

9th Circ. Makes U-Turn In Genocide Insurance Case

By **Abigail Rubenstein**

Law360, New York (December 10, 2010) -- A federal appeals court Friday ruled that a California law governing time limits for claims arising under life insurance policies issued to victims of the Armenian Genocide is not preempted by federal policy, reversing its own earlier decision in the case.

In a split decision, a three-judge panel for the U.S. Court of Appeals for the Ninth Circuit held that there is no official federal policy against recognizing the Armenian Genocide and that as such the California law did not improperly interfere in the realm of foreign policy.

The legal battle centers on Section 354.4 of California's Code of Civil Procedure, which was amended in 2000 to provide California courts with jurisdiction over certain classes of claims arising from insurance policies that were held by individuals who lived in the Ottoman Empire from 1915 to 1923 and died there, were deported or escaped to avoid persecution.

By some estimates the Armenian Genocide resulted in the deportation of nearly 2 million Armenians, of whom 1.5 million men, women and children were killed, and eliminated the more than 2,500-year presence of Armenians in their historic homeland. But Turkey fiercely denies that a genocide occurred.

In December 2003, plaintiff Vazken Movsesian launched a class action against German insurers Victoria Versicherung AG and Ergo Versicherungsgruppe AG, as well as their parent company Munich Re AG, seeking allegedly unpaid benefits.

The U.S. District Court for the Central District of California eventually found that the class members had standing to bring their claims for breach of contract and breach of the covenant of fair dealing, and ruled that Section 354.4 was not preempted under the foreign affairs doctrine, prompting Munich Re's appeal.

In August 2009, the Ninth Circuit sided with Munich Re and reversed the district court's order denying the company's motion to dismiss, holding that the statute was preempted because it conflicted with the federal government's foreign policy prohibiting legislative recognition of the Armenian Genocide.

But after agreeing to rehear the case, the appeals court concluded there was no clear federal policy with respect to references to the Armenian Genocide, and therefore that there could be no conflict.

The majority opinion, penned by Judge Harry Pregerson and joined by Judge Dorothy W. Nelson, determined that the presidential communications Munich Re held up to demonstrate a clear, express federal policy against use of the term "Armenian Genocide" were insufficient to demonstrate such a policy.

"As far as we're concerned it's huge," said Brian Kabateck of Kabateck Brown Kellner LLP, who represents the plaintiffs. "This decision not only helps the case and impacts the claims of a few hundred families that are beneficiaries to these very old life insurance policies but is also a wide-ranging opinion that will help Armenian Genocide recognition in this country."

In a dissenting opinion, Judge David R. Thompson said that he would hold that a clear presidential foreign policy does indeed exist against officially recognizing the Armenian Genocide, and that even though the law purports to regulate the insurance industry, its true purpose is to provide relief to the victims of the Armenian Genocide.

"We've reviewed the opinion and see no reason why there should be any different result in 2010 than there was in 2009 when the original opinion was written," Neil Soltman of Mayer Brown LLP, who represents Munich Re, told Law360.

"We also think that the opinion is impossible to reconcile with the same panel's opinion in the Norton Simon Museum case and other recent Supreme Court and Ninth Circuit authorities," Soltman said.

Judges Harry Pregerson, Dorothy W. Nelson and David R. Thompson sat on the panel for the Ninth Circuit.

The plaintiffs are represented by Kabateck Brown Kellner LLP.

The defendants are represented by Mayer Brown LLP.

The case is *Movsesian et al. v. Victoria Versicherung AG et al.*, case number 07-56722, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Erin Marie Daly