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JUDGE BLOCKS STATE LAW ON HOLOCAUST INSURANCE

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--A federal judge Friday barred state Insurance Commissioner Chuck Quackenbush from enforcing California's new law requiring insurance companies to report to him on policies covering Holocaust victims. U.S. District Judge William B. Shubb ruled that the California law "is meddling" unconstitutionally in the federal government's exclusive authority to conduct foreign policy and regulate foreign commerce.

Shubb noted that the law -- called the Holocaust Victim Insurance Relief Act -- is designed to satisfy claims under policies issued in Europe between 1920 and 1945.

Detailed reports were due from insurers by April 7. If they were not filed within 210 days after the law became effective on May 7, Quackenbush was mandated to suspend a company's certificate to do business in California.

At least 19 insurance companies, through four lawsuits before him, "have made a persuasive showing that the . . . (state law) interferes with foreign relations, has great potential for disruption or embarrassment, and has more than an incidental effect in foreign countries," Shubb found.

None of the companies "deny that the Holocaust was a terrible atrocity," the judge says in his 34-page order. "And none of (them) deny that the victims and their heirs and beneficiaries should be compensated to the extent possible.

"However, even though the end goal of such compensation is laudable, this goal may not be achieved through unconstitutional means."

Shubb further found that the companies have shown the law, enacted in October, would cause them irreparable harm.

He ordered that Quackenbush not implement the law and its accompanying regulations pending a final resolution of the suits.

Frank Kaplan, lead attorney for Quackenbush, declined to comment because he had not seen the judge's order.

George O'Connell, an attorney for Gerling Global Reinsurance Corp. of America, a group of five companies licensed in California and affiliated with two German companies that wrote policies in Europe during the Holocaust era, said, "We're pleased that the judge recognized the merits of our position."

The issue is critical in a state that is home to at least 20,000 Holocaust survivors, the second-largest population in the country behind New York's estimated 30,000. There are believed to be at least 150,000 survivors in the United States.

After the National Socialist (Nazi) Party came to power in Germany in 1933, it confiscated Jewish property and assets, including insurance proceeds. Many Holocaust victims lost their insurance papers during imprisonment. In most cases, people most knowledgeable about a policy were killed, leaving heirs without a paper trail.

As a result, countless Holocaust victims and their descendants and heirs have never collected on insurance policies.

The California Holocaust law obligates all insurers doing business in the state to file reports identifying policies sold directly or through a related company and updating their status. Attorneys for Quackenbush argue that there is no evidence the new statute has direct impact on foreign relations.

But Shubb ruled that the law is inconsistent with U.S. Secretary of the Treasury Stuart Eizenstat's statements regarding the agreement by the United States and Germany to a foundation funded by German government and business to resolve Holocaust reparations.

The foundation "should be regarded as the exclusive remedy," for overall reparations, Eizenstat said in December.

The judge also ruled that the state law conflicts with the cooperative spirit of the International Commission on Holocaust Era Insurance Claims. Chaired by former U. S. Secretary of State Lawrence Eagleburger, the commission includes European and American insurance regulators, the European insurance industry, Jewish and Holocaust survivor organizations, and Israel.

It investigates and helps settle claims. Eizenstat told the House Banking Committee in February that the commission should be the exclusive remedy for resolving insurance claims and that the German foundation is expected to recognize it as such.

The judge rejected Quackenbush's arguments that the German foundation does not have a reporting requirement and the commission does not encompass all the insurance companies targeted by California's law.

Shubb further found that the state law makes the United States' promises in January's U. S.-Swiss Joint Economic Statement appear unfulfilled. The United States promised to call on state insurance regulators and legislative bodies "to refrain from taking unwarranted investigative initiatives or from threatening or actually using sanctions against Swiss insurers."

"Finally," Shubb ruled, "legal peace cannot be achieved if California and each of the other states are free to enact their own legislation forcing companies to report insurance policies or lose their license."

He cites an Eizenstat letter to Gov. Gray Davis stressing that, for the German foundation to work, "German industry and German government need to be assured that they will get legal peace, not just from class-action lawsuits, but from the kind of legislation represented" by the California act.

Quoting James Madison in The Federalist Papers and citing a line of U. S. Supreme Court cases between 1941 and 1968, Shubb declared that "the states do not have authority to fill in perceived gaps

in international measures as they see fit. The United States must be able to speak with one voice on matters of international concern."

He wrote that the practical effect of the state law would be to force European insurers "to gather voluminous European records of policies sold to Europeans and to report these records to California. The required records are not in any way tailored toward California citizens."

The Constitution reserves to Congress the right "to regulate commerce with foreign nations, and among the several states," Shubb wrote. "California is meddling in foreign commerce entirely outside its borders."

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