

Congressman John Garamendi's Testimony Before the Judiciary
Committee's Subcommittee on Commercial and Administrative Law
Hearing: H.R. 4596, the "Holocaust Insurance Accountability Act of
2010," September 22, 2010

Chairman Cohen and Ranking Member Franks, thank you for allowing me the opportunity to testify before your subcommittee on an issue of great importance –that of allowing states to enforce disclosure laws and access to courts for covered Holocaust-era insurance policy claims.

I come before this subcommittee today in support of H.R. 4596, the Holocaust Insurance Accountability Act of 2010, with the experience of having served as Insurance Commissioner for the State of California, where I spent much time working on this issue.

For decades, Holocaust survivors and their heirs have sought the financial security that is rightfully theirs, paid for during the dark days preceding and during World War II to foreign insurance companies. H.R. 4596 would allow states to enforce laws extending the statute of limitations for suits against insurance companies arising out of their failure to pay on policies entered into during the Nazi era. Once signed into law, this bill will rightfully give Holocaust victims and their heirs who are now living in the U.S. the legal authority needed to fight injustice, granting them the authority to go after the foreign insurance companies who have denied them remuneration for more than half a century.

As this committee, those assembled in this chamber, and all those listening to these proceedings know, the Holocaust was a tragedy of unimaginable proportions, an act of pure evil, that marks one of the darkest periods in human history. Six million Jews died as the Nazi war machine roared across Europe, decimating the Jewish people and their communities, forcing the survivors into concentration camps.

It is a testament to the human spirit that some survived the Nazi's program of systematic genocide. Many emerged with just the clothes on their backs, as Nazi soldiers had been ordered to strip them of their material wealth, documents, and, in many cases, went so far as to rip gold fillings out of the mouths of the dead and dying. These men, women and children survived unspeakable atrocities, and were robbed of their physical security by Nazi soldiers whose cruelty has been so well documented by the survivors themselves, such as Eli Weasel in his book Night.

Before, in peaceful times, and even during the war, members of the Jewish community throughout Europe sought to protect their families by purchasing insurance policies to safeguard family assets, plan for retirement, provide dowries for their children and save for their children's education.

In the aftermath of the war, as survivors sought to rebuild their lives, they were again victimized, not by hostile military forces, but by the very insurance companies they and their families relied upon for financial security. In the concentration camps they had lost their human right to physical security, and now insurance companies sought to rob them of the financial security needed to help them rebuild their lives after the ravages of war. In a cruel twist of fate, survivors of the Holocaust insurance claims were rejected because they lacked the necessary paperwork. Documents that the insurance companies knew, or should have known, were either confiscated by the Nazis or lost in the ashes of a global war that decimated Europe.

The International Commission on Holocaust Era Insurance Claims (ICHEIC), established in 1998, decades after the end of WWII, tried to remedy some of the injustice perpetrated by the insurance companies by examining the claims of Holocaust survivors and their heirs. An important fact about the ICHEIC was that the U.S. government was not part of the organization, or the agreement that created it; rather it was between private individuals and private insurance companies. Some were helped by the ICHEIC, but, sadly, for others, justice was eluded.

During and after the war, many Holocaust survivors immigrated to the United States, where some tried to put the horrors they experienced behind them, building a new life in a country founded on the promise of justice for all and religious tolerance. However, some never forgot the insurance companies that had denied them the financial security they so desperately needed after the war.

As Americans, we can all be proud that their cries for justice did not go unheard. In my home state of California the state passed a law called the Holocaust Victims Insurance Relief Act of 1999 (HVIRA). HVIRA required insurance companies doing business in California to disclose the list of all policies issued by the companies themselves or anyone "related" to it. This was an effort by the state to help its citizens; a law that did not interfere with any existing agreements the U.S. had at the time with any foreign entities and/or nation states. Nor did it intrude into exclusive territory of the Executive Branch to make such agreements.

Unfortunately, the U.S. Supreme Court disagreed with California's decision to empower its citizenry, denying the state's law whose sole purpose was to help Holocaust survivors and their heirs claim insurance policies that were rightfully theirs. In a 5-4 decision in American Insurance Association, et. al. v. John Garamendi, Insurance Commissioner, State of California, Justice Souter's majority opinion held that the state law was preempted.

The Court majority found that California's law was unconstitutional under the Preemption Doctrine. This decision ignored the fact that California sought to make private entities disclose information to its citizens, which in no way interfered with the power of the Executive Branch to enter into agreements with foreign powers or any other diplomatic rights afforded it under the Constitution. Nevertheless, the Court found that "California seeks to use an iron fist where the President has consistently chosen kid gloves."

Thankfully, this Congress will now act to rectify the Supreme Court's decision. H.R. 4596, offered by my colleague Congresswoman Ileana Ros-

Lehtinen, would remedy the Supreme Court's decision. This bill recognizes that this matter is between private citizens in this country and foreign insurance companies, and allow for Holocaust survivors and their descendants to finally receive the justice and financial security so long denied to them, by the very companies they paid to insure their lives. This bill is a fine example of American justice, seeking to right the wrongs of the past, by providing a resolution to the survivors and heirs of one of humanity's darkest chapters.

Chairman Cohen and Ranking Member Franks, I thank you for allowing me to testify before this subcommittee and hope to serve as a resource as this Congress works on this important matter.