

112TH CONGRESS
1ST SESSION

H. R. 890

To allow for the enforcement of State disclosure laws and access to courts
for covered Holocaust-era insurance policy claims.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2011

Ms. ROS-LEHTINEN (for herself and Mr. DEUTCH) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To allow for the enforcement of State disclosure laws and
access to courts for covered Holocaust-era insurance pol-
icy claims.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Insurance
5 Accountability Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Holocaust, an event in which millions
2 of people endured enormous suffering through tor-
3 ture and other violence, including the murder of
4 6,000,000 Jews and millions of others, the destruc-
5 tion of families and communities, and the theft of
6 their assets, was one of the most heinous crimes in
7 human history.

8 (2) Before and during World War II, millions
9 of people purchased insurance policies to safeguard
10 family assets, plan for retirement, provide for a
11 dowry, or save for their children's education.

12 (3) When Holocaust survivors and heirs and
13 beneficiaries of Holocaust victims presented claims
14 to insurance companies after World War II, many
15 were rejected because they did not have death cer-
16 tificates or physical possession of policy documents
17 that had been confiscated by the Nazis or lost in the
18 devastation of the Holocaust.

19 (4) In many instances, insurance company
20 records and records in government archives are the
21 only proof of the existence of insurance policies be-
22 longing to Holocaust victims.

23 (5) Holocaust survivors and heirs and bene-
24 ficiaries of Holocaust victims have been attempting

1 for decades to persuade insurance companies to set-
2 tle unpaid insurance claims.

3 (6) In 1998, the International Commission on
4 Holocaust Era Insurance Claims (in this section re-
5 ferred to as “ICHEIC”) was established by the Na-
6 tional Association of Insurance Commissioners in co-
7 operation with several European insurance compa-
8 nies, European regulators, the Government of Israel,
9 and nongovernmental organizations with the promise
10 that it would expeditiously address the issue of un-
11 paid insurance policies issued to Holocaust victims.

12 (7) On July 17, 2000, the United States and
13 Germany signed an executive agreement in support
14 of the German Foundation “Remembrance, Respon-
15 sibility, and the Future”, which designated ICHEIC
16 to resolve all Holocaust-era insurance policies issued
17 by German companies and their subsidiaries.

18 (8) On January 17, 2001, the United States
19 and Austria signed an executive agreement, which
20 designated ICHEIC to resolve all Holocaust-era in-
21 surance policies issued by Austrian companies and
22 their subsidiaries.

23 (9) The ICHEIC process ended in 2007 and
24 companies holding Holocaust-era insurance policies
25 continue to withhold names of owners and bene-

1 ficiaries of thousands of insurance policies sold to
2 Jewish customers prior to World War II.

3 (10) Experts estimate that only a small fraction
4 of the policies estimated to have been sold to Jews
5 living in Europe at the beginning of World War II
6 have been paid through ICHEIC.

7 (11) In *American Insurance Association, Inc.,*
8 *v. Garamendi*, the United States Supreme Court
9 held that under the supremacy clause of the Con-
10 stitution of the United States, executive agreements
11 and executive foreign policy calling for insurance
12 claims against German and Austrian companies to
13 be handled within ICHEIC preempted State laws
14 authorizing State insurance commissioners to sub-
15 poena company records and require publication of
16 the names of Holocaust era policy holders.

17 (12) In the *Garamendi* case, the Supreme
18 Court stated that Congress, which has the power to
19 regulate international commerce and prescribe Fed-
20 eral court jurisdiction, had not addressed disclosure
21 and restitution of insurance policies of Holocaust
22 victims.

23 (13) Subsequent court decisions have dismissed
24 Holocaust-era insurance claims brought against an
25 Italian insurance company, even though there is no

1 executive agreement between the United States and
2 Italy.

3 (14) Congress supports the rights of Holocaust
4 survivors and the heirs and beneficiaries of Holo-
5 caust victims to obtain information from insurers
6 and to bring legal actions in courts, wherever juris-
7 diction requirements are met, to recover unpaid
8 funds from entities that participated in the theft of
9 family insurance assets or the affiliates of such enti-
10 ties.

11 (15) Congress intends for this Act to establish
12 a Federal private right of action to allow Holocaust
13 survivors and heirs and beneficiaries of victims to re-
14 cover under their covered Holocaust-era insurance
15 policies, and to allow for State causes of action and
16 disclosure requirement laws regarding Holocaust-era
17 insurance policies to be valid and not preempted.

18 (16) This Act expresses the intent of Congress
19 to deem valid State laws protecting the rights of
20 Holocaust survivors and the heirs and beneficiaries
21 of Holocaust victims to obtain information from in-
22 surers and to bring actions in courts of proper juris-
23 diction to recover unpaid funds from entities that
24 participated in the theft of family insurance assets
25 or the affiliates of such entities.

1 (17) Insurance payments should be expedited to
2 the victims of the most heinous crime of the 20th
3 century to ensure that justice is served.

4 (18) This Act will enable Holocaust survivors
5 and heirs and beneficiaries of Holocaust victims to
6 obtain compensation commensurate with the real
7 monetary value of their losses.

8 (19) Under the circumstances faced by Holo-
9 caust victims and their families, courts should be
10 open to Holocaust survivors and heirs and bene-
11 ficiaries of Holocaust victims for a reasonable num-
12 ber of years after the enactment of this Act, without
13 regard to any other statutes of limitation.

14 **SEC. 3. PRIVATE RIGHT OF ACTION.**

15 (a) CIVIL ACTIONS TO RECOVER UNDER COVERED
16 POLICIES.—Any person who purchased a covered policy,
17 or a beneficiary or heir of such person, may bring a civil
18 action, in the appropriate United States district court,
19 against the insurer for the covered policy or a related com-
20 pany of the insurer, to recover proceeds due under the cov-
21 ered policy or otherwise to enforce any rights under the
22 covered policy.

23 (b) NATIONWIDE SERVICE OF PROCESS.—For a civil
24 action brought under subsection (a), process may be
25 served in the judicial district where the case is brought

1 or any other judicial district of the United States where
2 the defendant may be found, resides, has an agent, or
3 transacts business.

4 (c) REMEDIES.—A court shall award to a prevailing
5 beneficiary in a civil action brought under subsection (a)—

6 (1) the amount of the proceeds due under the
7 covered policy;

8 (2) prejudgment interest on the amount de-
9 scribed in clause (i) from the date the amount was
10 due until the date of judgment, calculated at a rate
11 of 6 percent per year, compounded annually; and

12 (3) any other appropriate relief necessary to en-
13 force rights under the covered policy.

14 **SEC. 4. VALIDITY OF STATE LAWS.**

15 (a) VALIDITY OF LAWS CREATING CAUSE OF AC-
16 TION.—Any State law creating a cause of action against
17 any insurer or related company based on a claim arising
18 out of or related to a covered policy shall not be invalid
19 or preempted by reason of any executive foreign policy de-
20 scribed in subsection (d)(1) or any executive agreement
21 described in subsection (d)(2).

22 (b) VALIDITY OF LAWS REQUIRING DISCLOSURE OF
23 INFORMATION.—Any State law that is enacted on or after
24 March 1, 1998, and that requires an insurer doing busi-
25 ness in that State, including any related company, to dis-

1 close information regarding any covered policy shall be
2 deemed to be in effect on the date of the enactment of
3 such law and shall not be invalid or preempted by reason
4 of any executive foreign policy described in paragraph (1)
5 of subsection (d) or any executive agreement described in
6 paragraph (2) of subsection (d).

7 (c) EXECUTIVE AGREEMENTS AND EXECUTIVE FOR-
8 EIGN POLICY COVERED.—

9 (1) EXECUTIVE FOREIGN POLICY.—An execu-
10 tive foreign policy described in this paragraph is a
11 foreign policy of the executive branch of the Federal
12 Government established before, on, or after the date
13 of enactment of this Act.

14 (2) EXECUTIVE AGREEMENTS.—An executive
15 agreement described in this paragraph is an execu-
16 tive agreement between the United States and a for-
17 eign government entered into before, on, or after the
18 date of enactment of this Act.

19 (d) STATEMENTS OF INTEREST.—No funds may be
20 used by the Department of State, or any other department
21 or agency of the United States, for the purpose of issuing
22 a statement of interest seeking to encourage a court in
23 the United States to dismiss any claim or action brought
24 to recover compensation arising out of or related to a cov-
25 ered policy.

1 **SEC. 5. STATUTE OF LIMITATIONS.**

2 A court may not dismiss a claim or action that is
3 brought under section 3, or under subsection (a) or (b)
4 of section 4, within 10 years after the date of the enact-
5 ment of this Act on the ground that the claim or action
6 is barred under any statute of limitations or the doctrine
7 of laches.

8 **SEC. 6. APPLICABILITY.**

9 (a) IN GENERAL.—This Act shall apply to any claim
10 or action that is brought, before, on, or after the date of
11 the enactment of this Act, under section 3, or under a
12 State law described in subsection (a) or (b) of section 4,
13 including—

14 (1) any claim or action dismissed, before the
15 date of the enactment of this Act, on the ground of
16 executive preemption; and

17 (2) any claim or action that is deemed released
18 as a result of the settlement of a class action that
19 was entered into before the date of the enactment of
20 this Act, if the claimant did not receive any payment
21 pursuant to the settlement.

22 (b) CLAIMS OR ACTIONS NOT PRECLUDED ON CER-
23 TAIN GROUNDS.—With respect to any claim or action
24 brought under section 3, or under a State law described
25 in subsection (a) or (b) of section 4, it shall not be a de-
26 fense that the claim or action is or was precluded, barred,

1 waived, discharged, or otherwise invalid under the doctrine
2 of res judicata, collateral estoppel or any similar doctrine.

3 **SEC. 7. DEFINITIONS.**

4 In this Act:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means the Committee on Foreign Affairs in
8 the House of Representatives, the Committee on
9 Foreign Relations in the Senate, and the Commit-
10 tees on the Judiciary of the House of Representa-
11 tives and the Senate.

12 (2) COVERED POLICY.—

13 (A) IN GENERAL.—The term “covered pol-
14 icy” means any life, dowry, education, property,
15 or other insurance policy that—

16 (i) was in effect at any time after
17 January 30, 1933, and before December
18 31, 1945; and

19 (ii) was issued to a policyholder domi-
20 ciled in any area that was occupied or con-
21 trolled by Nazi Germany.

22 (B) NAZI GERMANY.—In this paragraph,
23 the term “Nazi Germany” means—

24 (i) the Nazi government of Germany;
25 and

1 (ii) any government in any area occu-
2 pied by the military forces of the Nazi gov-
3 ernment of Germany.

4 (3) INSURER.—The term “insurer” means any
5 person engaged in the business of insurance (includ-
6 ing reinsurance) in interstate or foreign commerce,
7 if the person issued a covered policy, or a successor
8 in interest to such person.

9 (4) LEGISLATIVE DAYS.—The term “legislative
10 days” means those days on which both Houses of
11 Congress are in session.

12 (5) RELATED COMPANY.—The term “related
13 company” means an affiliate, as that term is defined
14 in section 104(g) of the Gramm-Leach-Bliley Act
15 (15 U.S.C. 6701(g)).

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