Risk Transfer
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## Holocaust-Era Litigation Against Generalii: Alive and Well in California

Following the recent opinion by the United States Supreme Court, the question that comes to mind is what bearing does the decision have on the future of holocaust-era insurance litigation? In the opinion of attorneys Shernoff and Garris, holocaust-era litigation is alive and well in California.

Assicurazioni Generali S.P.A. ("Generali") is one of the world's largest insurance companies. Founded in 1831 by Jewish merchants, Generali, an Italian company, enjoyed a profitable business in Jewish communities throughout Europe.

To safeguard against a perilous future, tens of thousands of Jews purchased life-insurance policies with Generali, believing such an investment was more secure then leaving money in banking institutions. Now, decades later, Generali finds itself at the center of the argument over Holocaust-era insurance litigation. For Generali, the last major European insurer not to settle Holocaust-era insurance lawsuits, the risks are great.
Almost 60 years after the end of World War II, Dr. Jack Brauns, a 79-year-old retired surgeon living in West Covina, California, is one of 13 Lithuanian and other Central European plaintiffs suing Generali. Dr. Brauns is among hundreds of thousands of survivors who were denied life-insurance benefits after the war. For plaintiffs such as Dr. Brauns, taking on Generali is not only an opportunity to put the past behind them; it is also a chance to right a long overdue wrong.

On October 3, 1930, Dr. Moisejus Braunsas, Dr. Jack Brauns' father, purchased a life-insurance policy that was guaranteed by Generali.
In 1940, Dr. Moisejus Braunsas advised his son that all the premiums had been paid; that the purpose of the policy was to pay for Jack's education; that in the event of war, premiums were suspended; and that the policy would pay the sum of 2,000 U.S. dollars on September 25, 1945.

While sequestered in the Kovno Ghetto, Moisejus Brauns and his son, Jack, devised a plan for hiding the family's most valued documents and possessions, including the original insurance guarantee and policy from Generali. Jack constructed a primitive box in which to place the documents, and during the middle of the night he dug a deep hole adjacent to the only functioning outhouse in the ghetto.

Shortly thereafter, Jack and his family were separated and moved to camps in Stuthoff and Dachau. Jack worked as a slave laborer until April 29, 1945, when he was liberated from Dachau by the American army. After liberation, Jack's mother, who was in Stuthoff and had been liberated approximately one year earlier, recovered the hidden box with all of its contents intact.

Rather than returning home, Jack, at his father's urging, moved to Torino, Italy to attend university. Jack chose Italy because his father had told him to make a claim for the policy benefits at Generali's office in Rome. Jack expected that the insurance policy would pay for his medical education.

Jack went to Generali's office in Rome to present the claim in the latter part of 1945. Officials at Generali told him that they were unaware of any policies ever issued by Generali in the Baltic States. Jack explained that his parents had in their possession the original policy. Generali officials assured Jack that they would investigate the matter. But he never heard from Generali.

In 1951, Dr. Jack Brauns immigrated to the United States. Over the next six years he completed his medical training in New York, New Jersey, and Pennsylvania, barely surviving on a $25 dollar a month salary. Dr. Brauns moved to California in 1957, where he passed his American Board of Surgery exams, became a fellow of the American College of Surgeons, and began his practice as a general surgeon.

Fifteen years later, in 1960, Dr. Brauns wrote to Generali from his home in California and informed Generali that he was now in possession of the original policy. Dr. Brauns advised Generali that he would like to travel from his home in California to their office in Rome to discuss the claim personally.

In response to Dr. Brauns's correspondence, Generali wrote to Dr. Brauns at his home in California and extended an appointment time for him to meet with company officials and to discuss his claim at the company's Rome office. In 1961, Dr. Brauns traveled to Rome to a pre-arranged meeting to discuss his claim with Generali.

During his 1961, visit, Dr. Brauns presented the actual policy. Despite seeing the actual policy, Generali again did not honor its obligation.

In May 1998, Rabbi Abraham Cooper, Associate Dean of the Simon Wiesenthal Center's Museum of Tolerance in Los Angeles, traveled from California to Generali in Trieste on Dr. Brauns' behalf. Rabbi Cooper bore copies of the original policy. And Rabbi Cooper presented Dr. Brauns's claim once again. But once more, Generali failed to honor the policy.

Although Generali officials promised Rabbi Cooper that they would investigate the claim and contact Dr. Brauns immediately, over one year passed before Generali sent Dr. Brauns a response. On July 22, 1999, Generali offered Dr. Brauns only $5,000 in full and final settlement of a $2,000 policy that had been due and owing for over 54 years.

With stories like that of Dr. Brauns being brought to the public's attention, it was incumbent on state officials and lawmakers throughout the United States to take measures to right such long unaddressed wrongs.

One of several laws addressing Holocaust-era injustices was the California Holocaust Victim Insurance Relief Act, known popularly as the California Holocaust Registry Law. California also passed a claims statute that extended the statute of limitations to bring a lawsuit against a Holocaust-era insurance company to 2010.

The registry statute was passed unanimously by the California legislature and came into force on October 10, 1999. The statute required all insurance companies licensed in California to provide lists of all the policies they or any affiliated company issued for persons living in Europe between 1920 and 1945, from which the California Department of Insurance could create an open and accessible registry of all policyholders.

The constitutionality of the registry statute was challenged by the insurance companies and was upheld in the 9th Circuit Court of Appeals. The issue of the constitutionality of the registry statute was then taken by the United States Supreme Court. Just this June, the United States Supreme Court issued its opinion finding the registry statute unconstitutional.

The United States Supreme Court's recent ruling that California's registry statute is unconstitutional does not affect the currently pending Holocaust-era insurance lawsuits, such as the lawsuit filed by Dr. Jack Brauns, against Generali. Following the Supreme Court's opinion, many media accounts incorrectly reported that the ruling marked the end of Holocaust-era litigation. Such a report is completely incorrect.

The insurance bad-faith lawsuits are not based on the California registry statute. And, the United States Supreme Court addressed only the registry statute. In fact, the Court in its opinion specifically states at footnote 4 that the claims statute is not at issue: "Challenges to Cal. Civ. Proc. Code Ann. §354.5 (West Cum. Supp. 2003) and Cal. Ins. Code Ann. §790.15 (West Cu. Supp. 2003) were dismissed by the District Court for lack of standing, a ruling that was not appealed. See Gerling Global Reinsurance Corp. of America v. Low 240 F. 3d 739, 742-743 (CA9 2001)."

The Supreme Court's 5-4 vote demonstrates a clear division in the Court concerning the future of Holocaust-era litigation. The decision cites to the Executive's support of the German Foundation Settlement, including the issuance of a "Statement of Interest" in litigation against German Companies, to support the position that California's registry statute interferes with the Executive's diplomatic objectives. Generali was not a party to the German Foundation Settlement and our clients' claims against Generali do not implicate any foreign policy issues.

The Supreme Court's decision struck down only California's registry statute. California's claims statute (reviving the statute of limitations until 2010) was not before the Court and was not addressed.

Not only do the lawsuits brought by Dr. Brauns and the twelve other families not rely on the registry statute, they are also independent of California's claims statute. The lawsuits are based on recent conduct by Generali directed at California plaintiffs. Because they are based on Generali's ongoing conduct, the lawsuits are viable regardless of any further decision that might call the California claims statute into question.

In California, Generali faces claims for bad faith that create major exposure for extra-contractual damages, including punitive and emotional distress damages. Generali also faces claims under California law for unfair business practices that may find Generali liable to all potential claimants in California, both for the policy proceeds and for the disgorgement of the ill-gotten gains obtained by failing to pay the claims timely.

This is a huge class of claimants. California has the second-largest population of Holocaust survivors in the country, estimated at 20,000 plus 60,000 heirs. If Generali is required to restore to the entire class of California claimants the profits it has made from 50 years of reinvesting the wrongfully withheld proceeds, the restitution awards could dwarf the punitive-damage claims.

California's claims statute is alive and well. The California litigants have an insurance dispute with Generali, not a foreign policy dispute. And, the California legislature in enacting the Holocaust-era claims statute, only exercised jurisdiction over insurance matters, not foreign policy. Whereas the Executive has sole jurisdiction over foreign policy, insurance disputes are squarely within the exclusive provenance of the State.

California's interests would be seriously impaired by not having its law applied to the thirteen currently pending bad-faith lawsuits brought against Generali. California has strong interests in having its laws applied to disputes involving injury to state residents caused by Generali's conduct during the Holocaust and post-war era, which have been recognized by the California State legislature. (See 1998 Cal. Stat. 43 § 1(a) ["California has an overwhelming public policy interest in assuring that its residents and citizens who are claiming entitlement to proceeds under policies issued to Holocaust victims are treated reasonably and fairly and that those contractual obligations are honored."].)
Further, Generali has conducted substantial business in California, and has been licensed to do business in the State since 1935. This fact is significant because "[w]hen a person suffers injury in California as a result of business conducted by a foreign corporation then qualified to do business within the state, California has a legitimate interest that the foreign corporation not be permitted to avoid responsibility for its wrongful act. . ." [North American Asbestos Corp. v. Superior Court, 180 Cal. App. 3d 902, 907 (1St Dist. 1986).]
Additionally, the California plaintiffs have repeatedly made claims for payment to Generali from California. Moreover, Generali has denied those claims through correspondence sent to California residents and in litigation in California courts. California has strong interests in regulating Generali's practices within its boarders, and affording redress to California residents who are injured by Generali. See 20th Century Ins. Co. v. Garamendi, 8 Cal. 4th 216, 240 (1994).

California has a paramount interest in affording legal protection to its residents injured in California. The

thirteen California plaintiffs allege injury: (1) occurring in California, (2) as a result of conduct by Generali in California, (3) while the plaintiff resided in California and Generali did business in California, and (4) inflicted in the course of a relationship that was centered, if anywhere, in California.
Specifically, the thirteen California complaints allege that the following: at all relevant times the California plaintiffs resided in the State of California; Generali published its "Open Letter" in California, misrepresenting its intentions and obligations to settle the California plaintiffs' claims; Generali's misrepresentations, in California, induced the plaintiffs to renew their claims by corresponding with Generali on more than one occasion from their residences in California; Generali denied their claims in letters sent to them in California, or failed to respond within a reasonable amount of time to their claims; and they were compelled therefore to file lawsuits against Generali in California and have had to incur unnecessary litigation expenses in California in their efforts to force Generali to pay policy benefits owed to them.

California is also the place where much of Generali's alleged misconduct occurred. "[A] state has an obvious interest in regulating the conduct of persons within its territory and in providing redress for injuries that occurred there. Thus, subject only to rare exceptions, the local law of the state where conduct and injury occurred will be applied to determine whether the actor satisfied minimum standards of acceptable conduct and whether the interest affected by the actor's conduct was entitled to legal protection." (RESTATEMENT § 145, cmt. D; accord Hall v. University of Nevada, 74 Cal. App. 3d 280 (1st Dist. 1977), aff'd, 440 U.S. 410 (1979).)

Therefore, the California plaintiffs allege a pattern of bad-faith conduct by Generali in California , which includes among other acts the following: publishing its "Open Letter" in California magazines and newspapers; denying claims and corresponding with the California plaintiffs repeatedly in California; compelling the plaintiffs to litigate claims unnecessarily in California; and raising spurious defenses to coverage in that litigation. Accordingly, the place of injury-causing conduct only further supports the application of California law to the-bad faith claims.

These factual claims give rise to cause of action for tortious injuries and fresh bad faith under California law. All of these legally cognizable invasions of the plaintiffs' legally protected interests are alleged to have occurred – and to have caused injury – in California to California residents within the last several years.

Dr. Brauns's case serves as a prime example of Generali's wrongdoings as recently as 1999. With repeated examples of Generali's fresh bad faith that has occurred in California over the last five years, Generali has no choice but to take the California lawsuits seriously.