

## **Holocaust Insurance Claim Returns to L.A. State Court**

LOS ANGELES - Holocaust survivors who accuse an international commission of unlawfully processing World War II-era insurance claims to reduce the exposure of an Italian insurer from \$1 billion to \$100 million won an early battle in federal court Monday.

U.S. District Judge Ronald Lew denied a motion filed by the International Commission on Holocaust Era Insurance Claims to have the suit dismissed. Lew also agreed with the plaintiffs that their lawsuit should return to Los Angeles Superior Court, where it originally was filed.

"This is good news for the survivors," William Shernoff, who represents the plaintiffs in the action, said outside court Monday.

Shernoff, a partner at Claremont's Shernoff Bidart & Darras, said that Lew's decision allows survivors to pursue their claims against the commission for unfair business practices under state Business and Professions Code Section 17200.

The lawsuit against the commission follows thousands of claims filed in U.S. courts against Italy-based Assicurazioni Generali and other insurance companies by thousands of Europeans who survived the Holocaust. They believed they were due benefits owed under life, homeowners and other policies purchased by themselves or family members. The survivors were largely rebuffed, however, because they did not have the records to back their claims.

The suit alleges that the commission is helping Generali reduce by 90 percent its exposure for unpaid life insurance policies.

Generali and other European insurance companies established the commission in 1998 to expedite claims on policies purchased in the decades before 1945. The companies also finance the commission's operations.

The commission has faced criticism from state officials and members of Congress. It has denied wrongdoing in processing claims and billed itself as a free and nonlitigious service for Holocaust survivors and their heirs.

Constantinos Panagopoulos, a partner at Ballard Spahr Andrews & Ingersoll who represents the commission, declined to comment on Lew's ruling, other than to say his client will continue to fight the suit. The commission will file a motion to have the claims dismissed in state court, Panagopoulos said.

Shernoff's firm, along with Los Angeles sole practitioner Lisa Stern, filed the suit in September on behalf of two Holocaust survivors who live in California. The lawsuit accuses the commission of luring survivors into its claims process, then low-balling their settlements in favor of Generali. The suit also claims the commission failed to alert California citizens of their litigation rights in the courts.

For several years, Shernoff and other plaintiffs' attorneys have represented numerous survivors suing Generali directly. Those cases are pending in federal court in New York.

In 2002, U.S. District Chief Judge Michael Mukasey, who presides over the New York cases, rejected efforts by Generali and Zurich Life Insurance to have all legal claims processed by the commission, which he labeled "the company store."

In the suit before Lew, plaintiffs claimed, "[The commission] seeks to make itself the only remedy available to survivor claims, as part of its plan and scheme to bypass the entire U.S. judicial system in an effort to limit Generali's exposure."

Outside court, Shernoff also criticized the commission's use of "negative evidence" to deny claims for survivors whose family policy records are incomplete.

Commission lawyers removed the case to federal court in November. In a motion filed in January,

defense lawyers argued that the case should stay there because the claims raise foreign policy issues.

"Though plaintiffs filed suit under [17200], they actually seek to change United States foreign policy in the area of World War II reparations - specifically with respect to Holocaust-era insurance claims," according to the motion filed by commission attorneys at Weston Benshoof Rochefort Rubalcava & MacCuish in Los Angeles.

The motion also pointed out that United States has executive agreements with Germany and Austria to work with the commission to resolve claims. German-based companies reached a \$5 billion settlement with thousands of plaintiffs in 2000.

Shernoff countered in his motion, however, that his clients' lawsuit focuses on the commission's relationship with Generali, which is based in Italy. That country does not have an executive agreement with the United States regarding insurance claims, the motion explained.

Shernoff also argued that U.S. government officials have not tried to intervene in the lawsuit against the commission.

"The Government's silence strongly suggests that [the commission] overstates the importance of this action to the conduct of U.S. foreign policy," the motion argued.

Lew agreed Monday that the case did not hinge on executive agreements cited by the defense. Because Lew remanded the suit to state court, he said the motion to dismiss before him was moot.

Shernoff said the victory in federal court will allow plaintiffs to seek an injunction in state court that stops the commission from engaging in unfair business practices that benefit Generali at the expense of California-based Holocaust survivors. He estimated that between several hundred and 1,000 Californians have insurance claims against the insurer.