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Holocaust-era Insurance Claims: Federal Court Decisions and State Statutes and Federal Legislative Proposals

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Summary

In *American Insurance Association v. Garamendi,* the United States Supreme Court struck down California's Holocaust Victim Insurance Relief Act (HVIRA), finding that it impermissibly interfered with the President's conduct of foreign affairs. The challenged statute required insurance companies wishing to do business in California to disclose specified information concerning their policy-writing activities in Europe during the Holocaust era, and those of their related, European insurance companies; it was enacted by the state, one of many state statutes enacted to expedite the handling of the Holocaust-era insurance claims, in an attempt to address perceived (and in many cases, documented) injustices in the (non)payment of certain Holocaust-era insurance claims. All were enacted about the same time as the conclusion of several international agreements that (1) addressed problems involved in the settlement of Holocaust-era insurance claims and (2) created mechanisms for resolving those claims. These state laws, which vary greatly in their scope and coverage, are summarized in an Appendix to this report.

Prior to the Supreme Court decision, there had been a split between two U.S. Courts of Appeals in which state Holocaust-related insurance statutes had been litigated. The Ninth Circuit, whose decision was reversed in *Garamendi,* had upheld the California statute's disclosure provisions; the Eleventh Circuit had earlier struck down a similar Florida statute, reasoning that the requirement that U.S. insurance companies disclose information about the activities of their German affiliates violated the Due Process rights of the U.S. companies. The status of similar provisions in other states' insurance statutes is, as the result of the *Garamendi* decision, in question; either in anticipation of, or as a result of, the Court's 5-4 decision, several pieces of legislation have been introduced in the 108th Congress to clarify that the state laws are permissible. The legislation is intended to (1) expedite the settlement of Holocaust-era insurance claims and/or (2) provide greater structure and uniformity in the claims settlement process.

This report will discuss in detail the Supreme Court case and the lower court decisions that preceded it, providing only so much information on the background and history of the issue as is necessary to an appreciation of the litigation. For further historical information is presented in detail, see CRS Report RL30262 and CRS Report RL30396. Pertinent, pending congressional measures are summarized. As noted above, an appendix to this report provides, in chart form, summaries of currently existing state laws, including those containing provisions that are similar or identical to those in HVIRA that were struck down.

This report will be updated upon further congressional action.

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Holocaust-Era Insurance Claims: Federal Court Decisions and State Statutes and Federal Legislative Proposals

Introduction

In *American Insurance Association v. Garamendi,* the United States Supreme Court struck down California's Holocaust Victim Insurance Relief Act (HVIRA),[1] finding that it impermissibly interfered with the President's conduct of foreign affairs.[2] The challenged statute required insurance companies wishing to do business in California to disclose specified information concerning their policy-writing activities in Europe during the Holocaust era, and those of their related, European insurance companies. It was enacted by the state — one of many similar state statutes — in an attempt to address perceived (and in many cases, documented) injustices in the (non)payment of certain Holocaust-era insurance claims. These state laws were enacted about the same time as the conclusion of several international agreements that (1) addressed problems involved in the settlement of Holocaust-era insurance claims and (2) created mechanisms for resolving those claims. The state laws, which vary greatly in their scope and coverage, are summarized in an Appendix to this report.

Prior to the Supreme Court decision, there had been a split between two circuit courts before which state Holocaust-related insurance statutes had been litigated. The Ninth Circuit, whose decision was reversed in *Garamendi,* had upheld the California statute's disclosure provisions;[3] the Eleventh Circuit had earlier struck down a similar Florida statute, reasoning that the requirement that U.S. insurance companies disclose information about the activities of their German affiliates violated the Due Process rights of the U.S. companies.[4] The status of similar provisions in other states' insurance statutes is, as the result of the *Garamendi* decision, in question; either in anticipation of, or as a result of, the Court's 5-4 decision, several bills have been introduced in the 108th Congress to support state authority.[5]

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[1] Cal. Civ. Proc. §§ 354.5, 354.6 (West 2003).

[2] 123 S.Ct. 2374 (2003).

[3] Gerling Global Reinsurance Corp. of America v. Low, 296 F.3d 832 (9th Cir. 2002), *rev'g* 186 F.Supp. 2d 1099 (E.D. Cal. 2001).

[4] Gerling Global Reinsurance Corp. of America v. Gallagher, 267 F.3d 1228 (11th Cir. 2001), *aff'g* Gerling Global Reinsurance Corp. v. Nelson, 123 F.Supp.2d 1298 (N.D. Fla. 2000).

[5] E.g., H.R. 1210 (requiring disclosure of certain information to the Secretary of Commerce,

(continued...)

This report will discuss in detail the Supreme Court case and the lower court decisions that preceded it, providing only so much information on the background and history of the issue as is necessary to an appreciation of the litigation. Further historical information is presented in detail in other CRS Reports.[6] The Appendix to this report provides, in chart form, summaries of currently existing state laws, including those containing provisions that are similar or identical to those in California's HVIRA that were struck down.

Brief Historical Background

Several factors have led insurers to refuse payment of life insurance claims resulting from the Holocaust. Factors cited by insurers have included the following: 1) socialization/nationalization of insurance-company assets in Central and Eastern European countries after the war transferred to certain governments and successor entities the responsibilities for unpaid and unclaimed insurance policies; 2) Nazi-era regulations and decrees forced some insurers to pay insurance proceeds and cash values of insurance policies to the Nazi government, and Germany's postwar restitution program compensated some Holocaust victims for specific claims arising from those transactions; 3) many named beneficiaries lack death certificates for the insureds; 4) many policies had lapsed for nonpayment of premiums; and 5) many claims have been considered invalidated by the passage of time.

These and similar representations have not always been sympathetically received, especially after the end of the Cold War. The public disclosure of certain secret documents by the former Soviet Union revealed collusion between certain European insurance officials and Nazi leaders. Further materials documented lack of good faith on the part of some insurers.[7]

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[5] (...continued)
but also declaring that H.R. 1210 does not preempt state laws requiring disclosure of similar information); H.R. 1905/S. 972 (affirming the right of any state to establish, as a condition of doing business in the state, certain disclosure requirements for insurance companies); H.R. 3129 (allowing "states to require insurance companies to disclose Holocaust-era insurance information"). All of the bills remain in committee. It is worth noting that the fate of any legislation that has the effect of permitting states to require U.S. insurance companies to disclose information concerning their non-U.S. affiliates is itself not assured: the lower courts' grounds for their findings of unconstitutionality were Due Process infirmities not addressed in the Supreme Court decision. The measures are more fully described *infra,* at pp. 9-13.

[6] *See, e.g.*, CRS Report RL30262, *The Holocaust — Recovery of Assets from World War II: A Chronology (May 1995 to Present)*, by Barbara A. Salazar (July 31, 2000); and CRS Report RL30396, *Holocaust-Era Assets: A Guide for Filing Claims and a List of Compensation Programs,* by Barbara A. Salazar (August 15, 2000).

[7] Documentation of the confiscation of the German-Jewish insurance assets was presented at the Washington Conference on Holocaust-Era Assets held at the U.S. State Department from November 30 to December 3, 1998. At the time of the conference, dissension occurred among the members on the International Commission on Holocaust Era Insurance Claims
(continued...)

While international bodies and individual governments attempted to resolve the Holocaust-era insurance claims,[8] several state legislatures passed laws to facilitate resolution.[9] The focus of the more comprehensive legislation, such as that enacted in Florida and California, was to restrict the ability of certain insurers to engage in business in those states if the insurer (or a "related" insurer, frequently a European affiliate) did not provide policy information relating to, or had not settled, outstanding Holocaust-era insurance claims. Generally, state laws also contained a policy statement, an extension of the state's statute of limitations, and definitions to clarify (1) who is a target "insurance company" and (2) the term "related company." Some statutes also established helplines and/or registries, allowed for monetary damages, provided for loss of state certification to do business, and allowed private rights of action. The European insurance companies have, in challenging the statutes, argued Due Process, federal preemption of the state legislation under the Commerce Clause, and the "nationalization defense," i.e., that individual Holocaust victims and their heirs had already received compensation from the government of the Federal Republic of Germany.[10]

Litigation in the Lower Federal Courts

The focus of the Florida litigation in the district court and the court of appeals was the allegation that the Due Process rights of the insurance-company plaintiffs were unconstitutionally abridged by the challenged statutes. The California litigation, which eventually reached the Supreme Court as *American Insurance Association v. Garamendi*,[11] addressed, in the first instance, the impact of that state's insurance statute on the conduct of foreign policy by the United States; Due Process and Commerce Clause arguments were considered by the district court on remand from the United States Court of Appeals for the Ninth Circuit.

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[7] (...continued)
(ICHEIC) (*see, infra,* note 8) concerning the use of sanctions to encourage European insurers to join the ICHEIC.

[8] Following German reunification, class action suits for restitution were filed in the United States against companies that had done business in Germany during the Nazi era and now have branches or affiliates here. The dissent in *Garamendi* observes that the 1990s litigation "propelled" certain European insurance companies to create ICHEIC, a voluntary organization whose mission is to negotiate with European insurers to provide information about unpaid insurance policies and to attempt to provide individual settlements to such claims (123 S.Ct. at 2396). Subsequent negotiations between the United States and the German government resulted in the 2000 German Foundation Agreement, under which terms the German government and certain German companies contributed to a foundation established to oversee and administer the compensation of victims with claims against German companies dating back to the Nazi era. Concerning insurance claims, Germany and the United States agreed that the foundation would work with ICHEIC.

[9] *See* Appendix.

[10] *See, e.g.,* [http://www.icheic.org/], the extensive website maintained by ICHEIC, which contains statistics concerning the settlement offers which have been made to claimants.

[11] 123 S.Ct. 2374 (2003).

Gerling Global Reinsurance Corp. v. Nelson

The authority of the Florida Commissioner of Insurance to compel certain information pursuant to the state's Holocaust Victims Insurance Act (Act),[12] which contains various provisions affecting the rights of German insurers and their German insureds under policies issued in Germany between 1920 and 1945, was challenged and found constitutionally infirm on Due Process grounds by the United States District Court for the Northern District of Florida.[13] Under the terms of the act, any insurer doing business in Florida was required to report to the Florida Commissioner of Insurance 1) any legal relationship with a foreign insurer that issued policies to Holocaust victims during the Holocaust-era; 2) the number and value of such policies; 3) claims filed by such victims that have been paid or denied payment, or are pending; and 4) attempts to locate the beneficiaries of the policies. In other words, the act required that the Florida insurers, in addition to reporting about their own Holocaust-era policies, report about the policies of companies with which they (the Florida insurers) have any "legal relationship," as, e.g., a parent, subsidiary, or affiliated company. Given those facts, the district court granted the plaintiff insurers' motion for summary judgment, notwithstanding the undisputed fact that some Holocaust-era policy holders or their beneficiaries might currently reside in Florida:

> The jurisdictional limitations mandated by the Due Process Clause [minimum contacts with the forum state] are applicable not only to a state's judiciary but also to a state's executive and legislative branches.
>
> * * *
>
> Applying the Due Process Clause's jurisdictional principles to these facts does not present a difficult issue. The insurance contracts at issue were entered in Germany between German parties under German law. They addressed German events. Any breach of the contracts occurred in Germany. The parties to the contracts had no connection with Florida. The events governed by the contracts had no connection with Florida. The grounds for exercising jurisdiction over these parties or these events in Florida are exactly none. ... The law is clear that the movement into a state of a party to a contract entered elsewhere does not standing alone establish jurisdiction over claims arising under that contract.[14]

When the Florida insurance commissioner appealed the district court ruling, the insurance companies maintained their Due Process challenge, and also argued that the act violated (1) the dormant commerce clause by regulating out-of-state commerce; (2) Congress' power to control international commerce; and (3) the national government's foreign affairs power. The appeals court addressed only the validity of the act's reporting provisions as they related to the subpoenas served on the U.S. companies' non-U.S. affiliates; reviewing the district court's grant of summary judgment, it applied the same legal standard as had the lower court, affirming the district court decision that the act's reporting requirement did, in fact,

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[12] Fla. Stat. Ann. § 626.9543 (West Cum. Supp. 2003).

[13] Gerling Global Reinsurance Corp. v. Nelson, 123 F.Supp.2d 1298 (N.D. Fla. 2000).

[14] *Id.* at 1301-1302.

violate the plaintiff's Due Process rights because it effectively regulated transactions that have insufficient connection to Florida to provide the requisite jurisdictional foundation.[15]

Gerling Global Reinsurance Corp. v. Quackenbush/Low[16]

At the initial stage of this litigation, plaintiff insurance companies sought an injunction against the enforcement of California's Holocaust Victim Insurance Relief Act (HVIRA). The United States District Court for the Eastern District of California granted a preliminary injunction based on the state statute's constitutionally impermissible interference (actual or potential) with both interstate and international commerce, and the national conduct of foreign affairs — the arguments raised but not addressed in the Florida litigation.[17] First,

> ... defendant's argument that plaintiffs ['have not demonstrated that the Holocaust Statutes have an actual direct impact on foreign relations'] confuses the preemption doctrine with the foreign affairs power. A state cannot pass statutes that interfere with foreign affairs whether or not the national government has a stated policy. [In this instance, however, the President's foreign affairs powers are evident in the extensive national-government-level negotiations concerning Holocaust insurance payments and the existence of the International Commission on Holocaust Era Insurance Claims (ICHEIC), and underscore that the matter has been and is being addressed at the foreign relations level.].[18]

Nor was the court persuaded by the commissioner's argument that the state law could not be challenged as an abrogation of federal commerce power because the 1945 McCarran-Ferguson Act exempts state regulation of insurance from the general ban on state interference with Commerce Clause activity.[19] It cited a case successfully brought by the Federal Trade Commission to enforce a cease-and-desist order against a Nebraska-based insurance company engaged in an interstate mail-order insurance business.[20] The court also noted, favorably, plaintiffs' argument

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[15] Gerling Global Reinsurance Corp. v. Gallagher, 267 F.3d 1228 (11th Cir. 2001).

[16] The history of this case, before it reached the Supreme Court, is as follows: Gerling Global Reinsurance Corp. of America v. Quackenbush, 2000 WL 777978 (E.D. Cal. 2000), preliminary injunction *aff'd sub nom.* Gerling Global Reinsurance Corp. v. Low (who was California's insurance commissioner by 2001), 240 F.3d 739 (9th Cir. 2001), but *remanded* for further proceedings, *on remand,* 186 F.Supp. 2d 1099 (E.D. Cal. 2001), *rev'd and remanded by* 296 F.3d 832 (9th Cir. 2002).

[17] 2000 WL 777978 (E.D. Cal. 2000).

[18] *Id.* at*9.

[19] *Id.* at *10-*11. The McCarran-Ferguson Act states:"Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest ..." and that "[n]o Act of Congress shall be construed to invalidate ... or supersede any law enacted by any State for the purpose of regulating the business of insurance ...." 15 U.S.C. §§ 1011, 1012.

[20] Federal Trade Commission v. Travelers Insurance Association, 362 U.S. 293, 300 (1960)("There was no indication of any thought [by the Congress that enacted McCarran-

(continued...)

(made but not discussed in the Florida litigation) that disclosure of the required HVIRA information would likely violate certain European privacy laws.

Although the United States Court of Appeals for the Ninth Circuit disagreed with the district court's conclusions concerning the unconstitutionality of the California insurance law on foreign affairs grounds, it affirmed the preliminary injunction, at the same time remanding the case to the district court for its consideration of the plaintiffs' Due Process arguments.[21] On remand, the district court permanently enjoined revocation of the insurance companies' licenses to do business in California for refusing to make HVIRA's required disclosures: while there was no Due Process violation inherent in the disclosure requirement itself,[22] the court said, the fact that the companies were denied the opportunity to challenge a revocation (automatic unless the nondisclosure was based on the nonexistence of pertinent documents) constituted a violation of their Fourteenth Amendment Due Process rights.[23]

The second time around, the appeals court did reverse the district court decision, finding that HVIRA was not unconstitutional on any of the asserted grounds, and directing that the injunction be dissolved.[24] The insurance companies appealed, and the Supreme Court granted certiorari[25] to address the differing conclusions of the Eleventh (Florida law unconstitutional) and Ninth Circuit (California law not unconstitutional) opinions.

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[20] (...continued)
Ferguson] that a State could regulate activities carried on beyond its own borders"). *Discussed and quoted* at 2000 LW 777978 at *11.

[21] Gerling Global Reinsurance Corp. v. Low, 240 F.3d 739 (9th Cir. 2001).

[22] The district court compared the Florida statute invalidated on Due Process grounds in Nelson (*see* notes 11 and 12, *supra*, and associated text) with the California statute, noting that a primary difference between them was that the Florida's disclosure requirements were coupled with the mandate that all "reasonably established" claims be paid by the Florida insurers. 186 F.Supp. 2d 1099, 1108 (E.D. Cal. 2001); *see* note 14, *supra*, and associated quote.

[23] 186 F.Supp. 2d at 1110, 1111.

[24] 296 F.3d 832 (9th Cir. 2002).

[25] American Insurance Association v. Garamendi, 537 U.S. 1100 (2003).

Litigation in the Supreme Court: *American Insurance Association v. Garamendi*

As framed by the Court, the issue before it was "whether HVIRA interferes with the National Government's conduct of foreign relations." A five-Justice majority concluded that it did so interfere, and the California statute was therefore preempted by the Executive's negotiated agreements with foreign governments. The ruling of the Ninth Circuit was, accordingly, reversed.[26]

After recounting the history behind most Holocaust-era insurance claims, and the international negotiations directed at securing reparations based on those claims, the Court emphasized the negotiations between the United States and the German governments that resulted in, *inter alia,* the German Foundation Agreement ("Agreement").[27] Under its terms, the German government and certain German companies contributed to a foundation established to oversee and administer the compensation of victims with claims against German companies dating back to the Nazi era.

Pursuant to the Agreement, President Clinton had committed to a procedure that obligated the United States government, when a German company was sued in an American court over a Holocaust-era claim, to 1) submit a statement indicating that it would be in the United States' foreign policy interests for the foundation established by the Agreement to be the exclusive forum and source of remedy for such claims; and 2) attempt to get state and local governments to respect the foundation as the exclusive remedial mechanism for such claims. In other words, the Agreement represented a sort of "*quid pro quo*" pursuant to which

> [t]he willingness of the Germans to create a voluntary compensation fund was conditioned on some expectation of security from lawsuits in United States courts.[28]

Further, Germany and the United States agreed that the foundation would work with the International Commission on Holocaust Era Insurance Claims (ICHEIC), whose mission is to negotiate with European insurers to provide information about unpaid insurance policies and to attempt to provide individual settlements of such claims. ICHEIC has set up procedures to implement this joint claims/settlement procedure.[29]

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[26] 123 S.Ct. 2374, 2379, 2394 (2003), *rev'g*, 296 F.3d 832. The majority opinion was delivered by Justice Souter, joined by Justices Rehnquist, O'Connor, Kennedy, and Breyer. The dissenting opinion was filed by Justice Ginsburg, joined by Justices Stevens, Scalia and Thomas.

[27] Agreement Concerning the Foundation "Remembrance, Responsibility and the Future," 39 Int'l Legal Materials 1298 (2000).

[28] 123 S.Ct. at 2382.

[29] *See, e.g.,* CRS Report RL30396, *Holocaust-Era Assets: A Guide for Filing Claims and a List of Compensation Programs,* by Barbara A. Salazar (August 15, 2000).

The Court noted that the executive agreements at issue lacked express preemption clauses, but emphasized that there was a sufficiently "clear conflict" between the foreign policy embodied in the agreements and the California statute to require its finding of preemption: the President's policy, as embodied in his executive agreements and government officials' interpretation of them, was to *encourage* European governments and companies to volunteer settlement funds in preference to litigation or coercive sanctions; HVIRA imposed regulatory sanctions to *compel* disclosure and payment of claims, and created "a new cause of action for Holocaust survivors if the other sanctions" failed:[30]

> The express federal policy and the clear conflict raised by the state statute are alone enough to require state law to yield. If any doubt about the clarity of the conflict remained, however, it would have to be resolved in the National Government's favor, given the weakness of the State's interest, against the backdrop of traditional state legislative subject matter ....[31]

And, although the President had acted without express congressional authority on the subject, the Court found it noteworthy that Congress neither disapproved of the President's policy nor expressly authorized state statutes of the HVIRA type.[32]

California's Commerce Clause argument relying on the McCarran-Ferguson Act, rejected in the district court,[33] was no more successful in the Supreme Court:

> ... a federal statute directed to implied preemption by domestic commerce legislation cannot sensibly be construed to address preemption by executive conduct in foreign affairs.[34]

The four dissenting Justices were less willing than was the majority to find a preemption-inducing conflict, "[a]bsent a clear statement aimed at disclosure requirements by 'one voice' to which courts properly defer in matters of foreign affairs".[35] As does the majority, the dissent acknowledges the U.S. obligation under the German Foundation Agreement to advise litigation forums of the government's determination that the foreign policy interests of the United States would be served by having the foundation serve as "the exclusive forum and remedy for all asserted claims against German companies arising from their involvement in the national

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[30] *Id.* at 2390, 2391, 2392.

[31] *Id.* at 2392. In that respect, the Court noted the similarities to those of Massachusetts' so-called "Burma Law" at issue in Crosby v. National Foreign Trade Council (530 U.S. 63 (2000)). There, the state law, which restricted the ability of Massachusetts and its agencies to purchase goods or services from companies that did business with Burma (Myanmar), was unanimously held to violate the Supremacy Clause of the Constitution, and declared invalid.

[32] 123 S.Ct. at 2394. Legislation that would provide congressional authorization for the state statutes is summarized briefly in note 5, *supra*, and more fully, *infra,* at pp. 9-13.

[33] *Cf.* notes 19, 20, and accompanying text.

[34] 123 S.Ct. at 2394.

[35] *Id.* at 2395.

Socialist era and World War II."[36] Moreover, there is a further U.S. obligation to "recommend dismissal on any valid legal ground (which, under the U.S. system of jurisprudence, will be for the U.S. courts to determine)."[37] But the dissent also notes that

> [t]he agreement makes clear ... that 'the United States does not suggest that its policy interests concerning the Foundation *in themselves* provide an independent legal basis for dismissal.'[38]

Justice Ginsburg reviewed prior Supreme Court case law in which certain state laws were found to impermissibly conflict with either the express terms of executive agreements,[39] or required U.S. courts to inquire into the nature of foreign governments, possibly criticizing those "more authoritarian than our own."[40] Based on that review, the dissent concluded that HVIRA, which addressed only public disclosure — a subject neither mentioned nor alluded to in the German Foundation Agreement or similar agreements concluded with Austria and France — should be "left in place" because implementing HVIRA "would not compromise the President's ability to speak with one voice for the Nation."[41]

Federal Legislative Response

Over the past few years, Congress has considered certain aspects of the Holocaust-era insurance issues. The House Committee on Government Reform held a series of hearings on the entire Holocaust-era insurance topic which included, in the 108th Congress, "Holocaust Era Insurance Restitution After *AIA v. Garamendi:* Where Do We Go From Here?" (September 16, 2003) and, in the 107th Congress, "Holocaust Victims Insurance Relief Act of 2001," (September 21, 2002) and "The Status of Insurance Restitution for Holocaust Victims and Their Heirs" (November 8, 2001).

Several bills introduced in the 108th Congress address issues associated with the Holocaust-era insurance claims.[42] These bills and the legislative activity associated with them are summarized below:

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[36] 123 S.Ct. at 2398, *quoting* from the Agreement.

[37] *Id.*

[38] *Id.* (emphasis added).

[39] *Id.* at 2398-2399, *discussing* United States v. Belmont, 301 U.S. 324 (1937); United States v. Pink, 315 U.S. 203 (1942); Dames & Moore v. Regan, 453 U.S. 654 (1981).

[40] *Id*. at 2399, *quoting* from Zschernig v. Miller (389 U.S. 429, 440 (1968), cited approvingly by the majority (123 S.Ct. at 2388-2389). Zschernig nullified an Oregon escheat statute that had resulted in denying an inheritance to a resident of a Communist-bloc country.

[41] *Id.* at 2401.

[42] All relevant bills were introduced during the 1st Session of the 108th Congress. As of April 27, 2004, no bills on Holocaust-era insurance issues had been introduced in the 2nd Session.

H.R. 1210 — Holocaust Victims Insurance Relief Act of 2003

Introduced by Representative Waxman on March 11, 2003, H.R. 1210 would provide for the establishment of the Holocaust Insurance Registry by the Archivist of the United States and require certain disclosures by insurers to the Secretary of Commerce. The bill sets out findings on the events of the Holocaust, the theft of assets, the difficulties of processing insurance claims, the establishment of the ICHEIC, the Executive Agreement, and the alleged lack of progress of the ICHEIC in processing claims. The purpose of the bill is to provide information about Holocaust-era insurance policies to Holocaust victims and their heirs and beneficiaries in order to enable them to expeditiously file their rightful claims.

The Archivist is authorized to establish a Holocaust Insurance Registry, with information to be publicly available. An insurer is required to file with the Secretary certain information regarding the policy holder and the policy. The bill defines insurer as "any person engaged in the business of insurance in United States interstate or foreign commerce, if the person or a related company of the person issued a covered policy, regardless of when the related company became a related company of the insurer."[43] A related company means "an affiliate, as that term is defined in section 104(g) of the Gramm-Leach-Bliley Act."[44] This information is to be forwarded by the Secretary to the Archivist. Time limits and penalties for noncompliance are established. Notification procedures between the Secretary and various state insurance commissioners are established. The bill expressly does not preempt the right of any state to adopt/enforce any state law requiring an insurer to disclose information regarding Holocaust-era policies.[45]

The bill was referred to the Committee on Financial Services and to the Committee on Government Reform on March 11, 2003. In the House Financial Services Committee, it was referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises on March 28, 2003. In the House Committee on Government Reform, it was referred to the Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census on March 25, 2003. No hearings have been held.

H.R. 1905 — Comprehensive Holocaust Accountability in Insurance Measure

This bill, the Comprehensive Holocaust Accountability in Insurance Measure, was introduced by Representative Foley on May 1, 2003. The bill would clarify the authority of a state to condition the ability to conduct the business of insurance within

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[43] H.R. 1210, 108th Cong., 1st Sess., Sec. 10(3) (2003).

[44] *Id.* Defined in Sec. 10(4) through specific reference to the Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1338, Nov. 12, 1999: "AFFILIATE. — The term "affiliate" means any company that controls, is controlled by, or is under common control with another company."

[45] *Id.* Sec. 9(a). PREEMPTION-Nothing in this act preempts the right of any State to adopt or enforce any State law requiring an insurer to disclose information regarding insurance policies that may have been confiscated or stolen from victims of Nazi persecution.

the state on the provision of information regarding the Holocaust-era insurance policies of the insurer. The bill also would establish a Federal cause of action to obtain payment of claims. It sets out the factual and legal background surrounding the Holocaust-era insurance controversy, noting the ICHEIC's alleged lack of success in settling claims.[46] The bill provides that a state may establish requirements for insurers as a condition of doing insurance business, including the collection of insurance information from foreign-based insurance companies, to the extent that such requirements are consistent with constitutional due process guarantees. Specific information requirements are set out. A state may also require the disposition of the proceeds of the policies.[47]

The bill establishes a ten-year statute of limitations for causes of action under it. Matters of jurisdiction are covered.[48] There is an extensive definitional section, which includes a listing of specific foreign insurance companies that have had financial dealings with any Holocaust victim, as well as provision for designation by the states or the Attorney General of additional such companies.[49] The bill also provides guidelines for determining who is a "listed Holocaust victim"covered by the legislation.[50]

The bill was referred to the House Committee on Financial Services on May 1, 2003, and was referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises on May 12, 2003. It has not emerged from committee.

S. 972 — Comprehensive Holocaust Accountability in Insurance Act

This bill, introduced by Senator Coleman on May 1, 2003, is the companion bill to H.R. 1905, the "Foley bill." Although the bills are nearly identical, S. 972 would establish its "listed Holocaust victims"[51] without specific reference to a victim list held by the International Red Cross or other regularly accessed source of information concerning Holocaust victims.[52]

After its introduction on May 1, 2003, the bill was read twice and referred to the Senate Committee on the Judiciary. It has not emerged from committee.

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[46] H.R. 1905, 108th Cong., 1st Sess. Sec. 2 (2003).

[47] *Id.* Sec. 3

[48] *Id.* Sec. 4.

[49] *Id.* Sec. 4(d).

[50] *Id.*. Sec. 5.

[51] S. 972, 108th Cong., 1st Sess. Sec.5 (2003).

[52] See, e.g., H.R. 1905, 108th Cong., 1st Sess. Sec. 5(3)(B) (2003).

S. 1184 — Holocaust Victims' Assets, Restitution Policy, and Remembrance Act

Introduced by Senator Smith, the bill would establish a National Foundation for the Study of Holocaust Assets, which assets would appear to include the proceeds of insurance policies.[53] Extensive findings outline the Holocaust-era theft of many assets. The bill contains language to encourage the ICHEIC to prepare a report on the results of its claims process. Provisions are made for the establishment of the Foundation, its board, officers, and employees.

This bill is limited to encouraging the ICHEIC to prepare a report[54] and it is not involved with state activity to deal with Holocaust-era insurance claims.

Following its introduction on June 4, 2003, the bill was referred to the Senate Committee on Banking, Housing, and Urban Affairs. It has not emerged from committee.

H.R. 3129 — Holocaust Victims Insurance Fairness Act

This bill, introduced by Congressman Schiff following the *Garamendi* decision, would permit the states to require insurance companies to disclose Holocaust-era insurance information. The bill has a comprehensive section of congressional findings concerning the Holocaust, the loss of insurance policies, and the attempts to have the insureds or their heirs recover the policy proceeds.[55]

Significant provisions of the bill would permit a state to implement a law that would require insurance companies conducting business in the state to provide (and make publicly available) details regarding some or all covered policies that were issued by that company or by any related company.[56] The states would also be permitted to impose penalties and sanctions for noncompliance.

The bill explicitly disapproves of any executive branch policy or agreement that preempts state efforts to collect Holocaust-era insurance information to resolve outstanding claims.

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[53] S. 1184, 108th Cong., 1st Sess. Sec. 3 (2003).

[54] *Id*. Sec. 7.

[55] H.R. 3129, 108th Cong., 1st Sess. (2003).

[56] *Id.* A "covered policy" is defined in Sec. 3(b)(1) as "a property, liability, health, annuity, dowry, educational, or casualty insurance policy that was issued to a policyholder domiciled in the area of the European Continent that was occupied or controlled by Nazi Germany or by any ally or sympathizer of Nazi Germany and that was in effect at any time during the period between 1933 and 1945." "Related company" is defined as including with respect to an insurance company, any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliate company, whether or not the company was related during the time when a covered policy was sold" in Sec. 3(b)(2).

Following the introduction of the bill on September 17, 2003, it was referred to the House Committee on Financial Services and the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. It has not been reported.

Appendix: State Laws Concerning Holocaust-Era Insurance Assets

In holding that California's regime for resolving Holocaust-era claims unconstitutionally conflicted with the President's power over foreign affairs, and thereby was pre-empted by it, the Court noted that several other states had passed laws "similar" to California's.[57] Statutes in four states — Arizona, Florida, New York and Washington — appear very similar to California's statute. Statutes in Maryland, Minnesota and Texas have less jurisdictional reach and may be less vulnerable to challenge on due process grounds (an issue found significant by at least one Court of Appeals); nevertheless, these laws still may be vulnerable on foreign affairs preemption grounds. State statutes that grant favorable tax treatment to proceeds of certain types of claims would not appear to have been affected by *Garamendi.*

STATE	CITATION	SUMMARY OF PROVISIONS	POSSIBLE LEGAL IMPACT OF *GARAMENDI* DECISION
ARIZONA	Ariz.Rev.Stat. Ann. §§20-490 to 490.2 (West Cum. Supp. 2003)	*Enforcement of Insurance Policies Affecting Certain Holocaust Victims* — Provides definitions. Extends deadline for filing claims to Dec. 31, 2012. Provides a civil penalty against a noncomplying insurer of not more than $1,000 for each act or violation, with the aggregate civil penalty not to exceed $10,000.	Statute appears to be similar to HVIRA and may be vulnerable to constitutional challenge based on *Garamendi* preemption grounds.
CALIFORNIA	Cal.Civ.Proc. §§ 354.5, 354.6 (West 2003); Cal. Ins. Code §§ 790.15, 12967, 13800-13807 (West 2003)	*Holocaust Victim Insurance Relief Act of 1999 (HVIRA)* — Extends statute of limitations to Dec. 31, 2010. Suspends certificate of authority for insurer failing to pay Holocaust-survivor's	The Court in *Garamendi* determined that the claims process under HVIRA had been pre-empted by presidential action under his foreign affairs powers.

[57] 123 S.Ct. 2385, note 6.

STATE	CITATION	SUMMARY OF PROVISIONS	POSSIBLE LEGAL IMPACT OF *GARAMENDI* DECISION
		claim. Provides definitions. Establishes a registry of information related to insurance policies and Holocaust victims. Requires insurance companies to file information on policies issued by any "related" companies in Europe between 1920-1945. Imposes civil penalties. Suspends certificate of authority to conduct business for failure to comply.	
CONNECTICUT	Conn. Gen. Stat. Ann. § 12-701 (West 2003)	Provides special tax treatment of Holocaust victim settlement payments.	Statute deals with tax issues and *Garamendi* concerns are not present.
FLORIDA	Fla. Stat. Ann. § 626.9543 (West Cum. Supp. 2003)	*Holocaust Victims Insurance Act* — Provides definitions. Extends statute of limitations to July 1, 2009. Requires insurance companies to report information about any company with which they had "any legal relationship" between 1920 and 1945. Provides for private right of action, civil penalties.	Statute appears to be similar to HVIRA and may be vulnerable to constitutional challenge based on *Garamendi* preemption grounds. Certain disclosure provisions found to be unconstitutional on the basis of due process in *Gerling Global Reinsurance Corp. v. Gallagher,* 267 F.3d 1228 (11th Cir. 2001), discussed supra.
INDIANA	Ind. Code § 6-3-1-30 (Lexis 2000)	Provides special tax treatment for proceeds received from Holocaust-era	Statute deals with tax issues and *Garamendi* concerns are not present.

STATE	CITATION	SUMMARY OF PROVISIONS	POSSIBLE LEGAL IMPACT OF *GARAMENDI* DECISION
		insurance settlements.	
MAINE	Me. Rev. Stat. Ann. tit 36, § 5122 1.O (West 2002)	Provides special tax treatment for proceeds received from Holocaust-era insurance settlements.	Statute deals with tax issues and *Garamendi* concerns are not present.
MARYLAND	Md. Ins. Code §§ 28-101 to 110 (2002); Md. Tax-General Code § 10-207 (2002)	*Holocaust Victims Insurance Act —* Provides definitions. Authorizes investigation of claims. Sets a ten-year period for filing claims. Requires annual filings by insurers regarding Holocaust-era policies. Authorizes fines and debarment for non-compliance. Provides special tax treatment for proceeds of Holocaust-era claims.	Statute is more narrowly drafted than HVIRA. Covers "an insurer authorized to do insurance business in the State." (§ 28-1-5). However, *Garamendi* preemption issues remain, and the statute may be vulnerable to a constitutional challenge.
MINNESOTA	Minn. Stat. Ann. § 60A.053 (West Cum. Supp. 2003)	*Holocaust Victims Insurance Relief Act of 2000 —* Establishes a Holocaust insurance company registry. Covers any insurer that sold Holocaust-related insurance policies; exempts "related companies." Authorizes suspension of certificate of authority for noncompliance; Allows private right of action and extends of statute of limitations.	Statute is more narrowly drafted than HVIRA. Coverage is limited to "any insurer that sold Holocaust related policies" and has certain exemptions. However, *Garamendi* preemption issues remain, and the statute may be vulnerable to a constitutional challenge.

STATE	CITATION	SUMMARY OF PROVISIONS	POSSIBLE LEGAL IMPACT OF *GARAMENDI* DECISION
NEW YORK	N.Y. Ins. Law §§ 2701-2711 (McKinney 2003)	*Holocaust Victims Insurance Act of 1998* — Provides claims assistance (including toll free number). Covers "any insurer organized, registered, licensed or accredited to do an insurance business in this state." Imposes reporting requirements on insurers and related companies; Authorizes civil fines. Extends statute of limitations.	Statute appears to be similar to HVIRA and may be vulnerable to a constitutional challenge based on *Garamendi* preemption grounds.
TEXAS	Tex. Rev. Civ. Stat. (Ins.) Art. 21.74 (Vernon 2003)	Provides definitions, defining "insurer" as an "insurance company or other entity engaged in the business or insurance or reinsurance in this state" and includes "any parent, subsidiary, or affiliated company, at least 50 percent of the stock of which in common ownership with an insurer engaged in the business of insurance in this state." Establishes enforcement mechanisms. Extends statute of limitations. Authorizes sanctions.	Statute is more narrowly drafted than HVIRA. However, *Garamendi* preemption issues remain, and the statute may be vulnerable to a constitutional challenge.

STATE	CITATION	SUMMARY OF PROVISIONS	POSSIBLE LEGAL IMPACT OF *GARAMENDI* DECISION
WASHINGTON	Wash. Rev. Code Ann. §§ 48104.010 to 48104.903 (West 2003)	*Holocaust Victims Insurance Relief Act* — Provides policy declarations, expiration date, definitions (the terms "insurer" and "related company" seem to be narrowly defined), an assistance office, a Holocaust insurance company registry, and exemptions to the registration requirements. Authorizes monetary fines and suspension of the certificate of authority for non-compliance. Preserves private right of action.	Statute appears to be similar to HVIRA and may be vulnerable to a constitutional challenge based on *Garamendi* preemption grounds.

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