

109TH CONGRESS
1ST SESSION

H. R. 474

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2005

Mrs. MALONEY (for herself, Ms. ROS-LEHTINEN, Mr. SHAYS, Mr. NADLER, and Mr. WEINER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons.

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. CONGRESSIONAL FINDINGS.**

4 Congress finds as follows:

1 (1) During World War II, more than 75,000
2 Jews and thousands of other persons were deported
3 from France to Nazi concentration camps, on trains
4 operated for profit by the Société Nationale des Che-
5 mins de Fers Français (in this Act referred to as
6 “SNCF”), including deportations to Auschwitz and
7 Buchenwald. Numerous citizens and residents of the
8 United States were among those on the trains or
9 had relatives on the trains. United States servicemen
10 who were pilots shot down over France were also
11 among the persons deported on the SNCF trains to
12 Nazi concentration camps.

13 (2) United States citizens and others have
14 sought redress against SNCF by filing a class action
15 suit in the United States District Court for the
16 Eastern District of New York. The named plaintiffs
17 and class members include United States Army Air
18 Force pilots and United States citizens.

19 (3) The complaint filed alleges that SNCF, a
20 separate corporate entity which remained inde-
21 pendent during World War II, operated the deporta-
22 tion trains for a profit, as ordinary commercial
23 transactions. SNCF remained under French civilian
24 control throughout World War II and is alleged to

1 have collaborated willingly with the German Nazi re-
2 gime.

3 (4) The complaint alleges that SNCF provided
4 the necessary rolling stock, scheduled the depar-
5 tures, and supplied the employees to operate the
6 trains bound for the concentration camps. SNCF al-
7 legedly charged an ordinary passenger coach fare for
8 the deportations, calculated per person and per kilo-
9 meter, and considered these trains as ordinary com-
10 mercial activities. The plaintiffs further contend that
11 SNCF herded as many people as possible into each
12 car, requiring passengers of all ages and sexes, in-
13 cluding the elderly and young children, to stand
14 throughout the trip of several days' duration, with
15 no provision for food or water and no sanitary facili-
16 ties. The complaint further alleges that SNCF
17 cleaned the trains after each trip, removing the
18 corpses of persons who perished during transit due
19 to the execrable conditions of the train cars. The
20 destination was in each case a camp in which the de-
21 portees were to be exterminated, worked to death, or
22 made to suffer terrible and inhuman conditions.

23 (5) The complaint contends that SNCF's ac-
24 tions violated the Principles of the Nuremberg Tri-
25 bunal, 1950, relating to crimes under international

1 law (earlier recognized by the Martens Clause of the
2 Hague Convention IV of 1907), and aided and abet-
3 ted the commission of war crimes and crimes against
4 humanity. SNCF has not denied its actions and has
5 never disgorged the money that it was paid for the
6 deportations or otherwise compensated the deportees
7 or their heirs.

8 (6) SNCF's records concerning the deportation
9 trains have not been made available to the plaintiffs,
10 and SNCF archives concerning its wartime activities
11 remain closed to the general public.

12 (7) SNCF moved to dismiss the lawsuit on a
13 claim of sovereign immunity under the Foreign Sov-
14 ereign Immunities Act of 1976 (28 U.S.C. 1330 and
15 1602 et seq.), even though it is one of the 500 larg-
16 est corporations in the world, earns hundreds of mil-
17 lions of dollars from its commercial activities in the
18 United States, and is not accorded sovereign immu-
19 nity under the laws of France. SNCF's motion to
20 dismiss the lawsuit has been granted by the United
21 States District Court for the Eastern District of
22 New York. Plaintiffs appealed the decision, their ap-
23 peal was granted, and the case was remanded for
24 further proceedings. In November 2004, on remand,
25 the Court of Appeals for the Second Circuit deter-

1 mined that SNCF was entitled to immunity and af-
2 firmed the dismissal of the complaint.

3 (8) This lawsuit presents issues of substantial
4 importance to citizens and veterans of the United
5 States and finds that the courts of the United States
6 are and should be a proper forum for this lawsuit
7 and similar suits.

8 (9) SNCF is attempting to use the Foreign
9 Sovereign Immunities Act of 1976, enacted 30 years
10 after the events at issue occurred, to evade liability
11 for conduct for which it would otherwise be held ac-
12 countable, rather than accepting responsibility for its
13 actions. Under the rule of separate entities applica-
14 ble at the time of the events in question, SNCF
15 would not be immune from suit in United States
16 courts. The Foreign Sovereign Immunities Act of
17 1976 was not intended to expand the reach of im-
18 munity in these circumstances.

19 **SEC. 2. ACCESS TO UNITED STATES COURTS FOR HOLO-**
20 **CAUST DEPORTEES.**

21 (a) JURISDICTION OF DISTRICT COURTS.—The
22 United States district courts shall have original jurisdic-
23 tion, without regard to the amount in controversy, of any
24 civil action for damages for personal injury or death
25 that—

1 (1) arose from the deportation of persons to
2 Nazi concentration camps during the period begin-
3 ning on January 1, 1942, and ending on December
4 31, 1944; and

5 (2) is brought by any such person, or any heir
6 or survivor of such person, against a railroad that—

7 (A) owned or operated the trains on which
8 the persons were so deported; and

9 (B) was organized as a separate legal enti-
10 ty at the time of the deportation, whether or
11 not any of the equity interest in the railroad
12 was owned by a foreign state.

13 (b) OTHER LAWS NOT APPLICABLE.—Sections 1330
14 and 1601 through 1611 of title 28, United States Code,
15 or any other law limiting the jurisdiction of the United
16 States courts, whether by statute or under common law,
17 shall not preclude any action under subsection (a).

18 (c) INAPPLICABILITY OF STATUTES OF LIMITA-
19 TION.—No action described in subsection (a) shall be
20 barred by a defense that the time for bringing such action
21 has expired under a statute of limitations.

22 (d) APPLICABILITY.—This section shall apply to any
23 action pending on January 1, 2002, and to any action
24 commenced on or after that date.

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