

## ***Foreign Affairs Doctrine Preempts State Laws That Conflict With An Express Federal Foreign Policy Or Intrude On The Field Of Foreign Affairs***

The U.S. Courts have consistently struck down state laws that affect or impact the foreign affairs of the United States. This is because the United States Constitution has been deemed to provide the Federal government exclusive authority to administer foreign affairs. U.S. Const., art. VI, cl. 2. This exclusive authority has been referred to as the Foreign Affairs Doctrine. Under this Doctrine, state laws that intrude upon the Federal government's exclusive authority over foreign affairs are preempted.

The Foreign Affairs Doctrine encompasses two types of preemption concepts: 1) conflict preemption, and 2) field preemption. Under conflict preemption, a state law must yield when it conflicts with an express federal foreign policy. In the absence of any express federal foreign policy, a state law may also be preempted under field preemption when:

i) the state law does not address a traditional state responsibility, and ii) the state law intrudes on the Federal government's foreign affairs power.

In the recent case of *Movsesian v. Versicherung AG*, 2012 WL 589457 (C.A.9 (Cal.)), the Ninth Circuit Court of Appeals considered Section 354.4 of the California Code of Civil Procedure. This Section was enacted into law by the State of California to extend the statute of limitations period for insurance claims asserted by victims of Armenian genocide. The Court ruled that this Section did not concern an area of traditional state responsibility, and it was also not a neutral law of general application. At first blush, the statute appears to fall within a state's traditional jurisdiction, the regulation of insurance. However, the Ninth Circuit noted that the required analysis under the Foreign Affairs Doctrine does not begin and end with the plain language of the statute. Rather, the Ninth Circuit ruled that courts must look beyond the words of the statute to determine its "real purpose."

In this instance, the statute extended the limitations period in California over certain insurance claims to recover benefits under insurance policies brought by certain victims. The Ninth Circuit noted that this statute did not concern an area of traditional state responsibility because it applied only to a certain class of insurance policies (those issued or in effect in Europe and Asia between 1875 and 1923) and only to a certain class of people (Armenian genocide victims and their heirs, as its intended beneficiaries). The Ninth Circuit, therefore, held that the California statute imposed a concrete policy of redress for the asserted victims. The statute subjected foreign insurance companies to suit in California by overriding forum-selection provisions. And, the statute greatly extended the statute of limitations for a narrowly defined class of claims.

Thus, the Ninth Circuit held that the California statute intruded upon the Federal government's exclusive power to conduct and regulate foreign affairs, by essentially adopting a foreign policy of victim redress in California. As a result, the Ninth Circuit held that the California statute was preempted.

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