

111TH CONGRESS
2D SESSION

S. 4033

To provide for the restoration of legal rights for claimants under holocaust-era insurance policies.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2010

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the restoration of legal rights for claimants under holocaust-era insurance policies.

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 “Restoration of Legal
5 Rights for Claimants under Holocaust-Era Insurance
6 Policies Act of 2010”.

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are to—

9 (1) allow for the enforcement of State laws re-
10 quiring the disclosure of information about Holo-

1 caust-era insurance policies, notwithstanding the
2 holding of the Supreme Court of the United States
3 in *American Insurance Association v. Garamendi*,
4 539 U.S. 396 (2003) that such laws are preempted
5 by the foreign policy espoused by the executive
6 branch of the Federal Government addressed in that
7 case;

8 (2) facilitate the disclosure of information about
9 Holocaust-era insurance policies under applicable
10 State laws so that citizens of the United States (and
11 other persons on whose behalf such laws were en-
12 acted) may know whether they hold any rights under
13 the policies;

14 (3) allow the beneficiaries of Holocaust-era in-
15 surance policies, many of whom are citizens of the
16 United States, to bring suits in the courts of the
17 United States to recover any proceeds under the
18 policies to which they may be entitled, notwith-
19 standing the defense that such suits are preempted
20 by the executive-branch foreign policy addressed in
21 *Garamendi*;

22 (4) foreclose defenses to claims brought under
23 section 4 of this Act arising from any prior judg-
24 ments or settlement agreements (including the class
25 action judgment and settlement agreement (M 21–

89, United States District Court for the Southern District of New York) in *In re: Assicurazioni General S.p.A. Holocaust Insurance Litigation*)) that were entered and approved based on the erroneous conclusion that State-law claims to recover under Holocaust-era insurance claims are preempted by the executive-branch foreign policy addressed in *Garamendi*;

(5) provide for a uniform statute of limitations of 10 years after the date of enactment of this Act in any action to recover under Holocaust-era insurance policies under this Act or State law; and

(6) in carrying out the purposes described in paragraphs (1) through (5), preserve the lawmaking powers of Congress under article I of the Constitution of the United States, with which the judicial decisions cited in this section are inconsistent.

SEC. 3. DEFINITIONS.

In this Act:

(1) **BENEFICIARY.**—The term “beneficiary” includes—

(A) a named insured or named beneficiary under a covered policy; and

1 (B) an heir, assignee, or legal representa-
 2 tive of a named insured or named beneficiary
 3 described in subparagraph (A).

4 (2) COVERED POLICY.—The term “covered pol-
 5 icy” means any life, dowry, education, annuity, prop-
 6 erty, or other insurance policy that was—

7 (A) in effect at any time during the period
 8 beginning on January 31, 1933, and ending on
 9 December 31, 1945; and

10 (B) issued to a policyholder domiciled in—

11 (i) any area that was occupied or con-
 12 trolled by Nazi Germany; or

13 (ii) the territorial jurisdiction of Swit-
 14 zerland.

15 (3) INSURER.—The term “insurer”—

16 (A) means any person engaged in the busi-
 17 ness of insurance (including reinsurance) in
 18 interstate or foreign commerce that issued a
 19 covered policy; and

20 (B) includes any successor in interest to a
 21 person described in subparagraph (A).

22 (4) NAZI GERMANY.—The term “Nazi Ger-
 23 many” means—

24 (A) the Nazi government of Germany; and

25 (B) any government that—

1 (i) had friendly relations with the
2 Nazi government of Germany;

3 (ii) was allied with or controlled by
4 the Nazi government of Germany; or

5 (iii) exercised or claimed sovereignty
6 over any area occupied by the military
7 forces of the Nazi government of Germany.

8 (5) RELATED COMPANY.—The term “related
9 company” means an affiliate, as that term is defined
10 in section 104(g) of the Gramm-Leach-Bliley Act
11 (15 U.S.C. 6701(g)).

12 **SEC. 4. PRIVATE RIGHT OF ACTION; CIVIL ACTIONS.**

13 (a) CIVIL ACTIONS TO RECOVER UNDER COVERED
14 POLICIES.—A beneficiary of a covered policy may bring
15 a civil action against the insurer for the covered policy
16 or a related company of the insurer to recover proceeds
17 due under the covered policy or otherwise to enforce any
18 rights under the covered policy.

19 (b) NATIONWIDE SERVICE OF PROCESS.—For a civil
20 action brought under subsection (a) in a district court of
21 the United States, process may be served in the judicial
22 district where the case is brought or any other judicial
23 district of the United States where the defendant may be
24 found, resides, has an agent, or transacts business.

25 (c) REMEDIES.—

1 (1) DAMAGES.—

2 (A) IN GENERAL.—A court shall award to
3 a prevailing beneficiary in a civil action brought
4 under subsection (a)—

5 (i) the amount of the proceeds due
6 under the covered policy;

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

12 (iii) any other appropriate relief nec-
13 essary to enforce rights under the covered
14 policy.

15 (B) TREBLE DAMAGES.—If a court finds
16 that an insurer or related company of the in-
17 surer acted in bad faith, the court shall award
18 damages in an amount equal to 3 times the
19 amount otherwise to be awarded under sub-
20 paragraph (A).

21 (2) ATTORNEY'S FEES AND COSTS.—A court
22 shall award reasonable attorney's fees and costs to
23 a prevailing beneficiary in a civil action brought
24 under subsection (a).

1 (d) LIMITATION.—A civil action may not be brought
2 under this section on or after the date that is 10 years
3 after the date of enactment of this Act.

4 **SEC. 5. EFFECT OF PRIOR JUDGMENTS AND RELEASES.**

5 (a) IN GENERAL.—

6 (1) EFFECT.—Subject to subsection (b)(1), a
7 judgment or release described in paragraph (2) shall
8 not preclude, foreclose, bar, release, waive, acquit,
9 discharge, or otherwise impair any claim brought
10 under section 4 by any person.

11 (2) JUDGMENTS AND RELEASES.—A judgment
12 or release described in this paragraph is—

13 (A) a judgment entered before the date of
14 enactment of this Act for any claim arising
15 under a covered policy in any civil action in a
16 Federal or State court; or

17 (B) an agreement entered into before the
18 date of enactment of this Act under which any
19 person (on behalf of the person, any other per-
20 son, or a class of persons) agrees not to assert
21 or agrees to waive or release any claim de-
22 scribed in subparagraph (A), regardless of
23 whether the agreement is—

1 (i) denominated as a release, dis-
 2 charge, covenant not to sue, or otherwise;

3 or

4 (ii) approved by a court.

5 (b) RULES OF CONSTRUCTION.—

6 (1) IN GENERAL.—Except as provided in para-
 7 graph (2), nothing in this section shall affect the va-
 8 lidity or enforceability of any agreement entered into
 9 between any claimant under a covered policy and the
 10 International Commission on Holocaust Era Insur-
 11 ance Claims or an insurer under which the claimant
 12 has agreed to release or waive any claim in consider-
 13 ation for payment under a covered policy.

14 (2) EXCEPTION.—Paragraph (1) shall not
 15 apply to any agreement for which the payment is de-
 16 nominated as humanitarian by the International
 17 Commission on Holocaust Era Insurance Claims.

18 **SEC. 6. EFFECT OF EXECUTIVE AGREEMENTS AND EXECU-**
 19 **TIVE FOREIGN POLICY.**

20 (a) EFFECT OF EXECUTIVE AGREEMENTS AND EX-
 21 ECUTIVE FOREIGN POLICY ON STATE LAWS.—An execu-
 22 tive agreement described in subsection (c)(1) and an exec-
 23 utive foreign policy described in subsection (c)(2) shall not
 24 supercede or preempt the law of any State—

1 (1) relating to a claim under or relating to a
 2 covered policy against the insurer for the covered
 3 policy or a related company of the insurer; or

4 (2) that requires an insurer doing business in
 5 the State or any related company of the insurer to
 6 disclose information regarding a covered policy
 7 issued by the insurer.

8 (b) EFFECT OF EXECUTIVE AGREEMENTS AND EX-
 9 ECUTIVE FOREIGN POLICY ON CLAIMS BROUGHT UNDER
 10 THIS ACT.—An executive agreement described in sub-
 11 section (c)(1) and an executive foreign policy described in
 12 subsection (c)(2) shall not compromise, settle, extinguish,
 13 waive, preclude, bar, or foreclose a claim brought under
 14 section 4.

15 (c) EXECUTIVE AGREEMENTS AND EXECUTIVE FOR-
 16 EIGN POLICY COVERED.—

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

22 (2) EXECUTIVE FOREIGN POLICY.—An execu-
 23 tive foreign policy described in this paragraph is a
 24 foreign policy of the executive branch of the Federal

1 Government established before, on, or after the date
2 of enactment of this Act.

3 **SEC. 7. EFFECT ON STATE LAWS.**

4 Nothing in this Act shall supersede or preempt any
5 State law except to the extent the law of the State conflicts
6 with this Act.

7 **SEC. 8. TIMELINESS OF ACTIONS BROUGHT UNDER STATE**
8 **LAW.**

9 A claim brought under any State law described in
10 section 6(a) shall not be deemed untimely on the basis
11 of any State or Federal statute of limitations or on the
12 basis of any other legal or equitable rule or doctrine (in-
13 cluding laches) governing the timeliness of claims if the
14 claim is filed not later than 10 years after the date of
15 enactment of this Act.

16 **SEC. 9. SEVERABILITY.**

17 If any provision of this Act or the application of such
18 provision to any person or circumstance is held to be un-
19 constitutional, the remainder of this Act and the applica-
20 tion of such provision to any other person or circumstance
21 shall not be affected thereby.

22 **SEC. 10. EFFECTIVE DATE; APPLICABILITY.**

23 This Act shall—

24 (1) take effect on the date of enactment of this
25 Act; and

1 (2) apply to any claim relating to a covered pol-
2 icy that is brought, before, on, or after the date of
3 enactment of this Act.

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