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**From:** Abedin, Huma <AbedinH@state.gov>  
**Sent:** Friday, December 17, 2010 3:06 PM  
**To:** H  
**Subject:** Fw: for HRC: 9th circuit case Davutoglu referred to in call

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**From:** Macmanus, Joseph E  
**To:** Abedin, Huma; Sullivan, Jacob J  
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## Appeals court reverses itself over Armenian suit

By PAUL ELIAS  
The Associated Press  
Friday, December 10, 2010; 6:12 PM

SAN FRANCISCO -- A federal appeals court on Friday reversed itself and now says the heirs of Armenians killed in the Turkish Ottoman Empire can seek payment from companies that sold their relatives life insurance.

The 9th U.S. Circuit Court of Appeals in San Francisco said a California law labeling the killings as a "genocide" does not conflict with U.S. foreign policy, which the court said is unsettled on the issue.

The ruling was 2-1, the same vote the same judicial panel came to last year when it struck down the California law empowering the heirs to sue companies that sold life insurance policies to Armenians killed in Ottoman-era Turkey during World War I.

Last year, the same panel concluded that the U.S. government has sided with the Turkish government and formally taken the position against labeling the killings as a genocide. Therefore, that panel concluded, California's calling the event a genocide conflicted with U.S. foreign policy, making the state law invalid.

But in a rare and stunning move on Friday, Judge Dorothy Nelson changed her mind and sided with Judge Harry Pregerson, which turned his 2009 dissenting view into law.

"We conclude that there is no express federal policy forbidding states to use the term 'Armenian Genocide,'" Pregerson wrote.

The ruling revived a lawsuit filed by heirs against three German insurers, including Munich Re AG.

"This was totally unexpected," said attorney Brian Kabateck, who represents the Armenian heirs. "It's a great victory for the Armenia people."

Kabateck and other lawyers have filed similar lawsuits against New York Life Insurance Co. and French insurer AXA, which were settled in 2005 for a combined \$37.5 million.

Turkey has long denied that the loss of 1.5 million Armenian lives between 1915 and 1919 constituted genocide and instead describes the deaths as resulting from civil unrest that accompanied the collapse of the Ottoman Empire.

Judge David Thompson, who wrote the now-overturned majority opinion last year, said in dissent that former presidents Bill Clinton and George W. Bush defeated congressional legislation that would have recognized an Armenian genocide. Thompson said those presidential efforts show the United States has a clear foreign policy against recognizing the deaths as a genocide.

The majority opinion Friday called those efforts "informal presidential communications" and not official policy. The court said the insurance companies can file a request for a rehearing. The companies could also ask the U.S. Supreme Court to consider the case.

Attorney Neil Michael Soltman, who represented the German insurance companies, said an appeal decision hasn't been made.

Soltman said he was surprised by the decision since no new facts or legal cases were presented to the appellate panel between its first decision in August 2009 and the court's about face Friday.

"It's very rare that a panel changes its mind," Soltman said. "Everything is exactly as it was in August 2009, and all of sudden there's a new opinion. It's hard to explain."