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## **U.S. Policy Trumps State Law in Holocaust Case**

A state Court of Appeal ruled Thursday that U.S. foreign policy supersedes state law in a case filed by Holocaust survivors against the independent international commission set up to settle World War II insurance claims.

"The foreign policy of the United States is to favor settlement under [the International Commission on Holocaust Era Insurance Claims'] processes," Justice H. Walter Croskey of the 2nd District Court of Appeal wrote. "It would undermine this policy if California courts were to subject established guidelines to regulation under California's unfair business practices law." *Steinberg v. International Commission on Holocaust Era Insurance Claims*, 2005 DJDAR 12530 (Cal. App. 2nd Dist. Oct. 20, 2005).

Manny Steinberg and Jack Brauns sued the commission in 2003 after their claims against Italian insurer Assicurazioni Generali were denied. The lawsuit alleged unfair business practices and was brought under a state law allowing residents to file Holocaust-era insurance claims in state court.

The commission maintained that the case involved political questions touching on foreign policy issues, mainly an executive agreement among the United States, Germany, Austria and France to settle, not litigate, Holocaust insurance cases.

The commission's attorney, Michael J. Hartley of Los Angeles' Weston, Benshoof, Rochefort, Rubalcava & MacCuish, said, "We're very pleased with the decision."

Hartley declined to discuss the case further because he was not authorized to speak on behalf of the commission.

Lead attorney Constantino G. Panagopoulos of Ballard, Spahr, Andrews & Ingersoll in Washington, D.C., could not be reached for comment.

Plaintiffs' attorney William M. Shernoff of Shernoff Bidart Darras in Claremont said the court failed Holocaust survivors.

"To say these few lawsuits are going to interfere with the foreign policy of the United States vis-à-vis Italy is poppycock of the highest order," Shernoff said.

Shernoff said he had not discussed with his clients whether to appeal the ruling, but he vowed the fight is not over.

The international commission was established in 1998 by insurance carriers Generali, Allianz, AXA, Zurich and Winterthur to expedite claims on policies written between 1920 and 1945.

Its members include the insurers, American and European regulators - including the California Department of Insurance - representatives of Jewish organizations and Israel.

The insurance companies pay the commission's bills, including those of its chairman, former Secretary of State Lawrence Eagleburger.

Critics have said the commission has dragged its feet paying Holocaust survivors at the behest of the insurance companies. Survivors also say the commission, because it is completely private, is independent of any judicial or government oversight.

"What this case means is they cannot sue in court, even though most of these survivors have actually found their insurance policies," Shernoff said. "We have no access to the U.S. judicial system, even though we are citizens of the United States and Generali is licensed in California."

"We have to be forced into this international commission, created by Generali and funded by Generali," he said.

Shernoff argued that the U.S. executive agreement to settle cases did not include Italy or Generali and that no foreign policy interest was implicated by the case.

The justices disagreed. In the 17-page decision, the Court of Appeal looked to a recent U.S. Supreme Court ruling on the conflict between the state law and the country's interest in resolving Holocaust-era insurance claims.

The three-justice panel indicated that case dictated their decision in Steinberg.

In *American Insurance Association v. Garamendi*, the Supreme Court focused on a different law, the state's Holocaust Victim Insurance Relief Act, which required insurers doing business here to disclose information about all policies sold in Europe between 1920 and 1945.

Several insurance companies sued Insurance Commissioner John Garamendi, challenging the law's constitutionality.

The question before the high court in *American Insurance* was the state's disclosure laws, which were stricter than the international commission's.

"The court recognized that if [the law] is enforceable, the president would have less economic and diplomatic leverage, and enforceability would ultimately compromise the president's ability to speak for the nation in negotiations with other governments," the panel noted.

"Garamendi held that California insurance disclosure laws, which require greater disclosure than that required by the [commission] are preempted by this foreign policy," the justices concluded.

The opinion not only sets forth the relevant test but also applies it, the panel found.

"A state may not enforce a statute which interferes with a specific interest of the federal government," Croskey wrote. Justices Richard D. Aldrich and Patti S. Kitching concurred.