraham Cooper in connection with his deposition taken in these actions on July 27, 2001.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed in Los Angeles, California on August 13, 2001

\_\_\_\_\_  
/s/  
Frank Kaplan

[Exhibit 3 omitted]

[Exhibit 1]

*TRANSLATION FROM GERMAN*

Agency: (illegible)

Application No. 162706

L. No.

ASSICURAZIONI GENERALI  
in TRIESTE

Without administrative costs

(Stamp: TRANSLATION FROM THE HUNGARIAN)

*Life insurance*

*Copy*

Management for Hungary  
P.N.

Insurance Policy Table: 3.P.  
No. 55283 Age and Term:  
37/20

With regard to the following insurance policy, concluded on the basis of the application dated Abaújszántó, January 25, 1927, and the other written declarations of the policy holder and the insured, on the life of Mr. Josef Schwarcz, businessman in Abaújszántó, born, according to his statement, in Abaújszántó on January 19, 1890.

ASSICURAZIONI GENERALI obligates itself, under the general and special insurance conditions contained in this policy, to pay the amount of

2,000 dollars - Ch. New York

immediately upon the death of the insured, half to his wife, n<sup>è</sup>e Ella Spira and half to the children of the insured in equal shares, or, not later than February 1, 1947, to the insured himself, if he is still living on that date.

For this insurance, there is to be paid an annual premium of

105.40 dollars,

the surcharge for administrative costs and the statutory stamp tax, payable on February 1 of each year as long as the insured lives, but for not more than 20 years.

After the expiration of the fifth insurance year, the premiums shall be reduced in accordance with the rider on the other side of the page.

Without prejudice to the provisions of § 2 of the general insurance conditions, the insurance shall begin on February 1, 1927, at 12 noon.

The company recognizes Mr. Josef Schwarcz, residing in Abaujszántó, as the policy holder.

[illegible].

Premium until February 1, 1928	105.40
Administrative cost surcharge	
Single fee	3.00
Stamp tax	<u>2.11</u>
Total paid in cash	<u>111.11</u> doll. New York
Annual premium:	B'pest, on February 9, 1927

[illegible] doll. New York

ASSICURAZIONI GENERALI      Venue  
§ 9.W.

*TRANSLATION FROM HUNGARIAN*

55283

162708  
Miskolc3.P.  
37/20

prepared at Abaújszántó, on January 25, 1927

According to the statement made by József SCHWARCZ, produce merchant, resident of Abaújszántó, on January 19, 1890:

Two thousand (2,000.00) dollars - New York check - after the death of the insured, the above amount must be paid immediately - but not later than February 1, 1947 - in half to the wife of the insured, née Ella SPIRA, and the other half in equal proportion to his children.

One Hundred and Five Dollars and Forty cents (\$105.40) - New York check - in whole.

February

first

fifth

On February 1, 1927

Mr. József Schwarcz from Abaújszántó...

In connection with the present insurance policy, the attachment relating to the exercise of war risks is being applied as well.

February 1, 1929 105.40 dollars New York check

3.00

2.71 =

111.11 dollars New York check

On February 9, 1927

	[illegible word(s)]		105.40
28.	“ ” “	“	105.40
29.	“ ” “	“	105.40
30.	“ ” “	“	105.40
31.	“ ” “	“	105.40
32.	“ ” “	“	104.58
33.	“ ” “	“	1[??]
34.	“ ” “	“	100.44
35.	“ ” “	“	98.97
36.	“ ” “	“	9[?].7?
37.	“ ” “	“	87.69
38.	“ ” “	“	8[?].79
39.	“ ” “	“	7[?].0?
40.	“ ” “	“	67.46
41.	“ ” “	“	[?]9.0?
42.	“ ” “	“	42.76
43.	“ ” “	“	39.63
44.	“ ” “	“	28.67
45.	“ ” “	“	16.86
46.	“ ” “	“	<u>4.22</u>
			\$1,534.63

The present insurance policy deals with U.S. dollars, and therefore both the obligation of the payment of premiums and other expenses as well as the Company's payments must be expressed in U.S.A. dollar value and carried out by drawing a check on a New York bank.

Instead of Section 9 of the General Insurance Conditions, the following resolution [cut off] In the event of mixed insurance, the cash value equaling 5% of the insurance amount calculated without any premiums pursuant to Section 6 [cut off]

Section 10 of the General Insurance Conditions provides that the interest rate [cut off] from time to time.

Budapest. February 9, 1927

Hungarian [illegible] of the Triest General Insurance Company

§10 The maximum amount of a Policy Loan is the buy-back value. After the loan has been granted, 4 1/2% (four and one-half percent) interest must be paid in advance on the established due dates. The Policy Loan must be noted on the Insurance Document.

If the interest is not paid, the Company itself will continue making those payments by buying back the necessary portion of the Insurance amount (§9).

The Company shall have the right to deduct the debt capital from any of its payment obligations under the Insurance Policy in question.

*Changing  
the  
Beneficiary,  
transfer,  
mortgaging*

§11 The Beneficiary shall acquire his/her right to satisfaction only on the occasion of the Insurance event; until then all rights arising under the Insurance Policy that can be enforced against the Company shall be held exclusively by the Contracting Party or his/her heir acknowledged by the Company.

§12 Any changes in the person of the Beneficiary, the transfer of rights or the mortgaging of such rights by the Contracting Party shall only be valid, as far as the Company is concerned, if the announced change has been entered on the Insurance Document by the Company.

*False  
information*

§13 If the application or any other written statement by the Contracting Party or the

Insured knowingly contains false or biased information, the Insurance Policy will be canceled and the premiums already paid will be forfeited to the Company.

*Unassail-  
ability*

§14 When the Insurance has been in effect for a minimum of three years, the validity of the Insurance Contract is unassailable by the Company, unless the Contracting Party or the Insured entered into the Contract through fraud.

*Travels*

§15 The Company's guarantee covers unconditionally dangers involved in travel and changes of domicile within Europe. After the Policy has been in effect for six months, it will also cover dangers of travel and changes of domicile outside Europe.

*Suicide*

§16 If the Insured dies as a result of suicide or during a suicide attempt, the Company will pay the full amount of the Insurance only if the Insurance Policy has been in effect for a minimum of three years; otherwise, regardless whether the Insured was competent or incompetent at the time of commission of the deed, the Company will pay only the amount of the Unearned Premium Reserve.

*Duels* §17 If the Insured dies as a result of injuries sustained in a duel, the Company will pay the full amount of the Insurance only if the Insurance Policy had been in effect for a minimum of six months; otherwise, the Company shall have no liability whatsoever and the premiums already paid will be forfeited to the Company.

*Hazards of War* §18 If the Insured, fulfilling his legal draft obligation, is summoned for military duty, the guarantees of the Insurance Policy will be extended to his military service.

For professional soldiers and persons volunteering for military service, as well as those serving in the permanent Army, the National Defense Force and the Navy, the Company only insures for hazards of war if a separate agreement is concluded to that effect. If there is no such separate agreement or if the established surcharge is not paid before the Insured's participation in events of war, the Company's obligations for any Insurance shall remain suspended as long as the Insured remains in military service and will be reinstated only after the Insured provides the Company with proof of his satisfactory health and pays all omitted premiums with late interest. If the Insured dies in the course of his military duties or if his health upon completion of his duties is not found satisfactory, the Insurance Policy will be voided and the Company will pay to the Beneficiary or to the Contracting Party the amount of the Unearned Premium Reserve.

§19 The Insurance event must be reported to the Company without delay.

*Maturity of  
the  
Insurance*

§20 To enforce his/her claim, the Beneficiary must provide the Company with the Insurance Document, an official certification showing the age of the Insured (unless this was provided previously) as well as any and all other proofs that may be necessary. The death of the Insured must be documented with an official Death Certificate, and a physician must certify the last illness or other cause of death of the Insured. The attainment of a certain age must be proved with an official Certificate of Life. If the documents provided are regular and sufficient, the Insurance amount will be paid without delay or, if the Insurance Policy calls for payment by a certain deadline, at the deadline established in the Insurance Document.

[Exhibit 2]

*TRANSLATION FROM GERMAN*

ASSICURAZIONI GENERALI IN TRIEST

Main Office for the Czech Republic in Prague

Licensed to do business in the Austrian Republic pursuant to a decree of the Ministry of the Interior dated 10/4/1927 No. 62802.108

*COPY*

64813 Insurance Policy Table: 15 An  
Age and Duration: 40/20  
No. 115285

Based on the application from Uzhorod on March 18, 1929, and the other written declarations of applicant and the life insurance contract of the insured on the life of

Mr. Mor Stern, Merchant in Uzhorod

according to information born in Stropkow on September 23, 1889

The ASSICURAZIONI GENERALI agrees through its main office in Prague and subject to the general and special terms and conditions in this document to pay the amount of

K 30,000.--

on April 1, 1949, to the insured, if he survives to that date, or, if he should predecease, on the above date to the person surrendering this insurance document.

This policy is payable in semiannual premiums of

K 720.--

plus the statutory stamp fee, payable on April 1 and October 1 of each year as long as the insured is alive, but no longer than for the period of 20 years. Upon the expiration of five years the insurance premiums shall decrease in accordance with the application on the reverse side hereof.



3) The Company shall be entitled to withdraw from the contract on account of incorrect statement of age only if the actual age on the date the insurance commenced was more than 60 years. If the Company exercises its right to withdraw, the premiums paid will be refunded without interest.

4) In determining the premium, a year of life begun shall be assumed to be completed if, upon the commencement of the insurance, more than 6 months of that year of life have passed.

#### ART. 18

Payments by the Company. 1) All payments by the Company shall take place at its main cashier's office in Prague against acknowledgment of receipt, which shall be certified at the Company's request. Upon request, the amount payable will be sent to the person entitled to receive it at the latter's expense and risk. Return of the insurance policy is a prerequisite for the maturity of each claim under the insurance contract.

2) Payments by the Company shall become due and payable upon the expiration of one month after the notification of the insured event or the date specified in the insurance policy on which, if the insured survives, the insured amount is to be paid; if, however, the investigations necessary to determine the occurrence of the insured event, the scope of the payment obligation or the entitlement to payment, without fault of the Company, cannot be concluded within the one-