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The Honorable
Tom Lantos
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On International Relations
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Dear Mr. Chairman,

In view of next week's mark up of the Holocaust Insurance Claims Accountability Act (HR 1746), I would like to convey to you some of the German Government's concerns regarding this piece of legislation.

As you may know, the German Government considers the International Commission on Holocaust Era Insurance Claims (ICHEIC) a success: ICHEIC made it possible that out of a total of 91,558 applicants, 48,263 received compensation in one way or another. This is equivalent to more than 52% of applications filed with ICHEIC. Roughly 300 million US\$ have been paid just for compensation claims. Moreover, the ICHEIC Humanitarian Fund has made large contributions to programs designed to help Holocaust survivors and to commemorate and inform about the Holocaust.

The German Government does not have any evidence that millions of insurance holders' names have been withheld. Rather, the German government's view is that there are no significant numbers of unresolved insurance claims remaining open.

Those involved in the ICHEIC process, including Secretary Eagleburger, the Jewish Claims Conference, and the American Gathering of Jewish Holocaust Survivors share this assessment. At ICHEIC's final session on 20 March 2007 there was overall agreement that German insurers have fulfilled all obligations under the ICHEIC trilateral agreement and have therefore deserved permanent and all-embracing legal peace.

The German Government acknowledges without qualification Germany's historical responsibility for the Holocaust and Holocaust survivors. However, we do not consider legal action to be a suitable way to assert claims arising from the Nazi era. In the past voluntary agreements – as in the case of ICHEIC – have proven to be the most successful method of addressing the problem of compensation for such claims. These agreements also had the advantage of working to the benefit of large numbers of survivors – not just to the few who are successful in court. Moreover, given the significant legal hurdles posed by the federal rules of evidence for claims brought in court (not applicable for instance in the ICHEIC process), it is far from certain that court action against insurance companies would be successful. By contrast, voluntary agreements, such as ICHEIC are specifically aimed at also helping those Holocaust survivors whose claims would not stand up in court. As you may know, claimants with sufficient documentation can still file their claims with the insurance companies concerned, as insurers promised to continue processing these claims – and apply ICHEIC standards in their decisions – even after the ICHEIC process has been concluded.

Even if the legislation currently under discussion should clear the way for a few survivors to win large sums in court, it would certainly jeopardize the possibility of compensating large numbers of Holocaust survivors through voluntary contributions, for example, by industry. Indeed, turning away from the principle of legal peace after voluntary compensation has been paid, would make it much harder to convince industry not only in Germany, but anywhere in the world to enter into agreements that ensure timely compensation of Holocaust survivors.

We deeply regret that some Holocaust survivors today do not enjoy standards of living that we wish for them. The current bill, however, would do nothing to change that. To the contrary, it would instead benefit, just a very small number of persons, if any.

Let me also mention that HR 1746, in our opinion, is contrary to good faith: Secretary Eagleburger and others have confirmed that the participating companies have fully cooperated with ICHEIC. In exchange these companies were promised to be granted legal peace. The significant amounts paid for compensation and humanitarian projects under the ICHEIC procedure have shown that negotiation can help Holocaust survivors in a better and more timely manner than litigation ever could. Should HR 1746, however, become law, it would likely be impossible to enlist the support of any German company for similar projects in the future.

Hence, HR 1746 would do nothing to improve the lot of the majority of Holocaust survivors, but would at the same time jeopardize future agreements that would really serve to benefit Holocaust survivors in dire need of help, in particular those unable to afford litigation in the United States.

Before the committee considers this legislation I would like to work with you to address these issues.

Very truly yours,
Alan Krauth