

Stuart Eizenstat and Samuel Dubbin have very different points of view about how to handle Holocaust insurance claims.

THE ISSUE

Travel in Jewish circles these days and you are likely to hear bitter disagreement over how to handle decades-old insurance claims, a controversy that has torn apart friendships and pitted some Holocaust survivors against other survivors, the U.S. State Department, American Jewish Committee, Anti-Defamation League and Claims Conference, which represented world Jewry in post-war negotiations with Germany, and other Jewish groups.

On one side are survivors such as Jack Rubin, who was seven when an agent from insurance giant Generali came to his house in Vári, Czechoslovakia and sold his father a policy that covered the family's small department store. That was the last Rubin, an 84-year-old survivor of Auschwitz who lives in Florida, would hear of the policy. When his family was rounded up, his father took the family's important papers with him. "My parents' policy burned in Auschwitz," he says.

Rubin and others like him want to take Generali, based in Trieste, Italy, to court, but a 1998 agreement brokered in part by Clinton administration Deputy Treasury Secretary Stuart Eizenstat which created the International Commission on Holocaust Era Insurance Claims (ICHEIC), makes it nearly impossible for them to win. In return for making payments through ICHEIC to Holocaust survivors who had little or no documentation of their claims and might otherwise not be able to win in court, the insurance companies—including Generali and Germany's AXA and Allianz—asked for "legal peace" so that they would not be sued in the future. And although immunity was never promised, the U.S. government vowed to file a statement of interest in any future case, arguing that a lawsuit would fly in the face of American foreign policy interests.

The National Association of Insurance Commissioners, along with the AJC, ADL and other groups all signed off on the agreement, and by most standards ICHEIC was a success. The insurance companies set aside \$500 million for the process, and by the time ICHEIC closed its doors in 2007,

it had distributed some \$306 million to 48,000 claimants, many of whom had little or no evidence of an insurance policy. The remaining \$200 million was given to the Claims Conference to help needy survivors around the world, the vast majority of whom did not have insurance policies.

Rubin is one of a group of survivors represented by Florida attorney Sam Dubbin that has been aggressively pursuing a multi-front campaign against the agreement. Unable to persuade the State Department of their cause, they've enlisted the support of key legislators in the U.S. House and Senate—many of them from the battleground state of Florida—who are pushing legislation that would allow survivors to sue the insurance companies. The Tom Lantos Justice for Holocaust Survivors Act (H.R. 890) and the Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2011 (S466) would remove restrictions that were part of the agreement, leaving the insurance companies open to litigation. The issue has become a tug-of-war between Congress and administration officials—past and present—who warn that the proposed legislation could jeopardize "solemn agreements" that the U.S. has negotiated with various European governments. A compromise proposed by the World Jewish Congress and the American Gathering of Holocaust Survivors and their Descendants calling for an independent monitor to oversee claims and to address inadequacies in the ICHEIC process has as yet gone unheeded.

Recriminations fly, with the groups that helped forge the agreement accusing survivors of having unrealistic financial expectations that will, at best, enrich the pockets of their lawyers. The angry survivors, in turn, say Jewish groups have turned their backs on them and jumped into bed with the insurance companies. *Moment's* senior writer, Daphna Berman, talked to Ambassador Eizenstat, now a special advisor to Secretary of State Hillary Clinton on Holocaust Issues and Special Negotiator for the Claims Conference, and Dubbin, who represents the Holocaust Survivors Foundation USA.

WHAT STUART EIZENSTAT SAYS

Do you think that the current agreement with ICHEIC is fair?

The agreement was considered fair by some of the best class action lawyers in the United States. It was part of a \$5 billion settlement with Germany over slave labor and other issues including insurance. As a result of that agreement, we transmitted several hundred million dollars to ICHEIC, which has paid out a total of about \$350 million to some 20,000 claimants. They paid 8,000 claims where there were no insurance policies found at all and several thousand others on humanitarian grounds, simply because there was a story that sounded compelling despite lack of evidence.

WHAT SAMUEL DUBBIN SAYS

Do you think that the current agreement with ICHEIC is fair?

The ICHEIC process was not fair or transparent: It resulted in only three percent of victims' insurance money being paid. The U.S. has two executive agreements, one with Germany and one with Austria, and they were flawed from the outset because there was never any analysis about the amount of money that insurance policies were estimated to be worth. The German agreement called for insurance companies to pay \$250 million without ever examining what German insurance companies owed. Later studies using data collected by ICHEIC staff showed that they owe \$7 billion. When you include the Italian, French, Austrian and Swiss companies, the total is closer to \$18 billion.

Do you think that the Jewish organizations were right in striking the agreement?

Of course they were! Because without that the survivors wouldn't have gotten anything. You have \$350 million in insurance policies paid after 60 years when no one thought about insurance. I brought all of these issues back on the agenda of the world. It was a completely forgotten issue.

Is there a chance that the legislation now in Congress will pass?

I can't predict what Congress will or won't do. If the legislation proceeds, it would undercut the agreement we reached that we would file "legal peace" documents, which was the whole basis for getting the \$5 billion. It would mean that countries would feel that when they deal with the United

States they can't depend on a settlement because legislation could upset it.

What do you think is the best way to help needy survivors?

It's unacceptable that people who had such a tragic youth should have to live in deprivation in their declining years. Those survivors who feel that for some reason they haven't had their policies properly reviewed should present that evidence to Anna Rubin, director of the Holocaust Claims Processing Office of New York State's Department of Financial Services, and search their database to see if their relatives are on their list. They should let us know that they've done so, so that we can make sure that the insurance companies thoroughly review their

records. We want every single person who had a policy to be paid.

I also serve as a voluntary special negotiator for the Claims Conference and in October of 2011, we reached an agreement with the German government to cover an additional \$550 million three-year agreement for 2012, 2013 and 2014 for home care. We've improved cash benefits for survivors under the hardship funds. And just recently, on the 60th anniversary of the Luxembourg agreement, the Germans agreed for the first time to pay 81,000 survivors who live behind the Iron Curtain and whom Germany had never paid, one-time payments of more than \$3,000. I'm also raising money in New York for the Holocaust Survivor Fund through a benefit concert that we're doing at Lincoln Center next April.

Do you think that the Jewish organizations were right in striking the agreement?

Absolutely not. Survivors agree that no Jewish organization has the right to negotiate on behalf of individual Holocaust survivors concerning their family's historical and financial legacies. They are outraged that any Jewish organization would have the audacity to contend otherwise.

Is there a chance that the legislation now in Congress will pass?

Absolutely. We have wide bipartisan support from more than 100 members of Congress, including some of the most prominent senior members: Rep. Debbie Wasserman Schultz, the chair of the Democratic National Committee, Rep. Ileana Ros-Lehtinen (R-FL), the chair of the House Foreign Affairs Committee, Senator Bill Nelson, who was insurance

commissioner of Florida and Congressman John Garamendi, who was insurance commissioner of California. They are co-sponsoring legislation that would restore state's rights to require the insurance companies to publish a list with names of policyholders and would restore survivors' right to go to court. The House bill has cleared two committees in the House and has passed the Foreign Affairs Committee by a unanimous vote, and it's now pending before the Judiciary Committee. The Senate bill was heard in the Judiciary Committee on June 20 but has not yet been voted on.

What do you think is the best way to help needy survivors?

Survivors need to have the same rights as every other American. We're talking about binding legal contracts. The in-

surance companies accepted money so that they would pay families if something happened. This isn't reparations or compensation for harm that Germany caused during the war; the survivors are seeking to enforce contracts their loved ones paid for in good faith. Germany destroyed millions of lives and if there are survivors in need today, it's the German government's responsibility to provide for them. Insurance companies also need to be held accountable. They profited from the Holocaust. The fact that there were so many families annihilated means that under the status quo, the insurers stand to inherit a lot of money that doesn't belong to them. The insurance companies should not be heirs to victims of the Holocaust, contrary to what is apparently the position of the Jewish organizations and the State Department.