

Testimony
Congressman Adam Schiff
Hearing on HR 4596, the Holocaust Insurance Accountability Act
Subcommittee on Commercial and Administrative Law

Chairman Cohen, Chairman Conyers, Ranking Member Franks, I want to thank you for calling this hearing on the Holocaust Insurance Accountability Act. I am pleased to be joined on this panel by my colleagues Congresswoman Ros-Lehtinen, the sponsor of the legislation and a great advocate, and Congressman John Garamendi, whose tremendous leadership on this issue long predates his time in Congress.

We're brought here today by our shared commitment to finally achieving some measure of justice for victims of the Holocaust. For more than 60 years, many European insurance companies have unfairly denied insurance claims, frequently because survivors and their families could not produce documentation, such as death certificates, needed to prove ownership of a policy. It's an impossible burden to expect survivors and their families to meet. In fact, we know that frequently the only surviving records of these policies are held by these very same insurance companies.

There has been a concerted effort by honorable people to help survivors who are suffering in poverty. The International Commission on Holocaust Era Insurance Claims process, though flawed in many respects, did a lot of good. I appreciate the commitment and good intentions of those who were involved in the ICHEIC during its seven years of existence. But it is not the final word and it cannot be the final word while thousands of survivors struggle in poverty without access to financial restitution that rightly belongs to them. There are significant questions about the claims process that the ICHEIC used that need to be addressed, as we know that it was not a transparent process.

The history of Holocaust insurance claims working their way through the courts and through the International Commission is tortuous, and I will leave it to other witnesses on the panel to summarize more fully. But where the history of these cases is complex, the legislation introduced by my colleague, Congresswoman Ros-Lehtinen is simple. It asks only for Holocaust survivors and their beneficiaries the same that is owed to every American – a fair day in court.

The Holocaust Insurance Accountability Act would state unequivocally that no vague executive foreign policy interest compels the dismissal of state actions against insurance companies that refuse to honor claims of Holocaust survivors and their families. In doing so, I believe it would undo wrongly decided cases that have taken at face value statements about the foreign policy interests of the United States.

Let me quote briefly from a document that was recently obtained through a Freedom of Information Act request. It was written by an attorney in Solicitor General Office at the Department of Justice. In it, the attorney writes "On the merits, I have some reservations about the legal theory on which the district court dismissed the plaintiffs' common law claims....As a general matter, 'Executive Branch Actions' that 'express federal policy but lack the force of law' do not preempt state law. While Garamendi may reflect an exception to that general rule, that

principle is still subject to some doubt.” I could hardly say it better myself. I have joined with a bipartisan group of colleagues to sign an Amicus brief asking the Supreme Court to grant Certiorari and address the unsettled Separation of Powers questions that the Executive Branch has asserted. I hope that the Supreme Court will take the case and ask hard questions about whether a vague expression of executive policy is sufficient to preempt state law.

Finally, I want to take a moment to address an argument I’ve heard made by groups that oppose this legislation. They say that this hearing will “raise the expectations” of survivors, and that we will surely disappoint these people and their families that have already suffered so terribly. While I respect those making the argument, on this, I must disagree. Justice and fairness are to deserved expectation of every American, and the right to use the legal system to address, fully and finally, the wrongs that have been done to them is a foundational aspect of our system of government.

I have met with many Holocaust survivors, many of whom are still trying, after all these many years, to get what is rightfully theirs. They are a tough group, as they would have to be, given the horrors they endured. It is time for them to get their day in court.

Mr. Chairman, I look forward to working with you to advance this legislation this year. I do not think this is an issue that can wait any longer. Thank you again for your hard work on this issue, and thank you for inviting me to testify.